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**FORM 10-K**  
**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

Annual Report Pursuant To Section 13 or 15(d) of the Securities Exchange Act of 1934  
For the fiscal year ended **DECEMBER 31, 2002**

or

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number	Exact name of registrant as specified in its charter and principal office address and telephone number	State of Incorporation	I.R.S. Employer ID. Number
1-14514	<b>Consolidated Edison, Inc.</b> 4 Irving Place, New York, New York 10003 (212) 460-4600	New York	13-3965100
1-1217	<b>Consolidated Edison Company of New York, Inc.</b> 4 Irving Place, New York, New York 10003 (212) 460-4600	New York	13-5009340
1-4315	<b>Orange and Rockland Utilities, Inc.</b> One Blue Hill Plaza, Pearl River, New York 10965 (914) 352-6000	New York	13-1727729

**Securities Registered Pursuant to Section 12(b) of the Act:**

Title of each class	Name of each exchange on which registered
<b>Consolidated Edison, Inc.,</b> Common Shares (\$.10 par value)	New York Stock Exchange
7.25% Public Income NotES (7.25% Debentures, Series 2002A) due 2042	New York Stock Exchange
<b>Consolidated Edison Company of New York, Inc.,</b> 7.35% Public Income NotES (7.35% Debentures, Series 1999A) due 2039	New York Stock Exchange
7.50% Public Income NotES (7.50% Debentures, Series 2001A) due 2041	New York Stock Exchange
\$5 Cumulative Preferred Stock, without par value	New York Stock Exchange
Cumulative Preferred Stock, 4.65% Series C (\$100 par value)	New York Stock Exchange

**Securities Registered Pursuant to Section 12(g) of the Act:**

Title of each class
<b>Consolidated Edison Company of New York, Inc.</b> Cumulative Preferred Stock, 4.65% Series D (\$100 par value)

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Indicate by check mark whether each Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months, and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark if the disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in the definitive proxy statement incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes  No

The aggregate market value of the common equity of Consolidated Edison, Inc. (Con Edison) held by non-affiliates of Con Edison, as of June 30, 2002, was approximately \$8.9 billion.

As of January 31, 2003, Con Edison had outstanding 214,106,624 Common Shares (\$.10 par value).

All of the outstanding common equity of Con Edison Company of New York, Inc. (Con Edison of New York) and Orange and Rockland Utilities, Inc. (O&R) is held by Con Edison.

O&R meets the conditions specified in general instruction (i) (1) (a) and (b) of Form 10-K and is therefore filing this form with the reduced disclosure format.

## DOCUMENTS INCORPORATED BY REFERENCE

Portions of Con Edison's definitive joint proxy statement for its Annual Meeting of Stockholders to be held on May 19, 2003, to be filed with the Commission pursuant to Regulation 14A not later than 120 days after December 31, 2002, are incorporated in Part III of this report.

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### Filing Format

This Annual Report on Form 10-K is a combined report being filed separately by the three different registrants: Con Edison, Con Edison of New York and O&R. Neither Con Edison of New York nor O&R makes any representations as to the information contained in this report relating to Con Edison or the subsidiaries of Con Edison other than itself.

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\* O&R is omitting this information pursuant to General Instruction I of Form 10-K

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## Glossary of Terms

The following is a glossary of frequently used abbreviations or acronyms that are found throughout this report:

### Con Edison Companies

Con Edison	Consolidated Edison, Inc.
Con Edison Communications	Con Edison Communications, LLC.
Con Edison Development	Consolidated Edison Development, Inc.
Con Edison Energy	Consolidated Edison Energy, Inc.
Con Edison of New York	Consolidated Edison Company of New York, Inc.
Con Edison Solutions	Consolidated Edison Solutions, Inc.
O&R	Orange and Rockland Utilities, Inc.
Pike	Pike County Light & Power Company
RECO	Rockland Electric Company

### Regulatory and State Agencies

DEC	New York State Department of Environmental Conservation
EPA	Environmental Protection Agency
FERC	Federal Energy Regulatory Commission
NJBPU	New Jersey Board of Public Utilities
NYPA	New York Power Authority
NYSERDA	New York State Energy Research and Development Authority
PSC	New York State Public Service Commission
PPUC	Pennsylvania Public Utility Commission
SEC	Securities and Exchange Commission

### Other

ABO	Accumulated Benefit Obligation
APB	Accounting Principles Board
AFDC	Allowance for Funds used During Construction
ERISA	Employee Retirement Income Security Act of 1974
FASB	Financial Accounting Standards Board
FIN	FASB Interpretation No.
EITF	Emerging Issues Task Force
ENDRO	Equivalent number of days of revenue outstanding
KV	Kilovolts
kWh	Kilowatt-hour
MD&A	Management's Discussion and Analysis of Financial Condition and Results of Operations.
mdths	Thousand dekatherms
MLBS	Thousands of pounds
MVA	Megavolt amperes
MW	Thousand kilowatts or megawatt
MWH	Megawatt hours
NYISO	New York Independent System Operator
NUGs	Non-utility generators
OCI	Other Comprehensive Income
PCBs	Polychlorinated biphenyls
POLR	Provider of last resort
PRP	Potentially responsible party
SFAS	Statement of Financial Accounting Standards
Superfund	Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980

## Part I

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**Incorporation by Reference**

Information in other Items of this report as to which reference is made in this Item 1 is hereby incorporated by reference in this Item 1. The use of terms such as "see" or "refer to" shall be deemed to incorporate into this Item 1 the information to which such reference is made.

**Available Information**

Con Edison, Con Edison of New York and O&R file annual, quarterly and current reports, proxy or information statements and other information with the SEC. The public may read and copy any materials that the companies file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC. The address of that site is <http://www.sec.gov>. The address of Con Edison's Internet website is <http://www.conedison.com>. Con Edison of New York's website address is at <http://www.coned.com> and O&R's website is at <http://www.oru.com>. The companies make available free of charge on or through the Investor Information section of their websites their Annual Report on Form 10-K, quarterly reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports as soon as reasonably practicable after the reports are electronically filed with, or furnished to, the SEC. Information on the three companies' websites is not incorporated herein.

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**CON EDISON****Corporate Overview**

Consolidated Edison, Inc. (Con Edison), incorporated in New York State in 1997, owns all of the outstanding common stock of Consolidated Edison Company of New York, Inc. (Con Edison of New York) and Orange and Rockland Utilities, Inc. (O&R). Con Edison has no significant business operations other than those of its regulated utility subsidiaries, Con Edison of New York and O&R, and its unregulated subsidiaries.

For information about legal proceedings relating to Con Edison's October 1999 agreement to acquire Northeast Utilities, see Note P to the Con Edison financial statements in Item 8.

**Operating Segments**

Con Edison's principal business segments are the regulated electric, gas and steam businesses of its utility subsidiaries and the unregulated businesses of its other subsidiaries. In 2002, the operating revenues of the regulated electric, gas and steam businesses and the unregulated businesses were 73.7 percent, 14.2 percent, 4.8 percent and 7.3 percent, respectively, of Con Edison's operating revenues. For a discussion of operating revenues and operating income for each segment, see "Results of Operations" in Con Edison's Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) in Item 7. For additional segment information see Note N to the Con Edison financial statements in Item 8 and the discussions of the businesses of Con Edison of New York and O&R below in this Item 1.

**Regulation**

Con Edison's utility subsidiaries are subject to extensive federal and state regulation, including by state utility commissions and the Federal Energy Regulatory Commission (FERC). Con Edison, itself, is not subject to such regulation except to the extent that the rules or orders of these agencies impose restrictions on relationships between Con Edison and its utility subsidiaries.

Con Edison is a "holding company" under the Public Utility Holding Company Act of 1935 (PUHCA). Con Edison is exempt from all provisions of PUHCA, except Section 9(a)(2) (which requires SEC approval for a direct or indirect acquisition of 5 percent or more of the voting securities of any other electric or gas utility company) on the basis that Con Edison and its utility subsidiaries are organized and carry on their utility businesses substantially in the State of New York and that it does not derive any material part of its income from a public utility company organized outside of the State of New York. This exemption is available even though Con Edison subsidiaries that are neither an "electric utility company" nor a "gas utility company" under PUHCA will engage in interstate activities.

Con Edison has been and is expected to continue to be impacted by legislative and regulatory developments. Con Edison's utility subsidiaries are subject to extensive regulation in New York, New Jersey and Pennsylvania. Changes in regulation or legislation applicable to the company's subsidiaries could have a material adverse effect on the company and its subsidiaries. See "Regulatory Matters" in the MD&A of Con Edison and Con Edison of New York in Item 7.

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## Competition

Legislative and regulatory developments are promoting increased competition in Con Edison's businesses. For information about competition, see "Competition," below in the discussion of Con Edison of New York's business in this Item 1 and "Unregulated Subsidiaries," below.

## Unregulated Subsidiaries

Con Edison has four unregulated subsidiaries: Consolidated Edison Solutions, Inc. (Con Edison Solutions), a retail energy services company that sells electricity, gas and energy-related services to delivery customers of utilities, including Con Edison of New York and O&R; Consolidated Edison Energy, Inc. (Con Edison Energy), a wholesale energy supply company; Consolidated Edison Development, Inc. (Con Edison Development), a company that owns and operates generating plants and energy and other infrastructure projects; and Con Edison Communications, LLC (Con Edison Communications), a company that builds and operates fiber optic networks to provide telecommunications services. The unregulated subsidiaries participate in competitive energy supply and services businesses that are subject to different risks than those found in the businesses of the regulated utility subsidiaries. The unregulated subsidiaries accounted for 7.3 percent of consolidated operating revenues and 2.9 percent of consolidated net income (before cumulative effect of change in accounting principle) in 2002, and 7.0 percent of consolidated total assets at December 31, 2002.

For additional information about Con Edison's unregulated subsidiaries, see "Results of Operations—Unregulated Business" in Con Edison's MD&A in Item 7.

## Capital Requirements and Financing

For information about Con Edison's capital requirements, financing and securities ratings, see "Liquidity and Capital Resources—Capital Resources, Capital Requirements and Financial Market Risks" in Con Edison's MD&A in Item 7. Securities ratings assigned by rating organizations are expressions of opinion and are not recommendations to buy, sell or hold securities. A securities rating is subject to revision or withdrawal at any time by the assigning rating organization. Each rating should be evaluated independently of any other rating.

## State Anti-takeover Law

New York State law provides that a "resident domestic corporation," such as Con Edison, may not consummate a merger, consolidation or similar transaction with the beneficial owner of a 20 percent or greater voting stock interest in the corporation, or with an affiliate of the owner, for five years after the acquisition of voting stock interest, unless the transaction or the acquisition of the voting stock interest was approved by the corporation's board of directors prior to the acquisition of the voting stock interest. After the expiration of the five-year period, the transaction may be consummated only pursuant to a stringent "fair price" formula or with the approval of a majority of the disinterested stockholders.

## Employees

Con Edison has no employees other than those of Con Edison of New York, O&R and Con Edison's unregulated subsidiaries (which at December 31, 2002 had 12,917, 1,015 and 361 employees, respectively).

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## CON EDISON OF NEW YORK

### Corporate Overview

Con Edison of New York, incorporated in New York State in 1884, is a subsidiary of Con Edison and has no significant subsidiaries of its own. Con Edison of New York provides electric service in all of New York City (except part of Queens) and most of Westchester County, an approximately 660 square mile service area with a population of more than 8 million. It also provides gas service in Manhattan, the Bronx and parts of Queens and Westchester, and steam service in parts of Manhattan.

### Operating Segments

Con Edison of New York's principal business segments are its regulated electric, gas and steam businesses. In 2002, electric, gas and steam operating revenues were 79.9 percent, 14.5 percent and 5.6 percent, respectively, of its operating revenues. For a discussion of the company's operating revenues and operating income for each segment, see "Results of Operations" in its MD&A in Item 7. For additional information about the segments, see Note N to the Con Edison of New York's financial statements in Item 8.

### Electric Operations

There have been and are continuing to be significant changes in Con Edison of New York's electric operations, including the establishment of the company's electric retail access program (under which all of the company's electric customers are able to purchase electricity from other suppliers) and the company's sale of

most of its electric generating capacity. See "Regulatory Matters—Electric" in the MD&A of Con Edison and Con Edison of New York in Item 7 and "Rate and Restructuring Agreements" in Note A to the Con Edison and Con Edison of New York financial statements in Item 8.

**Electric Sales.** Electric operating revenues were \$5.8 billion in 2002 or 79.9 percent of Con Edison of New York's operating revenues. The percentages were 78.2 and 80.8, respectively, in the two preceding years. In 2002, 58.9 percent of the electricity delivered by Con Edison of New York in its service areas was sold by Con Edison of New York to its full-service customers, 22.0 percent was sold by other suppliers, including Con Edison Solutions, an unregulated subsidiary of Con Edison, to the company's customers under its electric retail access program and the balance was delivered to the state and municipal customers of the New York Power Authority (NYPA) and the economic development customers of municipal electric agencies. The company charges for the delivery of electricity sold by other suppliers to customers in its service area.

For additional information about electricity sales, see "Operating Statistics," below, and "Results of Operation—Electric" in the MD&As of Con Edison and Con Edison of New York in Item 7.

**Electric Peak Load.** The electric peak load in Con Edison of New York's service area occurs during the summer air conditioning season. The 2002 service area peak load, which occurred on July 3, was 12,086 thousand kilowatts (MW). The 2002 peak load included an estimated 7,874 MW for Con Edison of New York's full-service customers, 2,483 MW for the company's customers participating in its electric retail access program and 1,729 MW for NYPA's customers and municipal electric agency customers. If adjusted to historical design weather conditions, the 2002 peak load, would have been

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12,400 MW. Con Edison of New York estimates that, under design weather conditions, the 2003 service area peak load would be 12,650 MW, including an estimated 8,055 MW for the company's full-service customers, 2,700 for its electric retail access program customers and 1,895 MW for NYPA's customers and municipal electric agency customers. "Design weather" for the electric system is a standard to which the actual peak load is adjusted for evaluation and planning purposes.

**Electric Supply.** Most of the electricity sold by Con Edison of New York to its customers in 2002 was purchased under firm power contracts or through the wholesale electricity market administered by the New York Independent System Operator (NYISO). The firm power contracts were with non-utility generators (NUGs) and utilities (including Hydro-Quebec). The company has sold most of its electric generating capacity (see Note I to the Con Edison and Con Edison of New York financial statements in Item 8).

The company plans to meet its continuing obligation to supply electricity to its customers with electric energy purchased under contracts with NUGs or others, generated from its electric generating facilities (which have a capacity of 630 MW) or purchased through the NYISO's wholesale electricity market. For additional information about electric power purchases, see "Electric Power Requirements" in Con Edison's and Con Edison of New York's MD&As in Item 7 and "Recoverable Energy Costs" in Note A to the Con Edison and Con Edison of New York financial statements in Item 8.

For information about the company's contracts with NUGs for approximately 3,100 MW of electric generating capacity, see Note H to the Con Edison and Con Edison of New York financial statements in Item 8.

For the period ending March 2004, Con Edison of New York has an agreement with Hydro-Quebec (a government-owned Canadian electric utility) to purchase 400 MW of firm capacity during the months of April through October. The amount and price of a "basic amount" of energy the company is entitled to purchase in each year is subject to negotiation with Hydro-Quebec. In accordance with the agreement, the company can also purchase additional energy during the summer, which it would be obligated to return to Hydro-Quebec during the following winter.

For information about the company's remaining electric generating facilities, see Item 2.

The NYISO is a not-for-profit organization which controls and operates most of the electric transmission facilities in New York State as an integrated system and administers a wholesale market for electricity in New York State. The NYISO, for reliability reasons, requires that entities supplying electricity to customers in New York State have generating capacity (either owned or contracted for) in an amount that is 18 percent or more above the expected peak load for their customers. In addition, entities that serve customers in New York City must have enough New York City-located capacity to cover 80 percent of their New York City customer peak load. Con Edison of New York met these requirements in 2002 with respect to its full-service customers and expects to meet them in 2003.

For additional information about the NYISO, see "Regulatory Matters—Electric" in Con Edison's and Con Edison of New York's MD&A in Item 7.

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## Gas Operations

There have been and are continuing to be significant changes in Con Edison of New York's gas operations in recent years, including the establishment of the company's gas retail access program under which all of the company's gas customers are able to purchase gas from other suppliers, which Con Edison of New York would deliver.

**Gas Sales.** Gas operating revenues in 2002 were \$1.04 billion or 14.5 percent of Con Edison of New York's operating revenues. The percentages were 15.6 and 13.5, respectively, in the two preceding years. In 2002, 34 percent of the gas delivered by the company in its service area was sold by the company to its full-service (firm and interruptible) customers and 66 percent was sold by other suppliers, including Con Edison Solutions. For additional information about gas sales, see "Operating Statistics," below, and "Results of Operations—Gas" in the MD&As of Con Edison and Con Edison of New York in Item 7.

**Gas Requirements.** Firm demand for gas in Con Edison of New York's service area peaks during the winter heating season. The "design criteria" for the company's gas system assumes severe weather conditions, which have not occurred since the 1933-34 winter. Under these criteria, the company estimated that its requirements to deliver gas to firm customers during the November 2002/March 2003 winter heating season would amount to 77,400 thousand dekatherms (mdths) (including 63,600 mdths to its firm sales customers and 13,800 mdths to its firm transportation customers). For the period through January 31, 2003, the

company's peak day occurred on January 7, 2003 when it delivered 1,022 mdths of gas (including 558 mdths to its firm sales customers, 157 mdths to NYPA, 209 mdths to its other transportation customers and 98 mdths for use by the company in generating electricity and steam).

Under its design criteria, the company projects that for the November 2003/March 2004 winter heating season, its requirements for firm gas customers will amount to 79,300 mdths (including 63,600 mdths to firm sales customers and 15,700 mdths to firm transportation customers) and that the peak day requirements for these customers will amount to 971 mdths. The company expects to be able to meet these requirements.

**Gas Supply.** Con Edison of New York has contracts with suppliers for the firm purchase of natural gas. Charges under these contracts, which are based on formulas or indexes or are subject to negotiation, are generally designed to approximate market prices. The contracts are for various terms extending to 2006. The company also has contracts with interstate pipeline companies for the purchase of firm transportation and storage services. Charges under these contracts are approved by the FERC. The contracts are for various terms extending to 2013. The company is required to pay certain charges under the supply, transportation and storage contracts whether or not it actually uses the contracted capacity. These fixed charges amounted to approximately \$145 million in 2002. See "Contractual Obligations and Commercial Commitments" in the Con Edison of New York MD&A in Item 7. In addition, Con Edison of New York purchases gas on the spot market and has interruptible gas transportation contracts.

Con Edison of New York recovers its gas supply, transportation and storage costs, less net proceeds of sales of excess capacity (excluding any incentive earned by the company for such sales), from customers

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pursuant to rate provisions approved by the New York State Public Service Commission (PSC). See "Recoverable Energy Costs" in Note A to the Con Edison and Con Edison of New York financial statements in Item 8.

### Steam Operations

**Steam Sales.** Con Edison of New York sells steam in Manhattan south of 96th Street, mostly to large office buildings, apartment houses and hospitals. In 2002, steam operating revenues were \$404.0 million or 5.6 percent of the company's operating revenues. The percentages were 6.2 and 5.7, respectively, in the two preceding years.

For additional information about Con Edison of New York's steam operations, see "Regulatory Matters—Steam" and "Results of Operations—Steam" in the MD&As of Con Edison and Con Edison of New York in Item 7, the discussion of Con Edison of New York's steam facilities in Item 2 and "Operating Statistics," below.

**Steam Peak Load and Capacity.** Demand for steam in Con Edison of New York's service area peaks during the winter heating season. The one-hour peak load during the winter of 2002/2003 (through January 31, 2003) occurred on January 24, 2003 when the load reached 9.7 million pounds per hour. The company's estimate for the winter of 2003/2004 peak demand of its steam customers is 10.8 million pounds per hour under design criteria, which assume severe weather.

On December 31, 2002, the steam system had the capability of delivering about 12.8 million pounds of steam per hour. Con Edison of New York estimates that the system will have the capability to deliver 12.8 million pounds of steam per hour in the 2003/2004 winter.

**Steam Supply.** Forty-nine percent of the steam sold by Con Edison of New York in 2002 was produced in the company's steam-only generating stations; 38 percent was produced in the company's steam/electric generating stations, where it is first used to generate electricity; and 13 percent was purchased from others. See Item 2 for a discussion of Con Edison of New York's steam facilities (which information is incorporated herein by reference).

### Regulation

The PSC regulates, among other things, Con Edison of New York's electric, gas and steam rates, the siting of its transmission lines and the issuance of its securities. Certain activities of Con Edison of New York are subject to the jurisdiction of the FERC. In addition, various matters relating to the construction and operations of Con Edison of New York's facilities are subject to regulation by other governmental agencies. Changes in regulation or legislation applicable to Con Edison of New York could have a material adverse effect on the company. For additional information, including information about the company's electric, gas and steam rates, see "Regulatory Matters" in Con Edison of New York's MD&A in Item 7.

The PSC is conducting a statewide proceeding to consider issues relating to electric and gas utilities' exiting the business of selling commodity (i.e., electric energy and gas, at retail) and related retail services. In particular, the PSC is examining utility "provider of last resort" responsibilities and seeking to identify the consumer protections that will be needed as markets are opened to competition. In March 2002, Con

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Edison of New York filed its cost of service studies for electric and gas service in a separate phase of this proceeding established to address the unbundling of rates into various services (e.g., meter reading, billing services), with a view to having these services provided by competitive markets. A "generic" PSC decision is expected in 2003, followed by a proceeding to apply the generic principles to Con Edison of New York's electric and gas rates. In March 2002, the PSC rejected proposals for partial or total disallowance of "stranded costs" resulting from migration of customers to competitive markets and directed the utilities to propose recovery mechanisms, which were filed in May 2002. However, there is disagreement regarding which costs would be considered stranded and eligible for recovery. In December 2002, the company asked the PSC to terminate or suspend the "unbundling" proceeding on the grounds that the objectives of the proceeding were not being accomplished.

### Competition

For information about federal and state initiatives promoting the development of competition in the supply of electricity, see "Regulatory Matters" in the MD&As of Con Edison and Con Edison of New York in Item 7. Competition from other suppliers of electricity or gas, suppliers of oil and other sources of energy,

including distributed generation (such as fuel cells and micro-turbines) may provide alternatives for Con Edison of New York customers. The company's electric, gas and steam rates are among the highest in the country.

### Capital Requirements and Financing

For information about Con Edison of New York's capital requirements, financing and securities ratings, see "Liquidity and Capital Resources—Capital Resources, Capital Requirements and Financial Market Risks" in Con Edison of New York's MD&A in Item 7.

Securities ratings assigned by rating organizations are expression of opinion and are not recommendations to buy, sell or hold securities. A securities rating is subject to revision or withdrawal at any time by the assigning rating organization. Each rating should be evaluated independently of any other rating.

### Environmental Matters

**General.** Con Edison of New York's capital expenditures for environmental protection facilities and related studies were \$69 million in 2002 and are estimated to be \$66 million in 2003.

**Superfund.** The Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund) by its terms imposes joint and several strict liability, regardless of fault, upon generators of hazardous substances for resulting removal and remedial costs and environmental damages. In the course of Con Edison of New York's operations, materials are generated that are deemed to be hazardous substances under Superfund. The materials include asbestos and dielectric fluids containing polychlorinated biphenyls (PCBs). Other hazardous substances are generated in Con Edison of New York's operations or may be present at company locations. Also, hazardous substances were generated at the manufactured gas plants that the company and its predecessor companies used to operate. See "Superfund" in the discussion of Con Edison of New York's legal proceedings in Item 3 and Note F to the Con Edison and Con Edison of New York financial statements in Item 8.

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**Asbestos.** Asbestos is present in numerous Con Edison of New York facilities and was present in facilities formerly owned by the company. For information about asbestos, see "Asbestos Litigation" in the discussion of the company's legal proceedings in Item 3 and Note F to the Con Edison and Con Edison of New York financial statements in Item 8.

**Toxic Substances Control Act.** Virtually all electric utilities, including Con Edison of New York, own equipment containing PCBs. PCBs are regulated under the Federal Toxic Substances Control Act of 1976.

**Water Quality.** Certain governmental authorities are investigating contamination in the Hudson River and the New York Harbor. These waters are along the shoreline of Con Edison of New York's service area. Governmental authorities could require entities that generated hazardous substances that contaminated these waters to bear the cost of investigation and remediation, which could be substantial.

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## Con Edison of New York

### OPERATING STATISTICS

*Year Ended December 31*

	<i>2002</i>	<i>2001</i>	<i>2000</i>	<i>1999</i>	<i>1998</i>
<b>ELECTRIC ENERGY (MWH)</b>					
Generated	1,259,533	6,793,393	3,259,790	15,266,628	16,541,078
Purchased from others	32,712,723	27,877,154	35,780,429	29,303,386	26,372,576
<b>TOTAL GENERATED AND PURCHASED</b>	<b>33,972,256</b>	<b>34,670,547</b>	<b>39,040,219</b>	<b>44,570,014</b>	<b>42,913,654</b>
Less: Used by Company	172,873	187,773	191,445	151,090	155,172
Distribution losses and other variances	2,008,530	1,931,694	2,768,249	2,682,629	2,429,369
<b>NET GENERATED AND PURCHASED</b>	<b>31,790,853</b>	<b>32,551,080</b>	<b>36,080,525</b>	<b>41,736,292</b>	<b>40,329,113</b>
<b>Electric Energy Sold</b>					
Residential	12,481,689	12,048,743	11,637,167	11,854,995	11,282,669
Commercial and Industrial	19,110,770	19,839,340	19,930,376	20,238,777	24,455,265
Railroads and Railways	55,186	16,003	95,457	71,447	87,514
Public Authorities	125,651	150,069	257,706	465,287	548,569
Con Edison of New York full service customers	31,773,296	32,054,155	31,920,706	32,630,506	36,374,017
Off-System Sales (a)	17,557	496,925	4,159,819	9,105,786	3,955,096



TOTAL ELECTRIC ENERGY SOLD	31,790,853	32,551,080	36,080,525	41,736,292	40,329,113
<b>ELECTRIC ENERGY DELIVERED</b>					
Con Edison of New York full service customers	31,773,296	32,054,155	31,920,706	32,630,506	36,374,017
Delivery service for retail access customers	11,861,981	10,499,056	9,321,630	7,935,827	2,417,321
Delivery service to NYPA customers and others	9,504,526	9,815,259	9,631,618	9,335,230	9,039,674
Delivery service for municipal agencies	762,660	660,220	526,816	624,229	814,575
<b>TOTAL DELIVERIES IN FRANCHISE AREA</b>	<b>53,902,463</b>	<b>53,028,690</b>	<b>51,400,770</b>	<b>50,525,792</b>	<b>48,645,587</b>

<b>AVERAGE ANNUAL KWHR USE PER RESIDENTIAL CUSTOMER (b)</b>	<b>4,652</b>	<b>4,502</b>	<b>4,372</b>	<b>4,487</b>	<b>4,303</b>
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<b>AVERAGE REVENUE PER KWHR SOLD (CENTS)</b>					
RESIDENTIAL (b)	17.0	18.1	18.5	15.9	16.2
COMMERCIAL AND INDUSTRIAL (b)	14.4	15.6	15.5	12.7	12.7

(a) For 2000, 1999 and 1998, included sales to Con Edison Solutions. See "Unregulated Subsidiaries," above.

(b) Includes Municipal Agency sales.

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## Con Edison of New York

### OPERATING STATISTICS (CONTINUED)

Year Ended December 31,

	2002	2001	2000	1999	1998
<b>GAS (DTH)</b>					
Purchased	134,126,768	140,633,193	157,800,083	245,496,798	232,560,023
Storage - net change	5,728,684	(6,474,137)	774,660	1,964,581	(4,404,888)
Used as boiler fuel at Electric and Steam Stations	(29,386,788)	(27,725,598)	(27,674,312)	(67,331,325)	(109,240,109)
<b>GAS PURCHASED FOR RESALE</b>	<b>110,468,664</b>	<b>106,433,458</b>	<b>130,900,431</b>	<b>180,130,054</b>	<b>118,915,026</b>
Less: Gas used by the company	323,915	299,057	294,937	369,938	376,577
Off-System Sales & NYPA	16,120,307	12,666,668	29,563,339	92,072,772	26,104,143
Distribution losses and other variances	4,555,763	(2,887,761)	7,060,117	1,998,637	(820,174)
<b>TOTAL GAS PURCHASED FOR CON EDISON OF NEW YORK CUSTOMERS</b>	<b>89,468,679</b>	<b>96,355,494</b>	<b>93,982,038</b>	<b>85,688,707</b>	<b>93,254,480</b>
<b>GAS SOLD</b>					
<b>Firm Sales</b>					
Residential	44,162,920	46,506,365	47,602,792	44,705,689	45,106,269
General	32,681,926	35,118,342	30,468,676	27,271,134	30,685,310
<b>TOTAL FIRM SALES</b>	<b>76,844,846</b>	<b>81,624,707</b>	<b>78,071,468</b>	<b>71,976,823</b>	<b>75,791,579</b>
Interruptible Sales	12,623,833	14,730,787	15,910,570	13,711,884	17,462,901
<b>TOTAL GAS SOLD TO CON EDISON OF NEW YORK CUSTOMERS</b>	<b>89,468,679</b>	<b>96,355,494</b>	<b>93,982,038</b>	<b>85,688,707</b>	<b>93,254,480</b>
<b>Transportation of customer-owned gas</b>					
Firm transportation	15,695,403	14,279,816	18,215,120	17,382,490	8,634,659
NYPA	25,466,325	13,762,339	19,857,321	11,268,947	4,260,908
Other	116,953,158	78,709,049	97,155,425	22,560,029	14,478,269
Off-System Sales	8,354,940	6,206,522	23,067,713	32,942,436	25,982,200

TOTAL SALES AND TRANSPORTATION	255,938,505	209,313,220	252,277,617	169,842,609	146,610,516
<b>AVERAGE REVENUE PER DTH SOLD</b>					
RESIDENTIAL	\$ 12.30	\$ 14.25	\$ 11.62	\$ 11.20	\$ 11.75
GENERAL	\$ 8.90	\$ 10.76	\$ 8.44	\$ 7.70	\$ 7.95
STEAM SOLD (MLBS)	24,519,476	25,327,694	26,733,260	26,532,797	24,995,694
<b>AVERAGE REVENUE PER MLB SOLD</b>					
	\$ 15.52	\$ 18.86	\$ 16.37	\$ 12.80	\$ 12.83
<b>CUSTOMERS - AVERAGE FOR YEAR</b>					
Electric	3,117,542	3,100,642	3,078,648	3,054,693	3,030,746
Gas	1,054,312	1,051,540	1,051,555	1,046,133	1,040,410
Steam	1,838	1,853	1,861	1,879	1,898

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**O & R****General Nature and Scope of Business**

O & R, a subsidiary of Con Edison incorporated in New York State in 1926, two wholly-owned utility subsidiaries, Rockland Electric Company (RECO), a New Jersey corporation, and Pike County Light & Power Company (Pike), a Pennsylvania corporation.

O&R and its utility subsidiaries provide electric service in southeastern New York and in adjacent sections of New Jersey and northeastern Pennsylvania, an approximately 1,350 square mile service area. They also provide gas service in southeastern New York and Pennsylvania. O&R's business is subject to regulation by the PSC, the New Jersey and Pennsylvania state utility commissions and the FERC. Changes in regulation or legislation applicable to O&R could have a material adverse effect on the company's financial position, results of operations or liquidity.

O&R's principal business segments are its regulated electric and gas utility businesses. In 2002, electric and gas operating revenues were 75.0 percent and 25.0 percent, respectively, of its operating revenues.

For additional information about O&R's business, see O&R Management's Narrative Analysis of the Results of Operations in Item 7 and the notes to the O&R financial statements in Item 8. For information about O&R's legal proceedings, see Item 3.

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**O&R****OPERATING STATISTICS***Year Ended December 31,*

	2002	2001	2000	1999	1998
<b>ELECTRIC ENERGY (MWH)</b>					
Generated	--	--	--	1,871,898	4,061,371
Purchased from others	4,506,217	4,565,551	4,879,400	3,153,359	1,198,709
<b>TOTAL GENERATED AND PURCHASED</b>	<b>4,506,217</b>	<b>4,565,551</b>	<b>4,879,400</b>	<b>5,025,257</b>	<b>5,260,080</b>
Less: Used by Company	14,305	14,572	19,337	134,587	251,947
Distribution losses and other variances	172,374	101,368	410,489	369,456	315,075
<b>NET GENERATED AND PURCHASED</b>	<b>4,319,538</b>	<b>4,449,611</b>	<b>4,449,574</b>	<b>4,521,214</b>	<b>4,693,058</b>
<b>ELECTRIC ENERGY SOLD</b>					
Residential	1,815,262	1,772,576	1,881,680	1,942,347	1,836,916
Commercial and Industrial	2,393,181	2,566,726	2,463,744	2,373,415	2,228,938
Public Authorities	111,095	110,309	104,150	96,294	70,525
<b>Total sales to Orange &amp; Rockland customers</b>	<b>4,319,538</b>	<b>4,449,611</b>	<b>4,449,574</b>	<b>4,412,056</b>	<b>4,136,379</b>

Off-System Sales	-	-	-	109,158	556,679
<b>TOTAL ELECTRIC ENERGY SOLD</b>	<b>4,319,538</b>	<b>4,449,611</b>	<b>4,449,574</b>	<b>4,521,214</b>	<b>4,693,058</b>
Total sales to Orange & Rockland customers	4,319,538	4,449,611	4,449,574	4,412,056	4,136,379
Delivery service for Retail Choice customers	1,235,047	798,814	606,794	589,223	691,891
<b>TOTAL SALES IN FRANCHISE AREA</b>	<b>5,554,585</b>	<b>5,248,425</b>	<b>5,056,368</b>	<b>5,001,279</b>	<b>4,828,270</b>
<b>AVERAGE ANNUAL KWH USE PER RESIDENTIAL CUSTOMER</b>	<b>8,801</b>	<b>8,506</b>	<b>7,854</b>	<b>8,065</b>	<b>7,716</b>
<b>AVERAGE REVENUE PER KWH SOLD (CENTS)</b>					
RESIDENTIAL	11.23	12.79	12.22	11.84	12.01
COMMERCIAL AND INDUSTRIAL	8.65	10.04	9.93	8.18	8.38

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## O&R

### OPERATING STATISTICS (CONTINUED)

*Year Ended December 31,*

	<b>2002</b>	<b>2001</b>	<b>2000</b>	<b>1999</b>	<b>1998</b>
<b>GAS (DTH)</b>					
Purchased	19,723,917	18,588,275	25,042,346	36,711,658	53,030,119
Storage - net change	(2,195,456)	854,482	(1,099,134)	890,604	(278,878)
Used as boiler fuel at O&R electric generating stations	-	-	-	(15,252,652)	(31,757,453)
<b>GAS PURCHASED FOR RESALE</b>	<b>17,528,461</b>	<b>19,442,757</b>	<b>23,943,212</b>	<b>22,349,610</b>	<b>20,993,788</b>
Less: Gas used by the company	56,939	45,979	57,828	77,613	54,392
Distribution losses and other variances	799,625	578,186	841,296	705,214	1,395,333
<b>TOTAL GAS PURCHASED FOR O&amp;R CUSTOMERS</b>	<b>16,671,897</b>	<b>18,818,592</b>	<b>23,044,089</b>	<b>21,566,784</b>	<b>19,544,064</b>
<b>GAS SOLD</b>					
<b>Firm Sales</b>					
Residential	10,203,403	11,724,341	14,281,013	13,702,735	12,913,578
General	3,294,624	3,750,851	4,080,178	4,389,977	3,410,481
<b>TOTAL FIRM SALES</b>	<b>13,498,027</b>	<b>15,475,192</b>	<b>18,361,191</b>	<b>18,092,712</b>	<b>16,324,059</b>
Interruptible Sales	3,173,870	3,343,400	3,653,684	3,474,072	3,220,005
Sales to Con Edison	-	-	1,029,214	-	-
<b>TOTAL GAS SOLD TO O&amp;R CUSTOMERS</b>	<b>16,671,897</b>	<b>18,818,592</b>	<b>23,044,089</b>	<b>21,566,784</b>	<b>19,544,064</b>
Transportation of customer-owned gas					
Firm transportation	6,367,990	4,723,695	3,415,804	2,207,541	1,614,284
Interruptible transportation	4,192,062	3,920,901	4,222,835	1,905,807	4,059,829
Sales for resale	1,057,156	1,039,083	1,138,937	17,740	7,092
Sales to divested electric generating stations	13,983,048	11,427,428	11,640,751	-	-
Off-System Sales	2,883,913	2,526,829	4,984,794	264,277	-
<b>TOTAL SALES AND TRANSPORTATION</b>	<b>45,156,066</b>	<b>42,456,528</b>	<b>48,447,210</b>	<b>25,962,149</b>	<b>25,225,269</b>

**AVERAGE REVENUE PER DTH SOLD**

RESIDENTIAL	\$	8.29	\$	10.29	\$	8.32	\$	7.77	\$	7.25
GENERAL	\$	7.87	\$	9.73	\$	7.65	\$	6.92	\$	6.87

**CUSTOMERS - AVERAGE FOR YEAR**

Electric	285,519	282,191	278,851	275,640	272,111
Gas	121,437	120,108	118,707	117,283	115,708

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**ITEM 2. PROPERTIES**
**CON EDISON**

Con Edison has no significant properties other than those of Con Edison of New York, O&R and Con Edison's unregulated subsidiaries.

At December 31, 2002, the capitalized cost of Con Edison's utility plant, net of accumulated depreciation, was as follows (in millions of dollars):

	Con Edison of New York		O&R		Con Edison	
	Amount	Percent	Amount	Percent	Amount	Percent
Electric						
Generation	\$ 326.6	3%	-	-%	\$ 326.6	3%
Transmission	1,082.1	9%	98.0	13%	1,180.1	9%
Distribution	6,303.8	53%	371.1	48%	6,674.9	53%
Gas	1,663.9	14%	205.0	27%	1,868.9	15%
Steam	566.7	5%	-	-%	566.7	4%
General	938.0	8%	70.7	9%	1,008.7	8%
Held for Future Use	3.5	-%	1.7	-%	5.2	-%
Construction Work in Progress	965.5	8%	23.0	3%	988.5	8%
<b>NET UTILITY PLANT</b>	<b>\$ 11,850.1</b>	<b>100%</b>	<b>\$ 769.5</b>	<b>100%</b>	<b>\$ 12,619.6</b>	<b>100%</b>

**CON EDISON OF NEW YORK**
**Electric Facilities**

**Generating Facilities.** Con Edison of New York has sold most of its electric generating facilities. See Note I to the Con Edison and Con Edison of New York financial statements in Item 8 (which information is incorporated herein by reference). The company's remaining electric generating facilities consist of plants located in New York City with an aggregate capacity of 630 MW. The company expects to have sufficient amounts of fuel available in 2003 for use in these facilities. The company intends to add incremental generating capacity of approximately 200 MW based on a winter nominal rating (or approximately 125 MW based on a summer nominal rating) through the repowering of its East River station and the closing of its Waterside station.

**Transmission Facilities.** Con Edison of New York's transmission facilities, other than those located underground, are controlled and operated by the NYISO. See "Electric Operations—Electric Supply" in Item 1 (in which information is incorporated herein by reference). At December 31, 2002, Con Edison of New York's transmission system had 432 miles of overhead circuits operating at 138, 230, 345 and 500 kV and 138 miles of underground circuits operating at 138 and 345 kV. There are 267 miles of radial subtransmission circuits operating at 69 kV and above. The company's 14 transmission substations, supplied by circuits operated at 69kV and above, have a total transformer capacity of 15,731 MVA. The company's transmission facilities are located in New York City and Westchester, Orange, Rockland, Putnam and Dutchess counties in New York State.

Con Edison of New York has transmission interconnections with Niagara Mohawk, Central Hudson Gas & Electric Corporation, O&R, New York State Electric and Gas Corporation, Connecticut Light

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and Power Company, Long Island Power Authority, NYPA and Public Service Electric and Gas Company.

**Distribution Facilities.** Con Edison of New York owns various distribution substations and facilities located throughout New York City and Westchester County. At December 31, 2002, the company's distribution system had a transformer capacity of 20,300 MVA, with 32,763 miles of overhead distribution lines and 89,910 miles of underground distribution lines.

**Gas Facilities**

Natural gas is delivered by pipeline to Con Edison of New York at various points in its service territory and is distributed to customers by the company through 4,249 miles of mains and 372,083 service lines. The company owns a natural gas liquefaction facility and storage tank at its Astoria property in Queens, New York. The plant can store approximately 1,000 mdth of which a maximum of about 250 mdth can be withdrawn per day. The company has about 1,230 mdth of additional natural gas storage capacity at a field in upstate New York, owned and operated by Honeoye Storage Corporation, a corporation 28.8 percent owned by Con Edison of New York.

## **Steam Facilities**

Con Edison of New York generates steam for distribution at three steam/electric generating stations and five steam-only generating stations and distributes steam to customers through approximately 87 miles of mains and 18 miles of service line. For information about the planned repowering of the East River steam-electric station, see "Electric Facilities—Generating Facilities," above.

## **O&R**

### **Electric Transmission and Distribution Facilities**

O&R and its utility subsidiaries, RECO and Pike, own, in whole or in part, transmission and distribution facilities which include 602 circuit miles of transmission lines, 14 transmission substations (with a total transformer capacity of 3,762 MVA), 58 distribution substations (with a transformer capacity of 1,997 MVA), 92,829 in-service line transformers, 5,109 pole miles of overhead distribution lines and 2,630 miles of underground distribution lines.

### **Gas Facilities**

O&R and Pike own their gas distribution systems, which include 1,795 miles of mains.

### **RECO & Pike Mortgages**

Substantially all of the utility plant and other physical property of O&R's utility subsidiaries, RECO and Pike, is subject to the liens of the respective indentures securing first mortgage bonds of each company.

## **UNREGULATED SUBSIDIARIES**

For information about the unregulated subsidiaries' interests in electric generating facilities, see "Electric Power Requirements" in Con Edison's MD&A in Item 7 (which information is incorporated herein by reference). These interests, the capitalized cost of which at December 31, 2002 amounted to \$526 million (net of accumulated depreciation), are included in Con Edison's financial statements as unregulated generating assets and construction work in progress. In addition, Con Edison Development has an operating lease arrangement for a 525 MW generating facility which was placed in service in 2002. See

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Note S to the Con Edison financial statements in Item 8 (which information is incorporated herein by reference). The generating facilities, which use primarily natural gas for fuel, are located primarily in New Hampshire, Massachusetts, New Jersey and Maryland.

Con Edison Communications' properties, the capitalized cost of which at December 31, 2002 amounted to \$123 million (net of accumulated depreciation), are included in Con Edison's financial statements as non-utility property and construction work in progress. The properties include network facilities and approximately 130 miles of fiber optic cable that has been installed in the New York City metropolitan area primarily through Con Edison of New York underground conduits and other rights of way. Con Edison Communications pays a fee for the use of such conduits and rights of way.

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## **ITEM 3. LEGAL PROCEEDINGS**

### **Con Edison**

#### **Northeast Utilities**

For information about legal proceedings relating to Con Edison's October 1999 agreement to acquire Northeast Utilities, see Note P to the Con Edison financial statements in Item 8 (which information is incorporated herein by reference).

#### **Newington Project**

For a description of the Newington Project, see Note S to the Con Edison financial statements included in Item 8 (which information is incorporated herein by reference). In September 2002, Duke/Fluor Daniel, the general contractor for the Newington Project, initiated an arbitration proceeding with respect to its contract claims for an additional payment to it of \$89 million for alleged project costs and a 176-day extension of the project's scheduled substantial completion date. In September 2002, Con Edison Development commenced an action in the Supreme Court of the State of New York (Hawkeye Funding, Limited Partnership), seeking to adjudicate certain contract disputes with the general contractor. Presently, the arbitration proceeding and Supreme Court action are stayed pending resolution of an appeal in the New York State Supreme Court, Appellate Division. In September 2002, the general contractor commenced an action in Superior Court in the State of New Hampshire, and obtained a pre-judgment attachment on the project as security for the payment of its claim for additional project costs. The New Hampshire Superior Court is presently reviewing a motion to reconsider the propriety of its earlier decision allowing the pre-judgment attachment.

#### **Con Edison of New York**

#### **Nuclear Generation**

For information about the PSC proceeding relating to the nuclear generating unit that Con Edison of New York sold in 2001, see Note G to the Con Edison of New York financial statements in Item 8 (which information is incorporated herein by reference).

In December 2002, the United States Supreme Court denied defendants request to review a June 2002 decision by the United States Court of Appeals for the Second Circuit which had unanimously affirmed the October 2000 decision by the United States District Court for the Northern District of New York, in an action entitled Consolidated Edison Company of New York, Inc. v. Pataki, et al. In its decision, the district court determined that the New York State law that directed

the PSC to prohibit Con Edison of New York from recovering replacement power costs for the outage from customers was unconstitutional and granted the company's motion for a permanent injunction to prevent its implementation.

## Asbestos

For information about legal proceedings relating to exposure to asbestos, see Note F to the Con Edison of New York financial statement in Item 8 (which information is incorporated herein by reference).

## Superfund

The following is a discussion of significant proceedings pending under Superfund or similar statutes involving sites, including manufactured gas sites, for which Con Edison of New York has been asserted

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to have a liability. See "Environmental Matters—Superfund" in Item 1. Additional such proceedings may arise in the future.

Under Con Edison of New York's current electric, gas and steam rate agreements, site investigation and remediation costs in excess of \$5 million annually are to be deferred and subsequently reflected in rates.

For a further discussion of claims and possible claims against Con Edison of New York under Superfund, its estimated liability accrued for Superfund claims and recovery from customers of site investigation and remediation costs, see Note F to Con Edison of New York's financial statements in Item 8 (which information is incorporated herein by reference).

**Manufactured Gas Sites.** Con Edison of New York and its predecessors formerly manufactured gas and maintained storage holders for manufactured gas at sites in New York City and Westchester County, New York (MGP Sites). Many of these sites are now owned by parties other than Con Edison of New York and have been redeveloped by them for other uses, including schools, residential and commercial developments and hospitals. The New York State Department of Environmental Conservation (DEC) is requiring the company to investigate and, if necessary, develop and implement remediation programs for the MGP Sites, which include 33 manufactured gas plant sites and 17 storage holder sites.

The information available to Con Edison of New York for most of the MGP Sites is incomplete as to the extent of contamination and remediation and monitoring methods, if any, to be used. Investigation at most of the MGP Sites has not yet started and has been completed at only two of the MGP Sites. Coal tar and/or other manufactured gas plant-related environmental contaminants have been detected at nine other MGP Sites, including sites in Manhattan and other parts of New York City and in Westchester County.

For additional information about MGP Sites, see Note F to the Con Edison of New York financial statements in Item 8 (which information is incorporated herein by reference).

**Astoria Site.** Con Edison of New York is permitted by the DEC to operate a PCB storage facility on property the company owns in the Astoria section of Queens, New York. The company has submitted to the DEC and the New York State Department of Health a report indicating PCB contamination of a portion of the site. As a condition of its DEC permit, the company is required, where necessary, to conduct a remediation program. The company is investigating the extent of contamination at the Astoria site. The company estimates that its undiscounted potential liability for the cleanup of PCB contamination at the site will be at least \$7 million.

**Maxey Flats Nuclear Disposal Site.** In 1986, the EPA designated Con Edison of New York a potentially responsible party (PRP) under Superfund for the investigation and cleanup of the Maxey Flats Nuclear Disposal Site in Morehead, Kentucky. The site is owned by the State of Kentucky and was operated as a disposal facility for low level radioactive waste from 1963 through 1977 by the Nuclear Engineering Corporation (now known as U.S. Ecology Corporation). In 1995, the United States, the State of Kentucky and various *de minimis* PRPs, large private party PRPs (including Con Edison of New York) and large federal agency PRPs entered into consent decrees with respect to the funding and

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implementation of the cleanup program required by EPA for the site. Under the consent decrees, the large private party PRPs are responsible for implementing phase one of the program and any corrective actions required during the first 10 years following completion of phase one. The costs of those activities are being shared with the large federal agency PRPs. Also, if during this ten-year period the EPA determines that horizontal flow barriers are required, the large private party PRPs will construct the barriers and share the cost of that work with the large federal agency PRPs and the State of Kentucky. The large private party PRPs are not responsible for any costs after the ten-year period expires. The State of Kentucky will implement and fund the remainder of the cleanup program. Construction work for the phase one program is expected to end this year. Con Edison of New York's share of the cleanup costs is estimated to be between \$600,000 and \$700,000.

**Curcio Scrap Metal Site.** In 1987, the EPA designated Con Edison of New York a Superfund PRP for the Curcio Scrap Metal, Inc. Site in Saddle Brook, New Jersey, because the company had previously sold PCB-contaminated scrap electric transformers to a metal broker who in turn sold them to the owner of the site for salvaging. In 1991, the EPA issued a Unilateral Administrative Order which required Con Edison of New York and three other PRPs to implement a soil and sediment cleanup program at and around the site. In 1997, the EPA issued a Record of Decision in which it concluded that the soil and sediment cleanup had successfully remediated the principal threats associated with the site and required periodic groundwater monitoring at the site for five years. Con Edison of New York is conducting the required groundwater monitoring program, which is expected to cost between \$500,000 and \$600,000 to complete, under an EPA Administrative Consent Order. Depending on the results of the monitoring, the EPA could extend the monitoring program for an additional five years or require remedial measures, such as groundwater treatment or cleanup work.

**Metal Bank of America Site.** In 1987, the EPA designated Con Edison of New York a Superfund PRP for the Metal Bank of America Site in Philadelphia. The site, a former metal recycling facility, was placed on the EPA's national priority list in 1983. PCBs have been found in the site soil and groundwater and in the sediment from areas of tidal mudflat and the Delaware River along the site's shoreline. During the 1970's, Con Edison of New York sold approximately 125

transformers to scrap metal dealers who salvaged or may have salvaged the transformers at the site. In 1997, the EPA issued a Record of Decision that calls for, among other things, the removal and disposal of contaminated sediments in the areas of the tidal mudflat and the Delaware River along the site's shoreline. In 1998, the EPA ordered the current and former site owners and operators and various electric utility PRPs, including Con Edison of New York, to design and implement the cleanup program. The cost of the required cleanup program is estimated at between \$24 million and \$30 million. Con Edison of New York's share of the costs allocated to the electric utilities is 0.97 percent. The utilities are pursuing Superfund cost contribution litigation against current and former site owners and operators.

**Narrowsburg Site.** In 1987, the New York State Attorney General notified Con Edison of New York that it is a Superfund PRP for the Cortese Landfill Site in Narrowsburg, New York, because during 1974 the company had disposed of waste oil at the landfill. The Cortese Landfill is listed on the EPA's Superfund National Priorities List. In 1983, the Attorney General commenced an action under Superfund in the United States District Court for the Southern District of New York against the Cortese

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Landfill site owner and operator and SCA Services (SCA), the successor in interest of an alleged transporter of hazardous substances to the site. In 1989, SCA commenced a third-party action for contribution against Con Edison of New York and various other parties whose chemical waste was allegedly disposed of at the site. Con Edison of New York and SCA have reached a settlement of the third-party action under which Con Edison of New York paid \$114,485 toward the cost of the site environmental studies and will pay six percent of the first \$25 million of remedial costs for the sites. SCA has agreed to indemnify Con Edison of New York for any other remedial costs and natural resource damages that it has to pay. The EPA has selected a cleanup program for the site that is estimated to cost \$12 million and the court has approved a consent decree under which SCA, Con Edison of New York and various other site PRPs have agreed to implement the cleanup program, pay the EPA's oversight costs for the site, and pay approximately \$220,000 for natural resource damages.

**Carlstadt Site.** In 1990, Con Edison of New York was served with a third-party complaint in a Superfund cost contribution action for a former waste solvent and oil recycling facility located in Carlstadt, New Jersey. The complaint in the action, which is pending before the United States District Court for the District of New Jersey, alleges that Con Edison of New York is one of several hundred parties who are responsible under Superfund for the study and cleanup of the facility. The plaintiffs in the action, which include a group of former customers of the facility, have completed a \$3 million remedial investigation and feasibility study for the site. Plaintiffs estimate that seven to 15 million gallons of waste solvents and oil were recycled at the site. Based on this estimate, Con Edison of New York's share of the cleanup costs is estimated at about 0.8 to 1.7 percent. The costs of the cleanup alternatives that were evaluated in the remedial investigation and feasibility study range from \$8 million to \$321 million. Plaintiffs have completed an interim remedy, which plaintiffs claim cost more than \$10 million, to control releases from the site while the EPA evaluates and develops a final cleanup remedy.

**Global Landfill Site.** Con Edison of New York is a PRP under Superfund and the New Jersey Spill Compensation and Control Act (Spill Act) for the Global Landfill Site in Old Bridge, New Jersey. The site, a former sanitary landfill that was authorized to accept municipal refuse and industrial waste, is included on the Superfund National Priorities List and is being administered by the New Jersey Department of Environmental Protection (NJDEP) pursuant to an agreement between the EPA and the State of New Jersey. In 1993, a group of site PRPs, including Con Edison of New York, entered into a consent decree with the NJDEP to implement, with partial funding from NJDEP, a Phase I remedy, estimated to cost \$30 million. In 1997, the EPA issued a Record of Decision in which it selected a Phase II remedy. The site PRP group and the NJDEP are currently negotiating a consent decree under which the site PRP group would also design and implement the Phase II remedy. Con Edison of New York's share of the costs of the Phase I and Phase II remedies is not expected to exceed \$150,000.

**Chemsol Site.** In 1991, the EPA advised Con Edison of New York that it had documented the release of hazardous substances at the Chemsol Site in Piscataway, New Jersey and that it had reason to believe that the company sent waste materials to the site during the period from 1960 through 1965. In response to the EPA's demand for records relating to Con Edison of New York's dealings with the site and various specified companies, including Cenco Instruments Corporation, the company submitted to

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the EPA records of payments to Central Scientific Company, a Division of Cenco Instruments Corporation. Con Edison of New York is unable at this time to determine either the purpose of the payments to the Central Scientific Company or the connection of that company to the site. The EPA has not designated Con Edison of New York as a PRP and has not yet selected a final cleanup program for the site. However, the EPA has selected an interim remedy, expected to cost about \$8 million, for the site groundwater contamination and has ordered several designated PRPs to implement that remedy.

**PCB Treatment, Inc. Sites.** In 1994, the EPA designated Con Edison of New York as a Superfund PRP for the PCB Treatment, Inc. (PTI) Sites in Kansas City, Kansas and Kansas City, Missouri, because during the mid-1980's it shipped almost 2.9 million pounds of PCB-containing oil and electric equipment to two buildings that PTI used at the sites for the storage, processing, and treatment of PCB-containing electric equipment, dielectric oils, and materials. Con Edison of New York is member of a PRP steering committee that, in May 2000, completed environmental studies and engineering evaluations for the sites under an EPA administrative consent order. The results of the studies indicate that portions of the buildings' floor slabs, support columns and walls and the soil around the buildings' outdoor loading dock areas are contaminated with PCBs. In August 2000, EPA selected a removal action program for the contaminated buildings and soil at the sites. Under the program, which EPA projects will cost \$21 million to complete, the buildings will be demolished and the contaminated soil will be excavated and shipped to off-site disposal facilities. EPA, the members of the PRP steering committee (including Con Edison of New York) and the federal agencies that shipped PCB-containing waste materials to the sites are entering into an administrative order on consent under which the members of the PRP steering committee will design and implement EPA's removal action program with funding from both EPA and the settling federal agencies. Based on allocation information recently developed by EPA, Con Edison of New York believes that its share of the investigation and remediation costs for the sites could range between \$1.5 and \$3 million.

**Borne Chemical Site.** In 1997, Con Edison of New York was named as an additional third-party defendant in a private cost recovery action in the New Jersey Superior Court (Union County) under the New Jersey Spill Compensation and Control Act for the Borne Chemical site in Elizabeth, New Jersey. Borne Chemical used the site for the processing and blending of various types of petroleum, dyes and chemical products from approximately 1917 until 1985 when it became bankrupt and abandoned the site. Between 1971 and 1981, a portion of the site was occupied by a waste transporter and oil spill cleanup contractor that did work for Con Edison of New York at various times. Con Edison of New York and four other third-party defendants in the lawsuit have entered into a settlement with the third-party plaintiffs under which the company paid approximately \$70,000 towards the cost of certain work that plaintiffs had already completed and agreed

to assume responsibility for approximately 0.67 percent of the expenses that the third-party plaintiffs incurred conducting the site investigation study ordered by the NJDEP and any soil or groundwater cleanup program that the NJDEP may require after the site investigation study is completed.

**Capasso Site.** In 1997, Con Edison of New York was served with a complaint by DMJ Associates seeking to compel Con Edison of New York and 16 other defendants to clean up contamination at the Capasso property located in Long Island City, New York. The complaint alleges that Con Edison of

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New York sent waste to the Quanta Resources facility (Quanta) and that contamination, including PCB contamination, has migrated from Quanta to the Capasso property and is contributing to the contamination on or about the Capasso property. Con Edison of New York is continuing to investigate whether it sent any waste to Quanta. Con Edison of New York is defending this action pursuant to a joint defense agreement with the other generator defendants.

**Arthur Kill Transformer Site.** Following a September 1998 transformer fire at Con Edison of New York's former Arthur Kill generating station, it was determined that oil containing high levels of PCBs was released to the environment during the incident. The company has completed DEC-approved cleanup programs for the station's facilities and various soil and pavement areas of the site affected by the PCB release. Pursuant to a July 1999 DEC consent order, the company is also carrying out a DEC-approved Remedial Investigation/Feasibility Program to assess the nature and extent of the contamination in, and to recommend a proposed remediation program for the waterfront area of the station. After soliciting public comments, the DEC will select the remedial program to be implemented. In 1999, Con Edison of New York completed the sale of the generating station pursuant to an agreement in which the buyer generally agreed to assume all environmental liabilities relating to the assets sold other than those for prior offsite disposal of hazardous waste and liabilities arising out of the transformer fire. In April 2000, Con Edison of New York entered into a Stipulation and Order of Consent with the United States Attorney for the Southern District of New York pursuant to which the United States Attorney agreed not to prosecute the company in connection with its response to the release of PCBs during the September 1998 transformer fire and, among other things, the company agreed to continue to develop, implement and maintain an effective environmental compliance program and to submit the program to an examination and evaluation by a person selected by the United States Attorney.

**BCF Oil Refining Site.** In May 2000, the EPA designated Con Edison of New York and numerous other parties as PRPs for the BCF oil refining site in Brooklyn, New York. The site was operated as a waste oil reprocessing facility from the late 1970's until August 1994, when the facility was forced to close down because its storage and processing tank had become contaminated with elevated concentrations of PCBs. In November 1994, the owners of the site sued Con Edison of New York, alleging that its shipments of waste oil and oily wastewater to the facility were the source of the high concentration of PCBs that had contaminated the facility's tanks. The action was dismissed after a jury verdict in Con Edison of New York's favor. However, the facility's tanks still contain significant quantities of PCB-contaminated oil and the EPA has determined that an emergency cleanup program estimated to cost \$2.1 million is required for them. The EPA is attempting to negotiate with the owners of the facility for the implementation of the required emergency cleanup program, but has indicated that it may order PRPs who shipped waste oil to the facility to implement or to fund the program if the facility owners do not agree to carry out the program.

**Mattiace Petrochemical Company Site.** In July 2000, Con Edison of New York was served with an EPA Superfund information request for the Mattiace Petrochemical Company Superfund site in Glen Cove, New York. According to the EPA, the Mattiace Petrochemical Company processed, blended, repacked and distributed solvents at the site from the mid-1960's until 1987. Between 1974 and 1982, Mattiace Petrochemical's affiliate, the M&M Drum Company, cleaned and refurbished metal

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drums at the site. The EPA has reportedly incurred expenses totaling approximately \$23.5 million since 1988 in conducting emergency removal and cleanup work and other response actions at the site, including the portions of the site used by the M&M Drum Company. During the late 1970's and early 1980's, Con Edison of New York purchased naphtha and a mineral spirit-based solvent product from Mattiace Petrochemical and sold empty scrap drums to Mattiace Petrochemical and M&M Drum. Under a proposed Consent Decree, Con Edison of New York will settle its obligations with respect to this site with a \$4.9 million payment and TRC Company, an environmental contractor, will be responsible to complete the remediation of the site. In addition, TRC Company is to insure its obligations under the Consent Decree with a \$25 million insurance policy. If TRC Company were to default on its obligations under the Consent Decree and such default was not covered by the insurance policy, Con Edison of New York could have additional liability with respect to the site.

**Croton Point Sanitary Landfill Site.** The New York Attorney General has alleged that Con Edison of New York and numerous other businesses with commercial and industrial facilities within Westchester County, New York are Superfund PRPs for the County of Westchester's Croton Point Sanitary Landfill in Croton on the Hudson, New York, because they formerly used the landfill for the disposal of refuse and waste materials that contained hazardous substances. According to the New York Attorney General, the State of New York has spent over \$27 million since 1993 assisting the County of Westchester in implementing response actions needed to prevent releases of hazardous substances from the landfill and to properly close the landfill. Con Edison of New York has joined a group of other designated site PRPs that has negotiated a settlement with the Attorney General, under which the settling PRPs will pay \$9.5 million of the State of New York's past response costs. Con Edison of New York expects that its share of the settlement, which must be approved by the United States District Court for the Southern District of New York before becoming effective, will approximate \$370,000.

#### **Washington Heights Power Outage**

Lawsuits relating to a July 1999 interruption of electric service to customers served by Con Edison of New York's Washington Heights distribution network were brought in New York State Supreme and Civil Courts, New York County. A number of cases, including purported class action lawsuits, have been dismissed, discontinued or settled for *de minimis* amounts. The company does not expect that the remaining cases will have a material adverse effect on its financial position, results of operation or liquidity.

#### **Ronel Bennett**

In December 1999, Ronel Bennett, Inc. and its president commenced an action in Supreme Court of the State of New York, County of Queens, against Con Edison of New York and six of its employees seeking \$300 million in damages and alleging breach of contract and torts. Ronel Bennett performed work for the company at its former Ravenswood generating station from September 1996 to Spring 1997. Plaintiffs claim that the company failed to maintain a safe working environment, misrepresented conditions, failed to disclose information about hazardous and toxic substances, violated federal and New York laws regarding



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## O&R

### Asbestos

For information about legal proceedings relating to exposure to asbestos, see Note F to the O&R financial statements in Item 8 (which information is incorporated herein by reference).

### Superfund

The following is a discussion of significant proceedings pending under Superfund or similar statutes involving sites, including manufactured gas sites, for which O&R has been asserted to have a liability. Additional such proceedings may arise in the future.

O&R is permitted under its current rate agreements to defer for subsequent recovery through rates certain site investigation and remediation costs.

For a further discussion of claims and possible claims against O&R under Superfund, its estimated liability accrued for Superfund claims and recovery from customers of site investigation and remediation costs, see "Environmental Matters" in Note F to the O&R financial statements in Item 8 (which information is incorporated herein by reference).

**Manufactured Gas Sites.** O&R and its predecessors formerly owned and operated manufactured gas plants at seven sites (O&R MGP Sites) in Orange County and Rockland County, New York. Five of these sites are now owned by parties other than O&R and have been redeveloped by them for residential, commercial or industrial uses. The DEC is requiring O&R to develop and implement remediation programs for the O&R MGP Sites.

O&R has investigated and detected soil and/or groundwater contamination to varying degrees at all of the O&R MGP Sites. However, additional investigation will be required at most of the O&R MGP Sites and the remediation and monitoring methods have not yet been determined.

For additional information about the O&R MGP Sites, see Note F to the O&R financial statements in Item 8 (which information is incorporated herein by reference).

**Metal Bank of America Site.** O&R is a PRP with respect to the site described under "Superfund-Metal Bank of America Site" above in the description of Con Edison of New York's legal proceedings in this Item 3. O&R's share of the estimated \$24 million to \$30 million cost of the cleanup program is expected to be approximately 4.6 percent.

**Borne Chemical Site.** O&R is a PRP with respect to the site described under "Superfund-Borne Chemical Site" above in the description of Con Edison of New York's legal proceedings in this Item 3. In October 1995, various site PRPs, including O&R, entered into an administrative consent order with the NJDEP which obligates them to perform a remedial investigation to determine what, if any, subsurface remediation is required.

**West Nyack Site.** In 1994 and 1997, O&R entered into consent orders with the DEC pursuant to which O&R agreed to conduct a remedial investigation and remediate certain property it owns in West Nyack, New York at which PCBs were discovered. Petroleum contamination related to a leaking underground storage tank was found as well. O&R has completed all remediation at the site that the

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DEC has required to date. The DEC is expected to determine whether any additional groundwater remediation will be required.

**Orange County Landfill Site.** In August 2000, the New York Attorney General informed O&R that it has been identified as a Superfund PRP for the Orange County Landfill Site in Goshen, New York. The site, a former sanitary landfill, was operated by the Orange County Department of Works between 1974 and January 1992 and was reportedly used for the disposal of approximately seven million cubic yards of municipal waste as well as small quantities of waste oil, industrial waste, septic sludge and hazardous waste. In March 1992, the DEC designated the landfill site a Class 2 Inactive Hazardous Waste Disposal Site after finding groundwater contamination in the vicinity of the site. Since then, the State of New York has incurred expenses totaling more than \$12 million in connection with various required response actions for the site, including the capping and closure of the landfill. Orange County has reportedly spent an additional \$5 million in connection with those actions. O&R's records indicate that during the period 1988 through 1990, it disposed of approximately 1.5 cubic yards of oil-soaked debris and four cubic yards of oil and/or solvent-contaminated metal at the landfill. O&R is investigating whether private refuse carters that picked up trash from its facilities may have used the landfill for the disposal of the trash.

**Ramapo Landfill Site.** In November 2000, the New York Attorney General informed O&R that it was considered a Superfund PRP for the Ramapo Landfill Site in the Town of Ramapo, New York because a commercial carting company that had picked up trash from its facilities in Rockland County, New York during the early 1980's may have disposed of that material at the site. The site, a former municipal waste and construction and demolition debris landfill, is included on the Superfund National Priorities List and is being administered by the DEC. In 1992, the EPA issued a Record of Decision selecting a comprehensive cleanup program for the site, which is estimated will cost between \$21 million and \$28 million to complete. The State of New York has reportedly spent more than \$19 million assisting the Town of Ramapo to implement the required cleanup program.

### O&R Clean Air Act Proceeding

For information relating to alleged violations of the federal Clean Air Act and the New York State Environmental Conservation Law relating to the Lovett Generating Station that it sold in June 1999, See Note F to the O&R financial statements included in Item 8 (which information is incorporated herein by reference).

**ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

None.

**EXECUTIVE OFFICERS OF THE REGISTRANT**

The following table sets forth certain information about the executive officers of Con Edison and Con Edison of New York, as of February 20, 2003. As indicated, certain of the executive officers are executive officers of each of Con Edison and Con Edison of New York and others are executive officers of Con Edison or Con Edison of New York. The term of office of each officer is until the next election of directors (trustees) of their company and until his or her successor is chosen and qualifies. Officers are

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subject to removal at any time by the board of directors (trustees) of their company. Mr. McGrath has an employment agreement with Con Edison, which provides that he will serve as Chairman of the Board and Chief Executive Officer of Con Edison and Con Edison of New York through August 31, 2005 (subject to one year extensions unless terminated on six months prior notice). Messrs. Burke and McMahon and Ms. Freilich have employment agreements with Con Edison, which provide that they will serve in senior executive positions through August 31, 2005.

Name	Age	Offices and Positions During Past Five Years
<b>Executive Officers of Con Edison and Con Edison of New York</b>		
Eugene R. McGrath	61	10/97 to present—Chairman, President, Chief Executive Officer and Director of Con Edison 3/98 to present—Chairman, Chief Executive Officer and Trustee of Con Edison of New York 9/90 to 2/98—Chairman, President, Chief Executive Officer and Trustee to Con Edison of New York
Kevin Burke	52	9/00 to present—President of Con Edison of New York 7/99 to 8/00—President of O&R 7/98 to 6/99—Senior Vice President—Customer Service of Con Edison of New York 3/98 to 6/98—Senior Vice President—Corporate Planning of Con Edison of New York 3/93 to 2/98—Vice President—Corporate Planning
Joan S. Freilich	61	3/98 to present—Executive Vice President, Chief Financial Officer and Director (Trustee) of Con Edison and Con Edison of New York 10/97 to 2/98—Senior Vice President, Chief Financial Officer and Director of Con Edison 4/97 to 2/98—Trustee of Con Edison of New York 7/96 to 2/98—Senior Vice President and Chief Financial Officer
Frances A. Resheske	42	2/02 to present—Senior Vice President—Public Affairs of Con Edison of New York 5/99 to 2/02—Vice President—Public Affairs of Con Edison of New York 2/99 to 4/99—Director—Public Affairs of Con Edison of New York 6/95 to 2/99—General Manager—Government Relations and Community Development, Brooklyn Union
Charles E. McTiernan, Jr.	58	1/03 to present—General Counsel of Con Edison and Con Edison of New York 10/85 to 12/02—Associate General Counsel of Con Edison of New York
Edward J. Rasmussen	54	12/00 to present—Vice President and Controller of Con Edison and Con Edison of New York 12/00 to present—Vice President, Controller and Chief Financial Officer of O&R 4/93 to 11/00—Assistant Controller of Con Edison of New York
Hyman Schoenblum	54	12/00 to present—Vice President—Corporate Planning of Con Edison of New York 12/97 to 11/00—Vice President and Controller of Con Edison and Con Edison of New York 7/99 to 11/00—Vice President and Chief Financial Officer of O&R

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Robert P. Stelben	60	12/97 to present—Vice President and Treasurer of Con Edison and Con Edison of New York 7/99 to present—Vice President and Treasurer of O&R
<b>Executive Officers of Con Edison but not Con Edison of New York</b>		
Stephen B. Bram	60	1/03 to present—Group President, Energy and Communications of Con Edison 9/00 to 12/02—President and Chief Executive Officer of O&R 4/95 to 8/00—Senior Vice President—Central Operations of Con Edison of New York
John D. McMahon	51	1/03 to present—President and Chief Executive Officer of O&R 8/98 to 12/02—Senior Vice President and General Counsel of Con Edison and Con Edison of New York 10/97 to 8/98—Deputy General Counsel, Corporate and Regulatory, of Con Edison of New York
<b>Executive Officers of Con Edison of New York but not Con Edison</b> (all offices and positions listed are with Con Edison of New York)		
Louis L. Rana	54	2/03 to present—Senior Vice President—Electric Operations 10/01 to 1/03—Vice President—Manhattan Electric Operations 4/00 to 9/01—Vice President—Manhattan Customer Service 3/98 to 3/00—Vice President—System and Transmission Operations 10/97 to 2/98—General Manager—Central Operations
Mary Jane McCartney	54	10/93 to present—Senior Vice President—Gas
Robert A. Saya	61	9/01 to present—Senior Vice President—Central Operations 4/00 to 8/01—Vice President—System and Transmission Operations 1/95 to 3/00—Chief Engineer, Substation and Transmission Engineering
Luther Tai	54	9/01 to present—Senior Vice President—Central Services 9/00 to 8/01—Senior Vice President—Central Operations

## PART II

### ITEM 5. MARKET FOR THE REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

#### CON EDISON

Con Edison's Common Shares (\$.10 par value), the only class of common equity of Con Edison, are traded on the New York Stock Exchange. As of January 31, 2003, there were 97,987 holders of record of Con Edison's Common Shares.

The market price range for Con Edison's Common Shares during 2002 and 2001, as reported in the consolidated reporting system, and the dividends paid by Con Edison in 2002 and 2001 were as follows:

	2002			2001		
	<i>High</i>	<i>Low</i>	<i>Dividends Paid</i>	<i>High</i>	<i>Low</i>	<i>Dividends Paid</i>
1st Quarter	\$ 42.50	\$ 40.03	\$ 0.555	\$ 38.38	\$ 31.44	\$ 0.55
2nd Quarter	\$ 45.10	\$ 40.55	\$ 0.555	\$ 40.00	\$ 35.76	\$ 0.55
3rd Quarter	\$ 43.44	\$ 33.58	\$ 0.555	\$ 43.37	\$ 36.90	\$ 0.55
4th Quarter	\$ 44.30	\$ 39.18	\$ 0.555	\$ 42.20	\$ 36.50	\$ 0.55

On January 16, 2003, Con Edison's Board of Directors declared a quarterly dividend of \$0.56 per Common Share. The first quarter 2003 dividend will be paid on March 15, 2003.

Con Edison expects to pay dividends to its shareholders primarily from dividends and other distributions it receives from subsidiaries. The payment of future dividends, which, is subject to approval and declaration by Con Edison's Board of Directors, will depend on a variety of factors, including business, financial and regulatory considerations. For additional information see "Dividends" in Note B to the Con Edison financial statements in Item 8 (which information is incorporated herein by reference).

#### CON EDISON OF NEW YORK

The outstanding shares of Con Edison of New York's Common Stock (\$2.50 par value), the only class of common equity of Con Edison of New York, are held by Con Edison and are not traded.

The dividends declared by Con Edison of New York in 2002 and 2001 are shown in its Consolidated Statement of Retained Earnings included in Item 8 (which information is incorporated herein by reference). For additional information about the payment of dividends by Con Edison of New York, and restrictions thereon, see "Dividends" in Note B to the Con Edison of New York financial statements in Item 8 (which information is incorporated herein by reference).

#### O&R

The outstanding shares of O&R's Common Stock (\$5.00 par value), the only class of common equity of O&R, are held by Con Edison and are not traded.

The dividends declared by O&R in 2002 and 2001 are shown in its Consolidated Statement of Retained Earnings included in Item 8 (which information is incorporated herein by reference). See Note B to the O&R financial statements in Item 8 for information about restrictions on the payment of dividends by O&R.

### ITEM 6. SELECTED FINANCIAL DATA

#### CON EDISON\*

	<i>For the Year Ended December 31</i>				
	<i>2002</i>	<i>2001</i>	<i>2000</i>	<i>1999</i>	<i>1998</i>
	<i>(Millions of Dollars)</i>				
Operating revenues	\$ 8,481.9	\$ 9,388.8	\$ 9,317.2	\$ 7,491.3	\$ 7,093.0
Purchased power	3,180.4	3,380.3	3,536.3	1,824.0	1,253.8
Fuel	288.7	393.8	350.8	430.1	579.0
Gas purchased for resale	596.6	860.1	789.1	485.2	437.3

Operating income	1,060.1	1,127.6	1,016.1	1,019.8	1,053.3
Income before cumulative effect of changes in accounting principles	668.1	682.2	582.8	700.6	712.7
Cumulative effect of changes in accounting principles	22.1	-	-	-	-
Net income for common stock	646.0	682.2	582.8	700.6	712.7
Total assets	18,820.3	17,034.5	16,767.2	15,531.5	14,381.4
Long-term debt	6,168.4	5,501.2	5,415.4	4,524.6	4,050.1
Preferred stock subject to mandatory redemption	-	37.1	37.1	37.1	37.1
Common shareholders' equity	5,921.1	5,666.3	5,472.4	5,412.0	6,025.6

#### BASIC EARNINGS PER SHARE

Before cumulative effect of changes in accounting principles	\$ 3.14	\$ 3.22	\$ 2.75	\$ 3.14	\$ 3.04
Cumulative effect of changes in accounting principles	\$ 0.11	-	-	-	-
After cumulative effect of changes in accounting principles	\$ 3.03	\$ 3.22	\$ 2.75	\$ 3.14	\$ 3.04

#### DILUTED EARNINGS PER SHARE

Before cumulative effect of changes in accounting principles	\$ 3.13	\$ 3.21	\$ 2.74	\$ 3.13	\$ 3.04
Cumulative effect of changes in accounting principles	\$ 0.11	-	-	-	-
After cumulative effect of changes in accounting principles	\$ 3.02	\$ 3.21	\$ 2.74	\$ 3.13	\$ 3.04
Cash dividends per common share	\$ 2.22	\$ 2.20	\$ 2.18	\$ 2.14	\$ 2.12

Average common shares outstanding (millions)	213.0	212.1	212.2	223.4	234.3
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### CON EDISON OF NEW YORK

#### For the Year Ended December 31

	2002	2001	2000	1999	1998
<i>(Millions of Dollars)</i>					
Operating revenues	\$ 7,224.0	\$ 8,122.2	\$ 8,000.7	\$ 6,956.0	\$ 6,998.7
Purchased power	2,622.3	2,818.9	2,988.1	1,669.2	1,252.0
Fuel	231.8	350.6	322.1	430.2	579.0
Gas purchased for resale	471.8	666.0	490.6	351.8	370.1
Operating income	954.1	1,046.5	952.1	1,001.5	1,067.1
Net income for common stock	605.4	649.5	570.1	698.3	728.1
Total assets	16,018.0	14,518.8	14,547.9	13,682.2	14,172.8
Long-term debt	5,394.0	5,011.8	4,915.1	4,243.1	4,050.1
Preferred stock subject to mandatory redemption	-	37.1	37.1	37.1	37.1
Common shareholders' equity	4,890.5	4,665.8	4,479.6	4,393.8	5,842.7

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### ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – CONSOLIDATED EDISON, INC.

This discussion and analysis relates to the accompanying consolidated financial statements of Consolidated Edison, Inc. (Con Edison) and should be read in conjunction with the consolidated financial statements and the notes thereto. Except where noted, this discussion and analysis is presented on a consolidated basis. Information in the notes referred to in this discussion and analysis is hereby incorporated by reference herein. The use of terms such as "see" or "refer to" shall be deemed to incorporate by reference into this discussion and analysis the information to which reference is made.

#### CON EDISON

Con Edison is a holding company that provides a wide range of energy-related and telecommunications services to its customers through its regulated and unregulated subsidiaries. Con Edison's core business is energy distribution and it is also pursuing related growth opportunities in competitive businesses.

Con Edison's principal subsidiary is Consolidated Edison Company of New York, Inc. (Con Edison of New York), a regulated utility that provides electric service to over 3.1 million customers and gas service to approximately 1.1 million customers in New York City and Westchester County. It also provides steam service in parts of Manhattan.

Orange and Rockland Utilities, Inc. (O&R) is also a regulated utility subsidiary of Con Edison. O&R, along with its regulated utility subsidiaries, provides electric service to over 285,000 customers in southeastern New York and adjacent sections of New Jersey and northeastern Pennsylvania and gas service to over 120,000 customers in southeastern New York and northeastern Pennsylvania.

Con Edison has four unregulated subsidiaries: Consolidated Edison Solutions, Inc. (Con Edison Solutions), a retail energy services company that sells electricity, gas and energy-related services to delivery customers of utilities, including Con Edison of New York and O&R; Consolidated Edison Energy, Inc. (Con Edison Energy), a wholesale energy supply company; Consolidated Edison Development, Inc. (Con Edison Development), a company that owns and operates generating plants and energy and other infrastructure projects; and Con Edison Communications, LLC (Con Edison Communications), a company that builds and operates fiber optic networks to provide telecommunications services. The unregulated subsidiaries participate in competitive businesses that are subject to different risks than those found in the businesses of the regulated utility subsidiaries. The unregulated subsidiaries accounted for 7.3 percent of consolidated operating revenues

and 2.9 percent of consolidated net income in 2002 (before the cumulative effect of changes in accounting principles) and 7.0 percent of consolidated total assets at December 31, 2002.

## RESULTS OF OPERATIONS – SUMMARY

Con Edison's earnings per share in 2002 were \$3.03 (\$3.02 on a diluted basis). Earnings per share in 2001 and 2000 were \$3.22 (\$3.21 on a diluted basis) and \$2.75 (\$2.74 on a diluted basis), respectively.

Earnings per share for 2002, before the cumulative effect of changes in accounting principles of \$22.1 million after tax, were \$3.14 (\$3.13 on a diluted basis). See Notes K and O to the financial statements.

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Earnings for the years ended December 31, 2002, 2001 and 2000 were as follows:

	2002	2001	2000
	<i>(Millions of Dollars)</i>		
Con Edison of New York	\$ 605.4	\$ 649.5	\$ 570.1*
O&R	44.9	40.2	39.1
Unregulated subsidiaries	(2.6)**	11.5	7.7
Other***	(1.7)	(19.0)	(34.1)
<b>CON EDISON</b>	<b>\$ 646.0</b>	<b>\$ 682.2</b>	<b>\$ 582.8</b>

\* Includes a pre-tax charge for the possible disallowance of \$130 million of replacement power expenses.

\*\* Includes charges for the cumulative effect of two changes in accounting principles totaling \$22.1 million after tax.

\*\*\* Includes parent company expenses, inter-company eliminations, goodwill amortization (in the years 2001 and 2000) and a \$32.1 million charge in 2000 for merger-related expenses.

Con Edison's earnings in 2002 were \$36.2 million lower than in 2001, reflecting the following factors (after tax, in millions):

Con Edison of New York:

Lower operation and maintenance expenses (excluding nuclear operations)	\$ 21.6
Impact of weather (estimated)	18.4
Reserve for electric excess earnings	(26.0)
Amortization of divestiture gain in 2001	(25.0)
Reduction in gas base rates and lower non-firm gas sales	(21.3)
Economic conditions (estimated)	(7.5)
Cumulative effect of changes in accounting principles	(22.1)
Cessation of goodwill amortization	10.8
Unregulated businesses	8.0
Orange and Rockland Utilities	4.7
Other	2.2
<b>TOTAL</b>	<b>\$ (36.2)</b>

Con Edison's earnings in 2001 were \$99.4 million higher than in 2000, reflecting the following factors (after tax, in millions):

Con Edison of New York:

Lower nuclear production expenses	\$ 64.0
Impact of weather and economic conditions (estimated)	47.5
Lower depreciation expense	45.5
Amortization of divestiture gain	37.5
Increased pension credits	34.5
Recognition of deferred NYPA rate increase	22.9
Unrecovered Indian Point replacement power costs in 2000	84.5
Electric rate reductions	(243.4)
Taxes other than income, principally property taxes	(12.2)
Merger-related expenses in 2000	20.9
Unregulated businesses	3.8
Other	(6.1)
<b>Total</b>	<b>\$ 99.4</b>

See "Results of Operations" below for further discussion and analysis of results of operations.

## APPLICATION OF CRITICAL ACCOUNTING POLICIES

Con Edison's financial statements reflect the application of its accounting policies, which conform to accounting principles generally accepted in the United States of America. The company's critical accounting policies include industry-specific accounting applicable to regulated public utility subsidiaries and accounting for pensions and other postretirement benefits, contingencies, derivative instruments, goodwill and leases.

The application of certain of these accounting policies requires the company to use estimates. These estimates may require the company to make assumptions about matters that are highly uncertain and for which different estimates that could reasonably have been used could have resulted in material differences in its financial statements.

The major critical accounting policies are as follows:

### Accounting for Regulated Public Utilities—SFAS No. 71

Con Edison's principal subsidiaries, Con Edison of New York and O&R, are regulated public utilities subject to Statement of Financial Accounting Standards (SFAS) No. 71, "Accounting for the Effects of Certain Types of Regulation," and, in accordance with SFAS No. 71, are subject to the accounting requirements of the Federal Energy Regulatory Commission (FERC) and state public utility regulatory authorities having jurisdiction.

SFAS No. 71 specifies the economic effects that result from the cause and effect relationship of costs and revenues in the rate-regulated environment and how these effects are to be accounted for by a regulated enterprise. Revenues intended to cover some costs may be recorded either before or after the costs are incurred. If regulation provides assurance that incurred costs will be recovered in the future, these costs would be recorded as deferred charges or "regulatory assets" under SFAS No. 71. If revenues are recorded for costs that are expected to be incurred in the future, these revenues would be recorded as deferred credits or "regulatory liabilities" under SFAS No. 71.

Con Edison's principal regulatory assets and liabilities are detailed on the company's consolidated balance sheet. The company is receiving or being credited with a return on all of its regulatory assets for which a cash outflow has been made. The company is paying or being charged with a return on all of its regulatory liabilities for which a cash inflow has been received. The company's regulatory assets and liabilities will be recovered from customers, or applied for customer benefit, in accordance with rate provisions approved by the applicable public utility regulatory commission.

### Accounting for Pensions and Other Postretirement Benefits

Con Edison provides pensions and other postretirement benefits to substantially all employees and retirees of its utility subsidiaries and certain employees of its unregulated subsidiaries. Con Edison accounts for these benefits in accordance with SFAS No. 87, "Employers' Accounting for Pensions" and SFAS No. 106, "Employers' Accounting for Postretirement Benefits other than Pensions." In applying these accounting policies, the company has made critical estimates related to actuarial assumptions, including assumptions of expected returns on plan assets, future compensation, health care cost trends, and appropriate discount rates. See Notes D and E to the financial statements for information about

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these assumptions, actual performance, amortization of investment and other actuarial gains and losses and calculated plan costs for 2002, 2001 and 2000.

Primarily because of the amortization of previous years' net investment gains, Con Edison's pension expense for 2002, 2001 and 2000 was negative, resulting in a credit to and increase in net income in each year. Investment gains and losses on plan assets are fully recognized in expense over a 15-year period (20 percent of the gains and losses for each year begin to amortize in each of the following five years and the amortization period for each 20 percent portion of the gains and losses is ten years). This amortization is in accordance with the Statement of Policy issued by the New York State Public Service Commission (PSC) and is permitted under SFAS No. 87, which provides a "corridor method" for moderating the effect of investment gains and losses on pension expense, or alternatively, allows for any systematic method of amortization of unrecognized gains and losses that is faster than the corridor method and is applied consistently to both gains and losses.

Con Edison's expense or credit for actual pension and other postretirement benefits in future periods will depend upon actual returns on plan assets and the assumptions the company makes for future periods. The company's current estimate for 2003 is a reduction, compared to 2002, in the pension and other postretirement benefits net credit of \$54 million after tax. This reduction reflects, among other factors, an actual loss on the pension fund of 8.6 percent in 2002 as compared with an expected annual asset return assumption of 9.2 percent. This variation will reduce net income by \$21.3 million after tax in 2003, as compared to 2002. In addition, the company has lowered its expected annual asset return assumption for the plans for 2003 to 8.8 percent. This revised assumption will reduce net income by \$14.5 million after tax in 2003, as compared to 2002.

Amortization of market gains and losses experienced in previous years is expected to reduce the pension and other post retirement benefit net credit by an additional \$25 million, after tax, in 2004. A 5.0 percentage point variation in the actual annual return in 2003 as compared to the expected annual asset return of 8.8 percent would change net income by approximately \$6 million in 2004. Under the terms of its current regulatory agreements, O&R would defer as a regulatory asset any difference between expenses recognized under SFAS No. 87 and the amounts reflected in rates for such expenses.

An actuarial valuation of the plan's funded status was performed as of December 31, 2002. The valuation showed that the fair value of the company's pension plan assets exceeded its Accumulated Benefit Obligation (ABO) at December 31, 2002. However, the fair market value of Con Edison's pension plan assets could fall below the plan's ABO in future years. In that event, Con Edison would be required, under SFAS No. 87 and SFAS No. 132 "Employers' Disclosures about Pension and Postretirement Benefits," to accrue a liability equal in amount to the difference between the fair value of the plan assets and the ABO, plus its total accrued pension credits, through a non-cash charge to other comprehensive income (OCI). The charge to OCI, which would be net of taxes, would not affect the company's net income for common stock.

Con Edison was not required to make cash contributions to its pension plan in 2002 nor will it be required to do so in 2003.

## Accounting for Contingencies

SFAS No. 5, "Accounting for Contingencies," applies to an existing condition, situation, or set of circumstances involving uncertainty as to possible loss that will ultimately be resolved when one or more future events occur or fail to occur. Con Edison's known material contingencies include litigation relating to its October 1999 merger agreement with Northeast Utilities, a proceeding relating to outages at the nuclear generating unit the company sold in 2001, workers' compensation claims, and its responsibility for hazardous substances, such as asbestos, polychlorinated biphenyls (PCBs) and coal tar, that have been used or generated in the course of the operations of its subsidiaries. See Notes F, G and P to the financial statements. In accordance with SFAS No. 5, the company has accrued estimates of losses relating to the contingencies as to which loss is probable and can be reasonably estimated and no liability has been accrued for contingencies as to which loss is not probable or cannot be reasonably estimated.

## Accounting For Derivative Instruments

Con Edison's subsidiaries use derivative financial instruments to hedge market price fluctuations in related underlying transactions for the physical purchase or sale of electricity or gas and interest rate risk on certain debt securities. See "Financial Market Risks" below and Note O to the financial statements.

## Accounting for Goodwill

Con Edison adopted SFAS No. 142, "Goodwill and Other Intangible Assets" on January 1, 2002. In accordance with this standard, Con Edison ceased amortizing goodwill and began testing remaining goodwill balances for impairment on an annual basis. Con Edison completed initial goodwill impairment tests and recorded a loss of \$34.1 million (\$20.2 million after tax) as of January 1, 2002, relating to certain generation assets owned by an unregulated subsidiary. The unamortized goodwill of \$405.8 million, relating to the acquisition of O&R, was tested for impairment and determined not to be impaired. See Note K to the financial statements.

In determining whether or not its goodwill is impaired, Con Edison is required to make certain estimates and assumptions that could affect the results of the goodwill impairment test. Actual results could differ from the estimates used.

## Accounting for Leases

Con Edison applies SFAS No. 13, "Accounting for Leases" and other related accounting pronouncements to its leasing transactions. See Notes J and S to the financial statements.

## LIQUIDITY AND CAPITAL RESOURCES

Con Edison's liquidity reflects cash flows from operating, investing and financing activities, as shown on the accompanying consolidated statement of cash flows and discussed below. As a result of these activities, cash and temporary cash investments (including restricted cash) decreased \$226.9 million at December 31, 2002 compared to December 31, 2001.

### Cash Flows From Operating Activities

Con Edison's cash flows from operating activities reflect principally its energy sales and its cost of operations. The volume of energy sales is dependent on factors external to Con Edison such as weather, economic conditions and technological developments. The prices at which Con Edison's utility subsidiaries provide energy to their customers are determined in accordance with rate agreements approved by

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the state public utility regulatory authority having jurisdiction—the New York State Public Service Commission (PSC), the New Jersey Board of Public Utilities (NJBPUC) and the Pennsylvania Public Utility Commission (PPUC). See "Regulatory Matters" below. In general, changes in the utility subsidiaries' cost of purchased power, fuel and gas affect the timing of cash flows but not net income because the costs are recovered in accordance with rate agreements. See "Recoverable Energy Costs" in Note A to the financial statements.

Net income for common stock is the result of cash and non-cash (or accrual) transactions. Only cash transactions affect Con Edison's cash flow from operations. Principal non-cash charges include depreciation and deferred taxes. Principal non-cash credits include accrued pension credits. Pension credits result from past favorable performance in Con Edison of New York's pension fund and assumptions about future performance. See "Application of Critical Accounting Policies—Accounting for Pensions and Other Postretirement Benefits" and Notes D and E to the financial statements.

Net cash flows from operating activities in 2002 were \$82.6 million less than the 2001 period. This decrease is due principally to higher energy costs and sales in December 2002 as compared to December 2001, resulting in increased customer accounts receivable and recoverable energy costs, offset in part by increased accounts payable balances. The net benefit to cash flow from these activities in 2001 was greater than the benefit in 2002 because high energy costs at year-end 2000 were collected in 2001 and energy purchases at year-end 2001 were lower than the prior year. The change in cash flows also reflect the timing of federal income tax payments and refunds and net cash received related to regulatory liabilities, such as transmission congestion contracts, offset by increased cash expended related to regulatory assets. Net cash flows from operating activities in 2001 increased \$245.5 million compared with 2000, due principally to lower energy costs which are reflected in decreased customer accounts receivable and recoverable energy costs, offset in part by decreased accounts payable balances. See Note G to the financial statements.

The following analysis reflects variations in balance sheet accounts, which impact specific line items within the consolidated statement of cash flows. The changes in these balance sheet line items are utilized to reconcile income to cash flow from operations.

Accounts receivable—customers, less allowance for uncollectible accounts were \$96.4 million higher at December 31, 2002 than at year-end 2001, due primarily to higher electric, gas and steam sales in December 2002 as compared to December 2001. Con Edison of New York's equivalent number of days of revenue outstanding (ENDRO) of customer accounts receivable was 29.3 days at December 31, 2002, compared with 29.6 days at December 31, 2001. For O&R, the ENDRO was 23.0 days at December 31, 2002, compared with 23.6 days at year-end 2001.

Recoverable energy costs increased \$113.0 million at December 31, 2002 as compared with year-end 2001 due primarily to increased fuel, purchased power and gas costs, resulting from higher sales volumes in December 2002. See "Recoverable Energy Costs" in Note A to the financial statements.

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program receivables at the utility subsidiaries. See "Financial Market Risks—Commodity Price Risks," below.

Gas in storage decreased \$31.0 million at December 31, 2002 as compared with year-end 2001, reflecting primarily the lower volumes in storage as a result of higher withdrawals due to the colder weather at year-end 2002 as compared to 2001.

Other current assets increased \$18.9 million at December 31, 2002 compared with year-end 2001, due primarily to an increase in the value of energy marketing contracts at the regulated and unregulated subsidiaries.

Deferred loss on the sale of the nuclear generating unit decreased \$47.6 million at December 31, 2002 as compared to year-end 2001 reflecting the recovery of these costs from Con Edison of New York's customers in accordance with the company's 2000 Electric Rate Agreement. See "Rate and Restructuring Agreements" in Note A to the financial statements.

Divestiture—capacity replacement reconciliation balance decreased \$30.0 million at December 31, 2002 as compared to year-end 2001 representing the amortization of capacity costs incurred prior to the opening of the New York Independent System Operator (NYISO) market, in accordance with the company's 2000 Electric Rate Agreement. See "Rate and Restructuring Agreements" in Note A to the financial statements.

Deferred environmental remediation costs increased \$20.5 million at December 31, 2002 as compared to year-end 2001 representing primarily additional liabilities accrued for costs related to Superfund and other sites, which Con Edison's regulated subsidiaries are permitted to recover under current rate agreements. See Note F to the financial statements.

For information about the regulatory asset for World Trade Center restoration costs, see Note Q to the financial statements.

Deferred asbestos-related costs increased \$33.7 million at December 31, 2002 as compared to year-end 2001 due to increased liabilities accrued for Con Edison of New York's non-employee related asbestos claims (which Con Edison of New York is permitted to recover under its current rate agreements). See Note F to the financial statements.

Other regulatory assets increased \$34.4 million at December 31, 2002 as compared to year-end 2001 due principally to the reconciliation of taxes collected and the tax expense resulting from New York State tax law changes in accordance with PSC authorization. See Note A to the financial statements and "Other Regulatory Liabilities," below.

Accumulated provision for injuries and damages increased \$21.8 million at December 31, 2002 as compared with year-end 2001, reflecting primarily workers' compensation claims relating to asbestos exposure. See Note F to the financial statements.

Accounts payable increased \$239.7 million at December 31, 2002 as compared with year-end 2001. This increase is due primarily to higher electric, gas and steam energy costs at December 31, 2002 as compared to December 31, 2001, reflecting higher sales volumes, and an increase in payables associated with settled

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electric and gas commodity transactions at the unregulated subsidiaries. See discussion of electric power costs in "Results of Operations," below.

Accrued taxes decreased \$45.3 million at December 31, 2002 compared with year-end 2001, due primarily to the payment of the 2001 fourth quarter federal income tax liability in January 2002. The federal government delayed the timing of the payment in light of the World Trade Center attack.

Transmission congestion contracts increased \$119.9 million at December 31, 2002 as compared to year-end 2001 reflecting proceeds from the sale of transmission rights on Con Edison of New York's transmission system. These proceeds are being retained for customer benefit.

The gas rate plan balance of \$36.3 million at December 31, 2002 was established in accordance with the 2002 gas rate agreement to provide for the recovery of costs (net of reimbursement) related to the World Trade Center attack.

Electric excess earnings balance of \$40.0 million at December 31, 2002 represents a reserve established in 2002 for earnings in excess of a specified rate of return that are to be retained for customer benefit in accordance with Con Edison of New York's 2000 Electric Rate Agreement. See "Rate and Restructuring Agreements" in Note A to the financial statements.

During 2002, other regulatory liabilities increased \$125.5 million, due primarily to the reconciliation of taxes collected and the expense resulting from New York State tax law changes in accordance with PSC authorization and the establishment of a liability to customers for interest earned on a federal income tax refund. Changes in the New York State tax laws applicable to utility companies, effective January 1, 2000, repealed or reduced certain revenue-based taxes and instituted a net income-based tax. In June 2001, the PSC issued its final Order relating to these tax law changes. It authorized each utility to use deferral accounting to record the difference between taxes being collected and tax expense resulting from tax law changes, until those changes are incorporated into base rates.

#### Cash Flows Used in Investing Activities

Cash flows used in investing activities were \$686.8 million higher in 2002 compared with 2001, due primarily to the receipt of proceeds from generation divestiture, net of contributions to the nuclear decommissioning trust, in the 2001 period. See "Generation Divestiture," below. In addition, construction expenditures increased \$112.3 million in 2002 compared with 2001, principally to meet load growth on the company's electric distribution systems, to effect permanent restoration of portions of the electric, gas and steam systems in lower Manhattan following the World Trade Center attack and for the ongoing project to add incremental generating capacity at Con Edison of New York's East River steam-electric generating plant (the East River Repowering Project). Cash flows used in investing activities in 2001 decreased \$605.5 million compared with 2000, due primarily to the receipt of proceeds from generation divestiture, which offset increased utility construction expenditures related to meet load growth on the company's electric distribution systems. See "Generation Divestiture" and "Capital Expenditures" below.



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expected price of \$576 million to \$680 million, depending on zoning and other adjustments. The sale is subject to PSC approval and other conditions. The buyer paid Con Edison of New York \$50 million in 2000 as a down payment, which Con Edison of New York used to fund a portion of the demolition and remediation expenses. The down payment has been recorded as a regulatory liability.

#### Cash Flows Used in Financing Activities

Net cash flows used in financing activities in 2002 decreased \$278.0 million compared with 2001, reflecting principally increased financing for construction expenditures at Con Edison of New York, the issuance of common stock and a reduction in the amount of common stock dividends paid in cash. In 2002, the company began issuing new common shares for its Automatic Dividend Reinvestment and Cash Payment Plan instead of purchasing previously issued shares on the open market (approximately 1.0 million shares for \$39.6 million).

In September 2001, the company used the proceeds from the sale of Con Edison of New York's nuclear plant to repay all outstanding short-term borrowing. Net repayments of short-term debt increased \$221.8 million for the year-ended December 31, 2002 compared with 2001 period. Cash flows used in financing activities in 2001 increased \$196.3 million compared with 2000, as a result of decreased borrowings and increased debt redemption.

Con Edison had \$161.7 million of commercial paper and other short-term notes outstanding at December 31, 2002 and \$343.7 million outstanding at December 31, 2001. Con Edison's average daily short-term borrowing outstanding in 2002 was \$256.1 million compared with \$241.8 million in 2001. The weighted average interest rate was 1.7 percent in 2002 compared to 4.6 percent in 2001. For additional information about Con Edison's short-term borrowing, see Note C to the financial statements.

In February 2002, Con Edison of New York redeemed at maturity \$150 million of 6.625 percent 9-year, Series 1993C Debentures. In April 2002, Con Edison issued \$325 million of 7.25 percent long-term debt (Public Income Notes, Series 2002A), with a 40-year maturity, callable at par after five years. In June 2002, Con Edison of New York redeemed at maturity \$150 million of variable rate 5-year, Series 1997A Debentures and issued \$300 million of non-callable 5.625 percent 10-year Series 2002A Debentures. In August 2002, Con Edison of New York redeemed at maturity \$37.1 million of Cumulative Preferred Stock, \$100 par value, 6.125 percent, Series J. In December 2002, Con Edison of New York issued \$500 million 4.875 percent 10-year Series 2002B Debentures. In January 2003, Con Edison of New York redeemed \$275 million of 7.75 percent 35-year, Series 1996A, Subordinated Deferrable Interest Debentures.

In October 2002, Con Edison of New York changed the interest rate method applicable to \$224.6 million aggregate principal amount of its tax-exempt Facilities Revenue Bonds, Series 2001A from a variable weekly rate mode to a 10-year term mode, callable at par after three years with a 4.70 percent annual interest rate. In addition, Con Edison of New York entered into a swap agreement in connection with these bonds pursuant to which the company pays interest at a variable rate equal to the three-month LIBOR and is paid interest at a fixed rate of 5.375 percent. See Note O to the financial statements.

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External borrowings are a source of liquidity for Con Edison that could be affected by changes in credit ratings, financial performance and capital markets. For information about Con Edison's ratings and certain financial ratios, see "Capital Resources" below.

#### Generation Divestiture

In 2001, Con Edison of New York completed the sale of its interest in the jointly owned Roseton generating station and its nuclear generating unit and related assets. See Note I to the financial statements.

#### Capital Resources

Con Edison is a holding company that operates only through its subsidiaries and has no material assets other than its interests in its subsidiaries. Con Edison expects to finance its capital requirements primarily from dividends it receives from its subsidiaries and through the sale of securities, including commercial paper. In addition, Con Edison's ability to make payments on its external borrowings and dividends on its common shares is dependent upon its receipt of dividends from its subsidiaries or proceeds from the sale of its securities or its interests in its subsidiaries. For information about restrictions on the payment of dividends by Con Edison's utility subsidiaries, see Note B to the financial statements.

For information about Con Edison's \$950 million commercial paper programs and revolving credit agreements with banks, see Note C to the financial statements.

In 2002, Con Edison issued 1.7 million shares of previously unissued shares of its common stock for its Automatic Dividend Reinvestment and Cash Payment Plan, Stock Purchase Plan and Stock Option Plan, which increased common equity by \$68.5 million.

Con Edison expects its utility subsidiaries to finance their operations, capital requirements and payment of dividends to Con Edison from internally generated funds and external borrowings.

In December 2001, the PSC authorized Con Edison's utility subsidiaries to issue up to \$1.95 billion of debt securities prior to 2006, of which Con Edison of New York issued \$525 million of debt securities in 2002. In addition, the PSC authorized the refunding of the utility subsidiaries' outstanding debt securities and preferred stock.

Con Edison's unregulated subsidiaries have financed their operations and capital requirements primarily with capital contributions from Con Edison, internally generated funds and external borrowings and off-balance sheet financings guaranteed by Con Edison. See Note S to the financial statements.

In August 2002, President Bush signed into law an appropriations bill that authorizes funds for which the company is eligible to apply for the recovery of costs it incurred in connection with the World Trade Center attack. The procedural guidelines for disbursement of the federal funds are in the process of being developed. See Note Q to the financial statements.

Con Edison's ratio of earnings to fixed charges for 2002, 2001 and 2000 and common equity ratio at December 31, 2002, 2001 and 2000 were:

	2002	2001	2000
Earnings to fixed charges (SEC basis)	3.25	3.49	3.10
Common equity ratio	48.2	49.6	49.1

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Con Edison's ratio of earnings to fixed charges decreased for 2002 compared to 2001 primarily as a result of decreased earnings, including a non-cash, after-tax charge of \$22.1 million related to changes in accounting principles. Excluding this charge, the ratio of earnings to fixed charges for 2002 would have been 3.3. See Notes K and O to the financial statements. Con Edison's ratio of earnings to fixed charges increased for 2001 compared to 2000 primarily as a result of increased earnings, reflecting charges in 2000 for replacement power costs (\$130.0 million) and merger related expenses (\$32.1 million). See Notes G and P to the financial statements.

The commercial paper of Con Edison and its utility subsidiaries is rated P-1, A-1 and F-1, respectively, by Moody's Investors Service, Inc. (Moody's), Standard & Poor's Rating Services (S&P) and Fitch Ratings (Fitch). Con Edison's unsecured debt is rated A2, A and A-, respectively, by Moody's, S&P and Fitch. The senior unsecured debt of Con Edison's subsidiaries, Con Edison of New York and O&R, is rated A1, A+ and A+, respectively, by Moody's, S&P and Fitch.

#### Capital Requirements

The following table compares Con Edison's capital requirements relating to its regulated and unregulated subsidiaries for the years 2000 through 2002 and estimated amounts for 2003 and 2004:

	2000	2001	2002	2003	2004
	<i>(Millions of Dollars)</i>				
Regulated utility construction expenditures	\$ 959	\$ 1,043	\$ 1,157	\$ 1,179	\$ 1,104
Investment in unregulated subsidiaries	121	187	277	134	47
Sub-total	1,080	1,230	1,434	1,313	1,151
Retirement of long-term securities at maturity	395	638	348	460*	150
Total	\$ 1,475	\$ 1,868	\$ 1,782	\$ 1,773	\$ 1,301

\* Includes redemption in advance of maturity of \$275 million of Con Edison of New York's Subordinated Deferrable Interest Debentures Series 1996A in January 2003.

The increased regulated utility construction expenditures in 2002 and 2003 reflect expenditures for permanent electric, gas and steam system restoration following the World Trade Center attack, programs to meet increased electric load growth and reliability needs, a higher level of gas infrastructure expenditures and the East River Repowering Project.

The investment in unregulated subsidiaries reflects Con Edison's funding to the unregulated subsidiaries as well as the subsidiaries' own investments, but does not include off-balance sheet financing (which is guaranteed by Con Edison). See Notes R and S to the financial statements. At December 31, 2002 and 2001, Con Edison's investment in these subsidiaries, on an unconsolidated basis, was \$789.8 million and \$473.5 million, respectively.

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#### Contractual Obligations and Commercial Commitments

The following table summarizes Con Edison's material obligations at December 31, 2002, to make payments pursuant to contracts. Long-term debt and capital lease obligations are included on Con Edison's balance sheet. Operating leases and non-utility generator (NUGs) contracts (for which undiscounted future annual payments are shown) are disclosed in the notes to the financial statements.

<i>Contractual Obligations</i>	<i>Payments Due by Period</i>				
	<i>Total</i>	<i>Less than 1 year</i>	<i>1-3 years</i>	<i>4-5 years</i>	<i>After 5 years</i>
	<i>(Millions of Dollars)</i>				
Long-term debt (Note B)	\$ 6,668	\$ 473	\$ 627	\$ 385	\$ 5,183
Capital lease obligations (Note J)	72	8	15	14	35
Operating leases (Notes J and S)	418	79	129	88	122
Non-utility generator contracts (Note H)	8,145	543	1,076	1,061	5,465
Natural gas supply, transportation and storage contracts	424	144	135	120	25
Total	\$ 15,727	\$ 1,247	\$ 1,982	\$ 1,668	\$ 10,830

Con Edison's material commercial commitments to make payments in addition to these contractual commitments are its guarantees of certain obligations of its subsidiaries. See Notes R and S to the financial statements.

## **ELECTRIC POWER REQUIREMENTS**

In 2002, Con Edison's utility subsidiaries purchased substantially all of the energy they sold to customers pursuant to firm contracts with NUGs and others or through the NYISO's wholesale electricity market. Con Edison expects that these resources will again be adequate to meet the requirements of its customers in 2003.

In general, Con Edison's utility subsidiaries recover prudently incurred purchase power costs pursuant to rate provisions approved by the state public utility regulatory authority having jurisdiction. See "Financial Market Risks - Commodity Price Risk" below and "Recoverable Energy Costs" in Note A to the financial statements. From time to time certain parties have petitioned the PSC to review these provisions, the elimination of which could have a material adverse effect on Con Edison's financial position, results of operations or liquidity.

To reduce the volatility of electric energy costs, Con Edison's utility subsidiaries have firm contracts to purchase electric energy (including the output of the nuclear generating unit divested in 2001) and have entered into derivative transactions to hedge the costs of expected purchases, which together cover a substantial portion of the electric energy expected to be sold to customers in the summer of 2003. See Notes H and O to the financial statements. Con Edison of New York also owns approximately 630 MW of electric generating stations located in New York City, the electricity from which it sells through the NYISO's wholesale electricity market.

In December 2002, Con Edison of New York issued a request for proposals seeking a contract to purchase, for no more than 10 years, 500 MW of electric capacity from a new facility located in New York City (or outside the City if there is dedicated new transmission).

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The East River Repowering Project will add incremental electric capacity of approximately 200 MW based on a winter nominal rating or approximately 125 MW based on a summer nominal rating. Con Edison's utility subsidiaries do not expect to add any other long-term electric generation resources. In a July 1998 order, the PSC indicated that it "agree(s) generally that Con Edison of New York need not plan on constructing new generation as the competitive market develops," but considers "overly broad" and did not adopt Con Edison of New York's request for a declaration that, solely with respect to providing generating capacity, it will no longer be required to engage in long-range planning to meet potential demand and, in particular, that it will no longer have the obligation to construct new generating facilities, regardless of the market price of capacity. Con Edison of New York monitors the adequacy of the electric capacity resources and related developments in its service area, and works with other parties on long-term resource adequacy issues within the framework of the NYISO.

Con Edison's unregulated subsidiaries sell electricity in the wholesale and retail NYISO and other markets. At December 31, 2002, Con Edison Development owned interests in electric generating facilities with an aggregate capacity of 588 MW and had under construction additional generating facilities with an aggregate capacity of 665 MW of capacity. In addition, Con Edison Development has an operating lease arrangement for a 525 MW generating facility (see Notes J and S) that was placed in service in December 2002. Con Edison Energy sells the electricity from these generating facilities under contract or on the wholesale electricity markets. See "Financial Market Risks - Commodity Price Risk," below.

## **REGULATORY MATTERS**

### **Electric**

In July 2002, FERC issued a Notice of Proposed Rulemaking (NOPR) to establish a Standard Market Design (SMD) for wholesale electricity markets across the country. The proposed SMD has many of the elements of the markets that have been established in the Northeast, and if adopted, could facilitate transactions among energy markets across the country. The SMD proposes that transmission owners would join Independent Transmission Providers, or ITPs, which would be independent of market participants, would have operational authority for all transmission assets under their control, and would perform certain functions related to day-ahead and real-time energy markets, determine resource adequacy requirements, financial congestion management, regional planning, market monitoring, and interregional coordination with neighboring ITPs. Transmission facilities of Con Edison's utility subsidiaries, other than those located underground, are currently controlled by the NYISO.

In September 1997, the PSC approved a restructuring agreement among Con Edison of New York, the PSC staff and certain other parties (the 1997 Restructuring Agreement). Pursuant to the 1997 Restructuring Agreement, Con Edison of New York reduced electric rates on an annual basis by \$129 million in 1998, \$80 million in 1999, \$103 million in 2000 and \$209 million in 2001, divested most of its electric generating capacity, and enabled all of its electric customers to be served by competitive energy suppliers.

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In November 2000, the PSC approved an October 2000 agreement (the 2000 Electric Rate Agreement) that, among other things, revised and extended the electric rate plan provisions of the 1997 Restructuring Agreement and addressed certain generation divestiture-related issues.

The electric rate plan provisions of the 2000 Electric Rate Agreement cover the five-year period ending March 2005. Pursuant to the 2000 Electric Rate Agreement, Con Edison of New York reduced the distribution component of its electric rates by \$170 million on an annual basis, effective October 2000.

The 2000 Electric Rate Agreement continues the rate provisions pursuant to which Con Edison of New York recovers prudently incurred purchased power and fuel costs from customers. See "Recoverable Energy Costs" in Note A to the financial statements.

For additional information about the 1997 Restructuring Agreement and the 2000 Electric Rate Agreement, see "Rate and Restructuring Agreements" in Note A to the financial statements.

O&R has entered into settlement agreements or similar arrangements with the PSC, NJBPU and PPUC that provide for a transition to a competitive electric market. See "Rate and Restructuring Agreements" in Note A to the financial statements.

In August 2002, O&R's New Jersey utility subsidiary submitted a petition to the NJBPU requesting recovery under New Jersey's 1999 Electric Discount and Energy Competition Act (EDECA) of \$110 million of electric purchased power costs in excess of amounts previously billed to customers, associated interest, and other deferred charges. See "Recoverable Energy Costs" in Note A to the financial statements.

## Gas

In April 2002, the PSC approved a Con Edison of New York gas rate agreement for the three-year period ending September 30, 2004. The rate agreement reduces retail sales and transportation rates by \$25 million, on an annual basis.

In November 2000, the PSC approved an agreement between Con Edison of New York, the PSC staff and certain other parties that revised and extended the 1996 gas rate settlement agreement through September 2001. The 1996 agreement, with limited exceptions, continued base rates at September 1996 levels through September 2000.

In November 2000, the PSC also approved a gas rate agreement between O&R, PSC Staff and certain other parties covering the three-year period November 2000 through October 2003.

In November 2002, O&R filed a request with the PSC for approval of a \$27.2 million rate increase effective November 2003. O&R also submitted a multi-year plan that addresses rates for two additional years, with an increase of \$2.5 million per year to cover adjustments to infrastructure costs, inflation and property taxes. The Administrative Law Judge is expected to issue a recommended decision in the third quarter 2003.

For additional information about the new gas rate agreements, see "Rate and Restructuring Agreements" in Note A to the financial statements.

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## Steam

In December 2000, the PSC approved an agreement between Con Edison of New York, the PSC staff and certain other parties with respect to the steam rate plan filed by Con Edison in November 1999. The agreement provides for a \$16.6 million steam rate increase, which took effect October 2000 and, with limited exceptions, provided for no further changes in steam rates prior to October 2004.

For additional information about the agreement, see "Rate and Restructuring Agreements" in Note A to the financial statements.

## FINANCIAL MARKET RISKS

Con Edison's primary market risks are interest rate risk, commodity price risk, credit risk and investment risk.

### Interest Rate Risk

The interest rate risk relates primarily to variable rate debt and to new debt financing needed to fund capital requirements, including utility construction expenditures and maturing debt securities. Con Edison and its subsidiaries manage interest rate risk through the issuance of mostly fixed-rate debt with varying maturities and through opportunistic refinancing of debt. Con Edison estimates that, as of December 31, 2002, a 10 percent variation in interest rates applicable to its variable rate debt of \$809.8 million would result in a change in annual interest expense of \$1.2 million.

In addition, Con Edison and its subsidiaries, from time to time, enter into derivative financial instruments to hedge interest rate risk on certain debt securities. See "Interest Rate Hedging" in Note O to the financial statements.

### Commodity Price Risk

Con Edison's commodity price risk relates primarily to the purchase and sale of electricity, gas and related derivative instruments. The regulated and unregulated subsidiaries have risk management strategies to mitigate their related exposures. See Note O to the financial statements.

In general, the rates the utility subsidiaries charge customers for electric, gas and steam service fluctuate with the cost of purchased power, gas purchased for resale and fuel used in the generation of steam and electricity, including gains or losses on certain derivative instruments used to hedge energy purchases and related transaction costs. See "Recoverable Energy Costs" in Note A to the financial statements.

Con Edison estimates that, as of December 31, 2002, a 10 percent change in market prices would result in a change in fair value of \$7.4 million for the derivative instruments used by its regulated utility subsidiaries to hedge purchases of electricity and gas. Con Edison expects that any such change in fair value would be largely offset by directionally opposite changes in the cost of the electricity and gas purchased.

Con Edison's unregulated subsidiaries use a value-at-risk model to assess the market risk of their electricity and gas commodity fixed price purchase and sales commitments, physical forward contracts, and commodity derivative instruments. Value-at-risk represents the potential change in the fair value of instruments or portfolios due to changes in market factors, for a specified time period and confidence

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level. The unregulated subsidiaries estimate value-at-risk across their electricity and natural gas commodity businesses using a delta-normal variance/covariance model with a 95 percent confidence level. Since the value-at-risk calculation involves complex calculation methodologies, estimates and assumptions that are

based on past experience, it is not necessarily indicative of future results. The average, high and low values-at-risk for the 12 months ended December 31, 2002 were \$1.4 million, \$3.0 million and \$0.6 million, respectively.

#### Credit Risk

Con Edison is exposed to credit risk related to over-the-counter transactions entered into primarily for the various energy supply and hedging activities for its regulated and unregulated subsidiaries. Credit risk is the loss that may result from a counterparty's nonperformance. Con Edison uses credit policies to manage this risk, including an established credit approval process, monitoring of counterparty limits, master netting agreements and collateral or prepayment arrangements. Con Edison measures credit risk exposure as the replacement cost for open energy commodity and derivative positions plus amounts owed from counterparties for settled transactions. The replacement cost of open positions represents unrealized gains, net of any unrealized losses where the company has a legally enforceable right of setoff.

Con Edison's unregulated energy subsidiaries had \$64.8 million of credit exposure, net of collateral, at December 31, 2002, of which \$45.0 million was with investment grade counterparties and \$14.2 million was with the New York Mercantile Exchange or independent system operators.

#### Investment Risk

Con Edison's investment risk relates to the investment of the assets in the company's pension and other postretirement benefit plans. See "Critical Accounting Policies - Accounting for Pensions and Other Postretirement Benefits," above.

### ENERGY TRADING ACTIVITIES

Unregulated subsidiaries of Con Edison engage in energy trading activities that are accounted for in accordance with SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended. Con Edison Energy markets energy through specialized products and provides wholesale capacity, risk management and load forecasting and scheduling services to wholesale and retail energy providers and asset optimization services for the electric generating plants of Con Edison Development. Con Edison Energy also procures and markets energy for other Con Edison subsidiaries and utilizes commodity contracts such as two-party forward contracts for the purchase or sale of electricity and capacity, over-the counter swap contracts, exchange-traded natural gas and crude oil futures and options, transmission congestion contracts, natural gas transportation contracts and other physical and financial contracts.

Prior to October 2002, these contracts were accounted for under Emerging Issues Task Force (EITF) Issue No. 98-10, "Accounting for Contracts Involved in Energy Trading and Risk Management Activities." As of October 2002, energy and energy-related trading contracts that meet the definition of a derivative are accounted for under SFAS No. 133. Such contracts are marked to market with gains and losses recognized in earnings. For the years ended December 31, 2002 and 2001, Con Edison recognized in income net unrealized pre-tax losses of \$1.4 million, excluding the effect of a cumulative adjustment

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due to a change in accounting principle, and net gains of \$9.6 million, respectively. Contracts that did not fall within the scope of SFAS No. 133 were included in the cumulative effect of a change in accounting principle recognized in December 2002. See Note T to the financial statements.

The changes in fair value of energy trading net assets for the years ended December 31, 2002 and 2001 were as follows:

	2002	2001
	<i>(Millions of Dollars)</i>	
Fair value of net assets outstanding - beginning of period	\$ 11.2	\$ 1.6
Change in fair value during the period:		
Unrealized gain at inception	10.9	-
Net premium paid/(received)	(1.7)	-
Cumulative effect of a change in accounting principle	(3.2)	-
Changes in fair value prior to settlement	6.4	(1.6)
Fair value realized at settlement of contracts	(18.7)	11.2
Total change in fair value during the period	(6.3)	9.6
Fair value of net assets outstanding - end of period	\$ 4.9	\$ 11.2

As of December 31, 2002, the sources of fair value of the energy trading net assets were as follows:

Source of Fair Value	<i>Fair Value of Net Assets at Period End (Millions of Dollars)</i>				Total fair value
	<i>Maturity less than 1 year</i>	<i>Maturity 1-3 years</i>	<i>Maturity 4-5 years</i>	<i>Maturity in excess of 5 years</i>	

Prices provided by external sources	\$	12.6	\$	(4.8)	\$	-	\$	-	\$	7.8
Prices based on models and other valuation methods		(2.9)		-		-		-		(2.9)
<b>Total</b>	<b>\$</b>	<b>9.7</b>	<b>\$</b>	<b>(4.8)</b>	<b>\$</b>	<b>-</b>	<b>\$</b>	<b>-</b>	<b>\$</b>	<b>4.9</b>

"Prices provided by external sources" represents the fair value of exchange-traded futures and options and the fair value of positions for which price quotations are available through or derived from brokers or other market sources.

"Prices based on models and other valuation methods" represents the fair value of positions calculated using internal models when directly and indirectly quoted external prices or prices derived from external sources are not available. Internal models incorporate the use of options pricing and estimates of the present value of cash flows based upon underlying contractual terms. The models reflect management's estimates, taking into account observable market prices, estimated market prices in the absence of quoted market prices, the risk-free market discount rate, volatility factors, estimated correlations of energy commodity prices and contractual volumes. Counterparty specific credit quality, market price uncertainty and other risks are also factored into the models.

## ENVIRONMENTAL MATTERS

For information concerning potential liabilities arising from laws and regulations protecting the environment, including the Superfund, and from claims relating to alleged exposure to asbestos, see Note F to the financial statements.

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## IMPACT OF INFLATION

Con Edison is affected by the decline in the purchasing power of the dollar caused by inflation. Regulation permits Con Edison's utility subsidiaries to recover through depreciation only the historical cost of their plant assets even though in an inflationary economy the cost to replace the assets upon their retirement will substantially exceed historical costs. The impact is, however, partially offset by the repayment of the utility subsidiaries' long-term debt in dollars of lesser value than the dollars originally borrowed.

## RESULTS OF OPERATIONS

Con Edison's results of operations (which were discussed above under "Results of Operations - Summary") are discussed below for each of its business segments. Con Edison's principal business segments are its electric, gas and steam utility businesses of its regulated utility subsidiaries and the businesses of its unregulated subsidiaries. For additional information about its business segments, see Note N to the financial statements.

### YEAR ENDED DECEMBER 31, 2002 COMPARED WITH YEAR ENDED DECEMBER 31, 2001

#### Electric

Con Edison's electric operating revenues in 2002 decreased \$637.0 million compared with 2001, reflecting primarily lower fuel and purchased power costs of \$297.1 million (discussed below). The decrease also reflects the completion in March 2002 of amortizations of a previously deferred gain on the sale of divested plants and a previously deferred NYPA revenue increase (\$43.3 million), a reserve established in 2002 for earnings in excess of a specified rate of return that are to be retained for customer benefit in accordance with Con Edison of New York's 2000 Electric Rate Agreement (\$40.0 million), the amortization of the loss (\$29.9 million) related to the sale of the company's nuclear generating unit and rate reductions and other amortizations in accordance with the company's rate agreements. The decrease in electric operating revenues was offset, in part, by an increase in electric sales revenues (\$24.0 million) reflecting principally the hot summer weather. See "Recoverable Energy Costs" and "Rate and Restructuring Agreements" in Note A to the financial statements.

Electricity delivery volumes for Con Edison's utility subsidiaries increased 2.0 percent in 2002 compared with 2001. After adjusting for variations, principally weather and billing days in each period, electricity delivery volumes for Con Edison of New York and O&R increased 0.5 percent and 3.2 percent, respectively, in the 2002 period.

Con Edison's electric purchased power costs decreased \$244.8 million in 2002 compared with 2001, due to a decrease in the price of purchased power and an increase in volumes of electricity purchased from other suppliers by participants in the retail access programs of Con Edison's utility subsidiaries. This decrease was offset in part by Con Edison of New York's increased purchased volumes resulting from the sale of the company's nuclear generating unit in September 2001 and the hot summer weather in 2002. Fuel costs decreased \$52.3 million as a result of decreased generation at Con Edison of New York's owned power plants. In general, Con Edison's utility subsidiaries recover prudently incurred fuel and

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purchased power costs pursuant to rate provisions approved by the PSC. See "Recoverable Energy Costs" in Note A to the financial statements.

Con Edison's electric operating income decreased \$85.4 million in 2002 compared with 2001. The principal component of the decrease was lower net electric revenues (operating revenues less fuel and purchased power costs) of \$339.9 million. The decrease in net electric revenues reflects the sale of the nuclear generation unit and the same factors (other than lower fuel and purchased power costs) as discussed above with respect to the decrease in electric operating revenues. The decrease in net revenues was offset in part by reduced other operations and maintenance expenses (\$135.0 million) reflecting nuclear production expenses incurred in 2001, but not in 2002 and productivity improvements, lower depreciation and amortization expense (\$30.3 million) and lower revenue taxes (\$27.2 million). The decrease is also offset by lower income tax of \$63.9 million.

#### Gas

Con Edison's gas operating revenues decreased \$261.9 million, resulting primarily from the lower cost of purchased gas (\$233.9 million) in 2002 compared with 2001. The lower cost of purchased gas reflects primarily lower unit costs at Con Edison of New York. The lower revenues also reflect reduced sales volumes,

resulting primarily from the mild winter weather in the first quarter of 2002 and for Con Edison of New York, revenue reductions implemented in accordance with the gas rate agreement approved by the PSC in April 2002. Gas operating income decreased \$6.5 million in 2002, reflecting a \$28.0 million decrease in net revenues (operating revenues less gas purchased for resale), and increased property tax expense (\$10.0 million), offset in part by reduced operations and maintenance expenses (\$16.6 million), reduced revenue taxes (\$12.1 million) and lower income taxes (\$7.8 million).

Con Edison's gas sales and transportation volumes for firm customers decreased 3.2 percent in the year ended December 31, 2002 compared with the year ended December 31, 2001. After adjusting for variations, principally weather and billing days in each period, firm gas sales and transportation volumes for Con Edison of New York and O&R decreased 1.5 percent and 0.3 percent, respectively, in the 2002 period.

Con Edison's gas sales and transportation volumes vary seasonally in response to weather and peak in the winter. A weather-normalization provision that applies to the gas business of Con Edison's utility subsidiaries moderates, but does not completely eliminate, the effect of weather-related changes on gas operating income.

#### Steam

Con Edison of New York's steam operating revenues decreased \$99.7 million. The lower revenues reflect reduced sales volumes and lower fuel and purchased power costs primarily as a result of the loss of the World Trade Center as a customer, the mild winter weather in the first quarter of 2002, and the soft economy. The lower fuel and purchased power costs reflect primarily lower unit costs. Steam operating income increased \$8.2 million for 2002 compared with 2001 due primarily to reduced operations and maintenance expenses of \$9.3 million and lower income taxes of \$10.5 million, offset in part by a

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decrease in net revenues (operating revenues less fuel and purchased power costs) of \$11.1 million. See "Recoverable Energy Costs" in Note A to the financial statements.

Steam sales volume decreased 3.2 percent in the year ended December 31, 2002 compared with the year ended December 31, 2001, reflecting primarily the loss of the World Trade Center as a customer, the mild winter weather in the first quarter of 2002 and the soft economy. After adjusting for variations, principally weather and billing days in each period, steam sales volume decreased 1.4 percent.

#### Unregulated Business

Earnings for the unregulated subsidiaries decreased \$14.0 million in 2002 compared with 2001, reflecting a non-cash, after-tax charge in 2002 of \$22.1 million for changes in accounting principles (see Notes K, O and S to the financial statements) and continued start-up losses in the company's wholesale telecommunications business, including a non-cash, after-tax charge in 2002 of \$5.0 million for a write-down of an investment in Neon Communications, Inc. (NEON). The decrease in earnings was offset, in part, by higher electric retail sales volumes and gross margins, the capitalization of previously expensed project development costs on generation assets (\$4.2 million after tax) and unrealized mark-to-market gains on derivative instruments (\$6.9 million after tax), which are also discussed below in "Other Income."

#### Taxes Other Than Income Taxes

At \$1.1 billion, taxes other than income taxes remain one of Con Edison's largest operating expenses.

The principal components of, and variations in, operating taxes were:

	<i>Increase/(Decrease)</i>	
	<i>2002 Amount</i>	<i>2002 compared to 2001</i>
<i>(Millions of Dollars)</i>		
Property taxes	\$ 660.6	\$ 11.5
State and local taxes related to revenue receipts	365.2	(38.1)
Payroll taxes	60.1	(0.7)
Other taxes	28.3	2.0
<b>Total</b>	<b>\$ 1,114.2*</b>	<b>\$ (25.3)</b>

\* Including sales tax on customers' bills, total taxes other than income taxes billed to customers in 2002 were \$1,463.7 million.

Effective in 2003, New York City increased Con Edison of New York's annual property taxes by \$96 million. Under Con Edison of New York's rate agreements, the company is deferring the property tax increase as a regulatory asset to be recovered from customers.

#### Other Income

Investment income decreased \$6.1 million in 2002 compared to 2001, due principally to reduced interest income earned on short-term cash investments in the 2002 period as compared to the 2001 period. For the 2001 period, the company had more cash on hand than the 2002 period, primarily as a result of the sale of its nuclear generating unit. Allowance for equity funds used during construction increased \$8.7 million in 2002 compared to 2001 primarily reflecting the East River Repowering Project. Other

income increased \$52.5 million in 2002 compared to 2001 due primarily to \$26.7 million of interest income on a federal income tax refund claim, a \$10.2 million write-off in 2001 of an investment in the New York Discovery Fund in 2001, a \$9.4 million increase in interest earned on Con Edison of New York's regulatory assets (See "Application of Critical Accounting Policies - Accounting for Regulated Public Utilities - SFAS No. 71," above) and a \$11.7 million mark-to-market gain on derivative contracts for an unregulated subsidiary. These increases were offset in part by reduced income of \$2.5 million from Con Edison of New York's non-utility operations. Other income deductions decreased \$8.1 million due principally to lower legal fees relating to the Northeast Utilities litigation. See Note P to the financial statements.

#### Net Interest Charges

Net interest charges increased \$10.7 million in 2002 compared to 2001. The increase reflects principally the interest expense associated with a net federal income tax deficiency related to a prior period audit (\$19.1 million), partially offset by decreased interest expense on long-term debt of \$11.6 million.

#### Income Tax

Federal income tax decreased \$11.8 million in 2002 compared to 2001, reflecting lower income before tax and deductions related to removal costs and tax credits. In 2000, New York State implemented a tax law change that reduced or repealed certain revenue-based taxes and replaced them with the imposition of a net income-based tax. State income taxes decreased \$54.4 million in 2002 compared to 2001, reflecting lower income before tax, lowering of the tax rate and prior period adjustments. The state income tax expense is offset against the savings from the eliminated or reduced revenue taxes. Any over- or under-collection of these taxes is deferred for return to, or recovery from, customers. See Notes A and L to the financial statements.

### YEAR ENDED DECEMBER 31, 2001 COMPARED WITH YEAR ENDED DECEMBER 31, 2000

#### Electric

Con Edison's electric operating revenues in 2001 decreased \$50.3 million from 2000. The decrease in 2001 reflects decreased purchased power costs (see "Recoverable Energy Costs" in Note A to the financial statements) and electric rate reductions of \$375.6 million in 2001, offset by the effects of the warmer than normal summer weather when compared to cooler than normal weather for the 2000 period.

Electricity sales volume for Con Edison's utility subsidiaries increased 3.1 percent in 2001 compared with 2000. The increase reflects the warmer than normal summer weather and economic growth. Con Edison's electric sales vary seasonally in response to weather and peak in the summer.

After adjusting for variations, principally weather and billing days, in each period, electricity sales volume for Con Edison New York increased 2.4 percent in 2001 compared with 2000. For O&R, weather-adjusted electric sales increased 3.3 percent in 2001 compared with 2000.

Con Edison's electric operating income increased \$93.2 million in 2001 compared with 2000. The increase reflects an increase in net revenues (operating revenues less fuel and purchased power) of \$73 million. The increase in net revenues reflects principally increased sales (\$76.3 million), recognition

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of revenue related to previously deferred NYPA rate increases (\$35.2 million), gains on the sale of divested generation plants (\$37.5 million), increased system benefit charges (\$41 million), recovery of incremental NUG cost (\$31.0 million), reconciliation of state income tax and gross receipts tax (\$110.8 million; see "Income Tax" below) and the reduction in net revenues in 2000 for replacement power costs (\$130.0 million), offset by electric rate reductions of \$375.6 million in 2001. Electric operating income also increased due to decreased other operations and maintenance expenses of \$107.9 million and decreased depreciation and amortization expense of \$69.1 million, offset in part by increased property taxes of \$33.7 million, federal income tax of \$42.3 million and state income tax of \$99.1 million (see "Income Tax" below).

The \$107.9 million decrease in other operations and maintenance expenses reflects principally lower expenses related to Con Edison of New York's nuclear generating unit which was sold in September 2001 (\$98.4 million), increased pension credits (\$42.5 million) and decreased transmission expenses (\$11.3 million), offset in part by higher distribution expenses for the relocation of company facilities to avoid interference with municipal infrastructure projects (\$13.4 million) and increased system benefit charges (\$41 million).

#### Gas

Con Edison's gas operating revenues increased \$204.0 million in 2001 compared with 2000, reflecting increased cost of purchased gas, offset in part by a reduction in customers' bills of \$20.0 million, reflecting a refund of previously deferred credits and other provisions of the gas rate agreement approved by the PSC in November 2000. The increase in operating income of \$3.7 million reflects principally an increase in net revenues (operating revenues less gas purchased for resale) of \$5.4 million, increased pension credits of \$8.2 million, and the recognition in income in the 2001 period of previously deferred gas credits (\$7.0 million), offset in part by increased depreciation and amortization expense (\$5.3 million), increased state income tax (\$8.7 million; see "Income Tax" below) and higher distribution expenses of \$3.0 million for the relocation of company facilities to avoid interference with municipal infrastructure projects.

Firm gas sales and transportation volume for Con Edison's utility subsidiaries decreased 2.0 percent in 2001 compared with 2000.

Con Edison's gas sales and transportation volumes vary seasonally in response to weather and peak in the winter. The decrease in volume in 2001 compared with 2000 reflects the warmer 2001 winter compared with 2000.

After adjusting for variations, principally weather and billing days, in each period, gas sales and transportation volume to firm customers for Con Edison of New York increased 2.8 percent in 2001 compared with 2000. For O&R, weather-adjusted gas sales decreased 0.1 percent in 2001 compared with 2000.

#### Steam

Con Edison of New York's steam operating revenues increased \$51.6 million in 2001 compared to 2000, reflecting primarily increased purchased steam and fuel costs (see "Recoverable Energy Costs" in Note A



to the financial statements). Steam operating income increased \$2.3 million in 2001 compared with 2000, reflecting an October 2000 rate increase of \$16.6 million.

Steam sale volume decreased 5.3 percent in 2001 compared with 2000. The decrease in 2001 reflects the mild winter weather compared with 2000.

After adjusting for variations, principally weather and billing days, in each period, steam sales volume decreased 2.7 percent in 2001.

#### Unregulated Business

Operating revenues of Con Edison's unregulated subsidiaries decreased \$133.7 million in 2001 compared to 2000, principally reflecting lower gas revenues as result of lower gas sales volumes in the 2001 period compared to 2000. The decrease in operating revenues was offset by a comparable decrease in the cost of gas purchased and other expenses.

The unregulated subsidiaries' operating income increased \$11.6 million in 2001 compared to 2000 due principally to higher electric commodity gross margins and higher wholesale energy trading volumes.

#### Taxes Other Than Income Taxes

The principal components of, and variations, in operating taxes were:

	<i>2001 Amount</i>	<i>Increase/(Decrease) 2001 compared to 2000</i>
	<i>(Millions of Dollars)</i>	
Property taxes	\$ 649.1	\$ 35.1
State and local taxes related to revenue receipts	403.3	(22.2)
Payroll taxes	60.8	1.4
Other taxes	26.3	3.4
<b>Total</b>	<b>\$ 1,139.5*</b>	<b>\$ 17.7</b>

\* Including sales tax on customers' bills, total taxes other than income taxes billed to customers in 2001 were \$1,520.3 million.

#### Other Income

Other income increased \$11.4 million in 2001 compared with 2000, due principally to reduced federal income tax expense and the recognition in 2000 of \$32.1 million of merger-related expenses, offset by the write-off in 2001 of an investment of \$10.2 million in the New York City Discovery Fund.

#### Net Interest Charges

Net interest charges increased \$23.4 million in 2001 compared with 2000, reflecting \$28.4 million of increased interest expense for Con Edison of New York related to long-term borrowings and \$5.7 million of interest expense related to long-term borrowing for a 236 MW electric generating facility located in Lakewood, New Jersey (which was purchased in June 2000 by an unregulated subsidiary), offset in part by \$10.6 million in 2000 for interest accrued on the net after-tax gain from Con Edison of New York's 1999 generation divestiture, prior to the disposition of this gain in 2000. See Note I to the financial statements.

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#### Income Tax

Federal income tax increased \$14.9 million in 2001 compared with 2000, reflecting the changes in income before tax, deductions related to removal costs and tax credits. State income taxes increased \$120.6 million in 2001 compared with 2000 as a result of the change in New York State tax law, offset by a corresponding increase in other operating revenues for taxes no longer applicable but still being recovered through rates. See Notes A and L to the financial statements.

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### **ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS—CONSOLIDATED CON Edison COMPANY OF NEW YORK, INC.**

This discussion and analysis relates to the accompanying consolidated financial statements of Consolidated Edison Company of New York, Inc. (Con Edison of New York or the Company) and should be read in conjunction with the financial statements and the notes thereto. Information in the notes referred to in this discussion and analysis is hereby incorporated by reference herein. The use of terms such as "see" or "refer to" shall be deemed to incorporate by reference into this discussion and analysis the information to which reference is made.

#### **CON EDISON OF NEW YORK'S BUSINESS**

Con Edison of New York is a regulated utility that provides electric service to over 3.1 million customers and gas service to approximately 1.1 million customers in New York City and Westchester County. It also provides steam service in parts of Manhattan. All of the common stock of Con Edison of New York is owned

## RESULTS OF OPERATIONS – SUMMARY

Con Edison of New York's net income for common stock for the year ended December 31, 2002 was \$605.4 million. Earnings for the years ended December 31, 2001 and 2000 were \$649.5 million and \$570.1 million, respectively.

Con Edison of New York's earnings in 2002 were \$44.1 million lower than in 2001, reflecting the following factors (after tax, in millions):

Lower operation and maintenance expenses (excluding nuclear operations)	\$ 21.6
Impact of weather (estimated)	18.4
Reserve for electric excess earnings	(26.0)
Amortization of divestiture gain in 2001	(25.0)
Reduction in gas base rates and lower non-firm gas sales	(21.3)
Economic conditions (estimated)	(7.5)
Other	(4.3)
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Total	\$ (44.1)
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The Company's earnings in 2001 were \$79.4 million higher than in 2000, reflecting the following factors (after tax, in millions):

Lower nuclear production expenses	\$ 64.0
Impact of weather and economic conditions (estimated)	47.5
Lower depreciation expense	45.5
Amortization of divestiture gain	37.5
Increased pension credits	34.5
Recognition of deferred NYPA rate increase	22.9
Unrecovered Indian Point replacement power costs in 2000	84.5
Electric rate reductions	(243.4)
Taxes other than income, principally property taxes	(12.2)
Other	(1.4)
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Total	\$ 79.4
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See "Results of Operations" below for further discussion and analysis of results of operations.

## APPLICATION OF CRITICAL ACCOUNTING POLICIES

Con Edison of New York's financial statements reflect the application of its accounting policies, which conform to accounting principles generally accepted in the United States of America. The Company's critical accounting policies include industry-specific accounting applicable to regulated public utilities and accounting for pensions and other postretirement benefits and contingencies.

The application of certain of these accounting policies requires the Company to use estimates. These estimates require the Company to make assumptions about matters that are highly uncertain and for which different estimates that could reasonably have been used could have resulted in material differences in its financial statements.

The major critical accounting policies are as follows:

### Accounting for Regulated Public Utilities—SFAS No. 71

Con Edison of New York is a regulated public utility subject to Statement of Financial Accounting Standards (SFAS) No. 71, "Accounting for the Effects of Certain Types of Regulation," and, in accordance with SFAS No. 71, is subject to the accounting requirements of the Federal Energy Regulatory Commission (FERC) and the New York State Public Service Commission (PSC).

SFAS No. 71 specifies the economic effects that result from the cause and effect relationship of costs and revenues in the rate-regulated environment and how these effects are to be accounted for by a regulated enterprise. Revenues intended to cover some costs may be recorded either before or after the costs are incurred. If regulation provides assurance that incurred costs will be recovered in the future, these costs would be recorded as deferred charges or "regulatory assets" under SFAS No. 71. If revenues are recorded for costs that are expected to be incurred in the future, these revenues would be recorded as deferred credits or "regulatory liabilities" under SFAS No. 71.

Con Edison of New York's principal regulatory assets and liabilities are detailed on the Company's consolidated balance sheet. The Company is receiving or being credited with a return on all of its regulatory assets for which a cash outflow has been made. The Company is paying or being charged with a return on all of its regulatory liabilities for which a cash inflow has been received. The Company's regulatory assets and liabilities will be recovered from customers, or applied for customer benefit, in accordance with rate provisions approved by the PSC.

### Accounting for Pensions and Other Postretirement Benefits

Con Edison of New York provides pensions and other postretirement benefits to substantially all employees and retirees. The Company accounts for these benefits in accordance with SFAS No. 87, "Employers' Accounting for Pensions" and SFAS No. 106, "Employers' Accounting for Postretirement Benefits other than Pensions." In applying these accounting policies, the Company has made critical estimates related to actuarial assumptions, including assumptions of expected returns on plan assets, future compensation, health care cost trends, and appropriate discount rates. See Notes D and E to the financial statements for

Primarily because of the amortization of previous years' net investment gains, Con Edison of New York's pension expense for 2002, 2001 and 2000 was negative, resulting in a credit to and increase in net income in each year. Investment gains and losses on plan assets are fully recognized in expense over a 15-year period (20 percent of the gains and losses for each year begin to amortize in each of the following five years and the amortization period for each 20 percent portion of the gains and losses is ten years). This amortization is in accordance with the Statement of Policy issued by the PSC and is permitted under SFAS No. 87, which provides a "corridor method" for moderating the effect of investment gains and losses on pension expense, or alternatively, allows for any systematic method of amortization of unrecognized gains and losses that is faster than the corridor method and is applied consistently to both gains and losses.

Con Edison of New York's expense or credit for actual pension and other postretirement benefits in future periods will depend upon actual returns on plan assets and the assumptions the Company makes for future periods. The Company's current estimate for 2003 is a reduction, compared to 2002, in the pension and other postretirement benefits net credit of \$54 million after tax. This reduction reflects, among other factors, an actual loss on the pension fund of 8.6 percent in 2002 as compared with an expected annual asset return assumption of 9.2 percent. This variation will reduce net income by \$21.3 million after tax in 2003, as compared to 2002. In addition, the Company has lowered its expected annual asset return assumption for the plans for 2003 to 8.8 percent. This revised assumption will reduce net income by \$14.5 million after tax in 2003, as compared to 2002.

Amortization of market gains and losses experienced in previous years is expected to reduce the pension and other postretirement benefit net credit by an additional \$25 million, after tax, in 2004. A 5.0 percentage point variation in the actual annual return in 2003 as compared to the expected annual asset return of 8.8 percent would change net income by approximately \$6 million in 2004.

An actuarial valuation of the plan's funded status (which applies to both Con Edison of New York and O&R) was performed as of December 31, 2002. The valuation showed that the fair value of the pension plan assets exceeded its Accumulated Benefit Obligation (ABO) at December 31, 2002. However, the fair market value of Con Edison's pension plan assets could fall below the plan's ABO in future years. In that event, Con Edison would be required, under SFAS No. 87 and SFAS No. 132 "Employers' Disclosures about Pension and Postretirement Benefits," to accrue a liability equal in amount to the difference between the fair value of the plan assets and the ABO, plus its total accrued pension credits, through a non-cash charge to other comprehensive income (OCI). The charge to OCI, which would be net of taxes, would not affect the Company's net income for common stock.

Con Edison of New York was not required to make cash contributions to its pension plan in 2002 nor will it be required to do so in 2003.

#### Accounting for Contingencies

SFAS No. 5, "Accounting for Contingencies," applies to an existing condition, situation, or set of circumstances involving uncertainty as to possible loss that will ultimately be resolved when one or more future events occur or fail to occur. The Company's known material contingencies include a PSC

proceeding relating to outages at the nuclear generating unit the Company sold in 2001, workers' compensation claims, and its responsibility for hazardous substances, such as asbestos, polychlorinated biphenyls (PCBs), and coal tar, that have been used or generated in the course of its operations. See Notes F and G to the financial statements. In accordance with SFAS No. 5, the Company has accrued estimates of losses relating to the contingencies as to which loss is probable and can be reasonably estimated and no liability has been accrued for contingencies as to which loss is not probable or cannot be reasonably estimated.

## LIQUIDITY AND CAPITAL RESOURCES

Con Edison of New York's liquidity reflects cash flows from its operating, investing and financing activities as shown on the accompanying consolidated statement of cash flows and discussed below. As a result of these activities, cash and temporary cash investments (including restricted cash) decreased \$176.7 million at December 31, 2002 compared to December 31, 2001.

#### Cash Flows From Operating Activities

Con Edison of New York's cash flows from operating activities reflect principally its energy sales and its cost of operations. The volume of energy sales is dependent on factors external to the Company such as weather, economic conditions and technological developments. The prices at which the Company provides energy to its customers are determined in accordance with rate agreements approved by the PSC. See "Regulatory Matters," below. In general, changes in the cost of purchased power, fuel and gas affect the timing of cash flows but not net income because the costs are recovered in accordance with rate agreements. See "Recoverable Energy Costs" in Note A to the financial statements.

Net income for common stock is the result of cash and non-cash (or accrual) transactions. Only cash transactions affect Con Edison of New York's cash flow from operations. Principal non-cash charges included depreciation and deferred taxes. Principal non-cash credits included accrued pension credits. Pension credits result from past favorable performance in the Company's pension fund and assumptions about future performance. See "Application of Critical Accounting Policies—Accounting for Pensions and Other Postretirement Benefits," above, and Notes D and E to the financial statements.

Net cash flows from operating activities in 2002 were \$10.1 million more than the 2001 period. The change in cash flows reflect the aforementioned impact of energy sales and its cost of operations, the timing of federal income tax payments and refunds and cash received or expended related to regulatory liabilities and regulatory assets, respectively.

The following analysis reflects variations in balance sheet accounts, which also impact specific line items within the consolidated statement of cash flows. The change in these balance sheet line items are utilized to reconcile income to cash flow from operations.

Accounts receivable—customers, less allowance for uncollectible accounts were \$74.7 million higher at December 31, 2002 than at year-end 2001, due primarily to higher electric, gas and steam sales in December 2002 as compared to December 2001. The Company's equivalent number of days of revenue outstanding (ENDRO) of customer accounts receivable was 29.3 days at December 31, 2002, compared with 29.6 days at December 31, 2001.

Recoverable energy costs increased \$101.8 million at December 31, 2002 as compared with year-end 2001 due primarily to increased fuel, purchased power and gas costs, resulting from higher sales volumes in December 2002. See "Recoverable Energy Costs" in Note A to the financial statements.

Other receivables increased \$19.9 million at December 31, 2002 as compared with year-end 2001, due primarily to increased gas hedging program receivables.

Gas in storage decreased \$22.5 million at December 31, 2002 as compared with year-end 2001, reflecting primarily the lower volumes in storage as a result of higher withdrawals due to the colder weather at year-end 2002 as compared to 2001.

Other current assets increased \$20.8 million at December 31, 2002 compared with year-end 2001, due primarily to an increase in the value of energy marketing contracts.

Deferred loss on the sale of the nuclear generating unit decreased \$47.6 million at December 31, 2002 as compared to year-end 2001 reflecting the recovery of these costs from customers in accordance with the Company's 2000 Electric Rate Agreement. See "Rate and Restructuring Agreements" in Note A to the financial statements.

Divestiture—capacity replacement reconciliation balance decreased \$30.0 million at December 31, 2002 as compared to year-end 2001 representing the amortization of capacity costs incurred prior to the opening of the New York Independent System Operator (NYISO) market in accordance with the Company's 2000 Electric Rate Agreement. See "Rate and Restructuring Agreements" in Note A to the financial statements.

Deferred environmental remediation costs increased \$30.3 million at December 31, 2002 as compared to year-end 2001 representing primarily additional liabilities accrued for costs related to Superfund and the other sites, which the Company is permitted to recover under its current rate agreements. See Note F to the financial statements.

For information about the regulatory asset for World Trade Center restoration costs, see Note P to the financial statements.

Deferred asbestos-related costs increased \$33.7 million at December 31, 2002 as compared to year-end 2001 due to increased liabilities accrued for non-employee related asbestos claims (which the Company is permitted to recover under its current rate agreements). See Note F to the financial statements.

Other regulatory assets increased \$37.4 million at December 31, 2002 as compared to year-end 2001 due principally to the reconciliation of taxes collected and the tax expense resulting from New York State tax law changes in accordance with PSC authorization. See Note A to the financial statements and "Other Regulatory Liabilities," below.

Accumulated provision for injuries and damages increased \$24.5 million at December 31, 2002 as compared with year-end 2001, reflecting primarily workers' compensation claims relating to asbestos exposure. See Note F to the financial statements.

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Accounts payable increased \$152.0 million at December 31, 2002 as compared with year-end 2001. This increase is due primarily to higher electric, gas and steam energy costs at December 31, 2002 as compared to December 31, 2001, reflecting higher sales volumes. See discussion of electric power costs in "Results of Operations," below.

Accrued taxes decreased \$48.6 million at December 31, 2002 compared with year-end 2001, due primarily to the payment of the 2001 fourth quarter federal income tax liability in January 2002. The federal government delayed the timing of the payment in light of the World Trade Center attack.

Transmissions congestion contracts increased \$119.9 million at December 31, 2002 as compared to year-end 2001 reflecting proceeds from the sale of transmission rights on Con Edison of New York's transmission system. These proceeds are being retained for customer benefit.

The gas rate plan balance of \$36.3 million at December 31, 2002 was established in accordance with the 2002 gas rate agreement to provide recovery of costs (net of reimbursement) related to the World Trade Center attack.

Electric excess earnings balance of \$40.0 million at December 31, 2002 represents a reserve established in 2002 for earnings in excess of a specified rate of return that are to be retained for customer benefit in accordance with the 2000 Electric Rate Agreement. See "Rate and Restructuring Agreements" in Note A to the financial statements.

During 2002, other regulatory liabilities increased \$127.7 million, due primarily to the reconciliation of taxes collected and the tax expense resulting from New York State tax law changes in accordance with PSC authorization and the establishment of a liability to customers for interest earned on a federal income tax refund. Changes in the New York State tax laws applicable to utility companies, effective January 1, 2000, repealed or reduced certain revenue-based taxes and instituted a net income-based tax. In June 2001, the PSC issued its final Order relating to these tax law changes. It authorized each utility to use deferral accounting to record the difference between taxes being collected and tax expense resulting from tax law changes, until those changes are incorporated into base rates.

#### Cash Flows Used in Investing Activities

Cash flows used in investing activities were \$710.3 million higher in 2002 compared with 2001, due primarily to the receipt of proceeds from generation divestiture, net of contributions to the nuclear decommissioning trust, in the 2001 period. See "Generation Divestiture," below. In addition, construction expenditures increased \$119.6 million in 2002 compared with 2001, principally to meet load growth on the Company's electric distribution systems, to effect permanent restoration of portions of the electric, gas and steam systems in lower Manhattan following the World Trade Center attack and for the ongoing project to add incremental generating capacity at the Company's East River steam-electric generating plant (the East River Repowering Project). Cash flows used in investing activities in 2001 decreased \$612.7 million compared with 2000, due primarily to the receipt of proceeds from generation divestiture in the 2001 period,

which offset increased utility construction expenditures (\$93.3 million) related to meet load growth on the Company's electric distribution systems. See "Generation Divestiture" and "Capital Expenditures" below.

Deferred real estate sale costs related to the demolition and remediation of a nine-acre development site in midtown Manhattan along the East River were \$134.4 million at December 31, 2002, compared to \$105.4 million at December 31, 2001. In 2000, the Company agreed to sell this site for an expected price of \$576 million to \$680 million, depending on zoning and other adjustments. The sale is subject to PSC approval and other conditions. The buyer paid Con Edison of New York \$50 million in 2000 as a down payment, which the Company used to fund a portion of the demolition and remediation expenses. The down payment has been recorded as a regulatory liability.

#### Cash Flows Used in Financing Activities

Net cash flows used in financing activities in 2002 decreased \$329.1 million compared with 2001, reflecting principally increased financing for construction expenditures, and reduced dividend payments to the parent.

In September 2001, the Company used the proceeds from the sale of its nuclear plant to repay all outstanding short-term borrowing. Net repayments of short-term debt increased \$140.0 million for the year-ended December 31, 2002 compared with 2001 period. The common stock dividend to parent decreased \$79.3 million in 2002 compared with 2001. Cash flows used in financing activities in 2001 increased \$376.0 million compared with 2000, as a result of decreased borrowings and increased debt redemption.

External borrowings are a source of liquidity that could be affected by changes in credit ratings, financial performance and capital markets. For information about the Company's credit ratings and certain financial ratios, see "Capital Resources," below.

Con Edison of New York had no commercial paper outstanding at December 31, 2002 and at December 31, 2001. The Company's average daily commercial paper outstanding in 2002 was \$156.7 million compared to \$163.8 million in 2001. The weighted average interest rate was 1.8 percent in 2002 compared to 4.9 percent in 2001. For additional information about the Company's commercial paper program, see Note C to the financial statements.

In February 2002, the Company redeemed at maturity \$150 million of 6.625 percent 9-year Series 1993C Debentures. In June 2002, the Company redeemed at maturity \$150 million of variable rate 5-year Series 1997A Debentures and issued \$300 million of non-callable 5.625 percent 10-year Series 2002A Debentures. In August 2002, the Company redeemed at maturity \$37.1 million of Cumulative Preferred Stock, \$100 par value, 6.125 percent, Series J. In December 2002, the Company issued \$500 million 4.875 percent 10-year Series 2002B Debentures. In January 2003, the Company redeemed \$275 million of 7.75 percent 35-year, Series 1996A, Subordinated Deferrable Interest Debentures.

In October 2002, Con Edison of New York changed the interest rate method applicable to \$224.6 million aggregate principal amount of its tax-exempt Facilities Revenue Bonds, Series 2001A from a variable weekly rate mode to a 10-year term mode, callable at par after three years with a 4.70 percent annual interest rate. In addition, the Company entered into a swap agreement in connection with these

bonds pursuant to which the Company pays interest at a variable rate equal to the three-month LIBOR and is paid interest at a fixed rate of 5.375 percent. See Note O to the financial statements.

#### Generation Divestiture

In 2001, Con Edison of New York completed the sale of its interest in the jointly owned Roseton generating station and its nuclear generating unit and related assets. See Note I to the financial statements.

#### Capital Resources

Con Edison of New York expects to finance its operations, capital requirements and the payment of dividends to Con Edison from internally generated funds and external borrowings, including commercial paper. For information about Con Edison of New York's commercial paper program and revolving credit agreements with banks, see Note C to the financial statements.

In December 2001, the PSC authorized Con Edison of New York to issue up to \$1.8 billion of debt securities prior to 2006, of which the Company issued \$525 million of debt securities in 2002. The PSC also authorized the refunding of the Company's outstanding debt securities and preferred stock.

In August 2002, President Bush signed into law an appropriations bill that authorizes funds for which the Company is eligible to apply for the recovery of costs it incurred in connection with the World Trade Center attack. The procedural guidelines for disbursement of the federal funds are in the process of being developed. See Note P to the financial statements.

Con Edison of New York's ratio of earnings to fixed charges for 2002, 2001 and 2000 and common equity ratio at December 31, 2002, 2001 and 2000 were:

	<u>2002</u>	<u>2001</u>	<u>2000</u>
Earnings to fixed charges (SEC basis)	3.35	3.66	3.23
Common equity ratio	46.6	47.2	46.4

The changes in interest coverage in these years reflect changes in pre-tax income and changes in interest charges due to debt issuances and refunding. The Company's ratio of earnings to fixed charges increased for 2001 compared to 2000 primarily as a result of increased earnings, reflecting charges in 2000 for replacement power costs (\$130 million). See Note G to the financial statements.

## Capital Requirements

The following table compares Con Edison of New York's capital requirements for the years 2000 through 2002 and estimated amounts for 2003 and 2004:

	2000	2001	2002	2003	2004
<i>(Millions of Dollars)</i>					
Utility construction expenditures	\$ 908	\$ 983	\$ 1,098	\$ 1,107	\$ 1,031
Retirement of long-term securities at maturity	275	628	337	425*	150
<b>Total</b>	<b>\$ 1,183</b>	<b>\$ 1,611</b>	<b>\$ 1,435</b>	<b>\$ 1,532</b>	<b>\$ 1,181</b>

\* Includes redemption in advance of maturity of \$275 million of Con Edison of New York's Subordinated Deferrable Interest Debentures Series 1996A in January 2003.

The increased regulated utility construction expenditures in 2002 and 2003 reflect expenditures for permanent electric, gas and steam system restoration following the World Trade Center attack, programs to meet increased electric load growth and reliability needs, a higher level of gas infrastructure expenditures and the East River Repowering Project.

## Contractual Obligations and Commercial Commitments

The following tables summarize Con Edison of New York's material obligations to make payments pursuant to contracts. Long-term debt and capital lease obligations are included on the Company's balance sheet. Operating leases and non-utility generator contracts (NUGs) (for which undiscounted future annual payments are shown) are disclosed in the notes to financial statements.

<i>Contractual Obligations</i>	<i>Payments Due by Period</i>				
	<i>Total</i>	<i>Less than 1 year</i>	<i>1-3 years</i>	<i>4-5 years</i>	<i>After 5 years</i>
<i>(Millions of Dollars)</i>					
Long-term debt (Note B)	\$ 5,845	\$ 425	\$ 600	\$ 330	\$ 4,490
Capital lease obligations (Note N)	72	8	15	14	35
Operating leases (Note N)	116	38	47	10	21
Non-utility generator contracts (Note H)	8,085	526	1,043	1,051	5,465
Natural gas supply, transportation and storage contracts	339	115	108	96	20
<b>Total</b>	<b>\$ 14,457</b>	<b>\$ 1,112</b>	<b>\$ 1,813</b>	<b>\$ 1,501</b>	<b>\$ 10,031</b>

The Company has no material commercial commitments to make payments other than these contractual commitments.

## ELECTRIC POWER REQUIREMENTS

In 2002, Con Edison of New York purchased substantially all of the energy it sold to customers pursuant to firm contracts with NUGs and others or through the NYISO's wholesale electricity market.

The Company recovers prudently incurred purchased power costs pursuant to rate provisions approved by the PSC. See "Financial Market Risks—Commodity Price Risk" below and "Recoverable Energy Costs" in Note A to the financial statements. From time to time certain parties have petitioned the PSC to review these provisions, the elimination of which could have a material adverse effect on the Con Edison of New York's financial position, results or operations or liquidity.

To reduce the volatility of electric energy costs, the Company has firm contracts to purchase electric energy (including the output of the nuclear generating unit divested in 2001) and has entered into derivative transactions to hedge the costs of expected purchases which together cover a substantial portion of the electric energy expected to be sold to its customers in the summer of 2003. See Notes H and O to the financial statements. The Company also owns 630 MW of electric generating stations located in New York City, the electricity from which it sells through the NYISO's wholesale electricity market.

In December 2002, the Company issued a request for proposals seeking a contract to purchase, for no more than 10 years, 500 MW of electric capacity from a new facility located in New York City (or outside the City if there is dedicated new transmission).

The East River Repowering Project will add incremental electric capacity of approximately 200 MW based on a winter nominal rating or approximately 125 MW based on a summer nominal rating. The Company does not expect to add any other long-term electric generation resources. In a July 1998 order, the PSC indicated that it "agree(s) generally that the Company need not plan on constructing new generation as the competitive market develops," but considers "overly

broad" and did not adopt its request for a declaration that, solely with respect to providing generating capacity, the Company will no longer be required to engage in long-range planning to meet potential demand and, in particular, that it will no longer have the obligation to construct new generating facilities, regardless of the market price of capacity. The Company monitors the adequacy of the electric capacity resources and related developments in its service area, and works with other parties on long-term resource adequacy issues within the framework of the NYISO.

## REGULATORY MATTERS

### Electric

In July 2002, FERC issued a Notice of Proposed Rulemaking (NOPR) to establish a Standard Market Design (SMD) for wholesale electricity markets across the country. The proposed SMD has many of the elements of the markets that have been established in the Northeast, and if adopted, could facilitate transactions among energy markets across the country. The SMD proposes that transmission owners would join Independent Transmission Providers, or ITPs, which would be independent of market participants, would have operational authority for all transmission assets under their control, and would perform certain functions related to day-ahead and real-time energy markets, determine resource adequacy requirements, financial congestion management, regional planning, market monitoring, and interregional coordination with neighboring ITPs. The Company's transmission facilities, other than those located underground, are currently controlled by the NYISO.

In September 1997, the PSC approved a restructuring agreement among Con Edison of New York, PSC staff and certain other parties (the 1997 Restructuring Agreement). Pursuant to the 1997 Restructuring Agreement, the Company reduced electric rates on an annual basis by \$129 million in 1998, \$80 million in 1999, \$103 million in 2000 and \$209 million in 2001, divested most of its electric generating capacity, and enabled all of its electric customers to choose to be served by competitive energy suppliers.

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In November 2000, the PSC approved an October 2000 agreement (the 2000 Electric Rate Agreement) that, among other things, revised and extended the electric rate plan provisions of the 1997 Restructuring Agreement and addressed certain generation divestiture-related issues.

The electric rate plan provisions of the 2000 Electric Rate Agreement cover the five-year period ending March 2005. Pursuant to the Agreement, the Company reduced the distribution component of its electric rates by \$170 million on an annual basis, effective October 2000.

The 2000 Electric Rate Agreement continues the rate provisions pursuant to which the Company recovers prudently incurred purchased power and fuel costs from customers. See "Recoverable Energy Costs" in Note A to the financial statements.

For additional information about the 1997 Restructuring Agreement and the 2000 Electric Rate Agreement, see "Rate and Restructuring Agreements" in Note A to the financial statements.

### Gas

In April 2002, the PSC approved a Con Edison of New York gas rate agreement for the three-year period ending September 30, 2004. The rate agreement reduces retail sales and transportation rates by \$25 million, on an annual basis.

In November 2000, the PSC approved an agreement between Con Edison of New York, PSC staff and certain other parties that revised and extended the 1996 gas rate settlement agreement through September 2001. The 1996 agreement, with limited exceptions, continued base rates at September 1996 levels through September 2000.

For additional information, see "Rate and Restructuring" in Note A to the financial statements.

### Steam

In December 2000, the PSC approved an agreement between Con Edison of New York, PSC staff and certain other parties with respect to the steam rate plan filed by the Company in November 1999. The agreement provides for a \$16.6 million steam rate increase, which took effect October 2000 and, with limited exceptions, no further changes in steam rates prior to October 2004.

For additional information about the agreement, see "Rate and Restructuring" in Note A to the financial statements.

## FINANCIAL MARKET RISKS

Con Edison of New York's primary financial market risks are interest rate risk, commodity price risk, credit risk and investment risk.

### Interest Rate Risk

The interest rate risk relates primarily to variable rate debt and to new debt financing needed to fund capital requirements, including utility construction expenditures and maturing debt securities. Con Edison of New York manages interest rate risk through the issuance of mostly fixed-rate debt with varying maturities and through opportunistic refinancing of debt. The Company estimates that, as of December 31, 2002, a 10 percent variation in interest rates applicable to its variable rate debt of \$615.3 million would result in a change in annual interest expense of \$1.1 million.

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In addition, the Company, from time to time, enters into derivative financial instruments to hedge interest rate risk on certain debt securities. See "Interest Rate Hedging" in Note O to the financial statements.

### Commodity Price Risk

Con Edison of New York's commodity price risk relates primarily to the purchase and sale of electricity and gas that the Company delivers to its customers. The Company has risk management strategies to mitigate its related exposure and uses derivative instruments to hedge this price risk. See "Energy Price Hedging" in Note O to the financial statements. Also, see Item 2 of this report for a discussion of the Company's generating capacity.

In general, the rates the Company charges customers for electric, gas and steam service fluctuate with the cost of purchased power, gas purchased for resale and fuel used in the generation of steam and electricity, including gains or losses on certain derivative instruments and related transaction costs. See "Recoverable Energy Costs" in Note A to the financial statements.

The Company estimates that, as of December 31, 2002, a 10 percent change in market prices would result in a change in fair value of \$5.7 million for the derivative instruments used by it to hedge purchases of electricity and gas. The Company expects that any such change in fair value would be largely offset by directionally opposite changes in the cost of the electricity and gas purchased.

## Credit Risk

Con Edison of New York is exposed to credit risk related to over-the-counter transactions entered into primarily for the various energy supply and hedging activities. Credit risk is the loss that may result from a counterparty's nonperformance. The Company uses credit policies to manage its credit risk, including an established credit approval process, monitoring of counterparty limits, master netting agreements and credit mitigation measures such as margin, collateral, or prepayment arrangements.

## Investment Risk

Con Edison of New York's investment risk relates to the investment of the assets in the Company's pension and other postretirement benefit plans. See "Critical Accounting Policies—Accounting for Pensions and Other Postretirement Benefits," above.

## ENERGY TRADING ACTIVITIES

Con Edison of New York has not engaged to a material extent in trading activities that are accounted for at fair value. See "Financial Market Risks" above.

## ENVIRONMENTAL MATTERS

For information concerning potential liabilities arising from laws and regulations protecting the environment, including the Superfund, and from claims relating to alleged exposure to asbestos, see Note F to the financial statements.

## IMPACT OF INFLATION

Con Edison of New York is affected by the decline in the purchasing power of the dollar caused by inflation. Regulation permits the Company to recover through depreciation only the historical cost of its plant assets even though in an inflationary economy the cost to replace the assets upon their retirement

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will substantially exceed historical cost. The impact is, however, partially offset by the repayment of the Company's long-term debt in dollars of lesser value than the dollars originally borrowed.

## RESULTS OF OPERATIONS

The Company's results of operations (which were discussed above under "Results of Operations—Summary") are discussed below for each of its business segments. The Company's principal business segments are its electric, gas and steam businesses. For additional information about its business segments, see Note L to the financial statements.

## YEAR ENDED DECEMBER 31, 2002 COMPARED WITH YEAR ENDED DECEMBER 31, 2001

### Electric

Con Edison of New York's electric operating revenues in 2002 decreased \$575.2 million compared with 2001, reflecting primarily lower fuel and purchased power costs of \$226.9 million (discussed below). The decrease also reflects the completion in March 2002 of amortizations of a previously deferred gain on the sale of divested plants and a previously deferred NYPA revenue increase (\$43.3 million), a reserve established in 2002 for earnings in excess of a specified rate of return that are to be retained for customer benefit in accordance with the 2000 Electric Rate Agreement (\$40.0 million), a reserve established in 2002 related to the sale of the Company's nuclear generating unit (\$24.8 million), the amortization of the loss (\$29.9 million) related to the sale of the Company's nuclear generating unit and rate reductions and other amortizations in accordance with the Company's rate agreements. The decrease in electric operating revenues was offset, in part, by an increase in electric sales revenues (\$24.0 million) reflecting principally the hot summer weather. See "Recoverable Energy Costs" and "Rate and Restructuring Agreements" in Note A to the financial statements.

Electricity delivery volume in Con Edison of New York's service territory increased 1.6 percent in 2002 compared with 2001. The increase reflects the impact of the hot summer weather, offset in part, by the mild winter weather in the first quarter of 2002 and the soft economy. After adjusting for variations, principally weather and billing days in each period, electricity delivery volume in the service territory increased 0.5 percent in the 2002 period.

The Company's electric purchased power costs decreased \$174.6 million in 2002 compared with 2001, due to a decrease in the price of purchased power and an increase in volumes of electricity purchased from other suppliers by participants in the retail access programs. This decrease was offset in part by the Company's increased purchased volumes resulting from the sale of the Company's nuclear generating unit in September 2001 and the hot summer weather in 2002. Fuel costs decreased \$52.3 million as a result of decreased generation at Company-owned power plants. In general, the Company recovers prudently incurred fuel and purchased power costs pursuant to rate provisions approved by the PSC. See "Recoverable Energy Costs" in Note A to the financial statements.

The Company's electric operating income decreased \$92.7 million in 2002 compared with 2001. The principal component of the decrease was lower net electric revenues (operating revenues less fuel and purchased power costs) of \$348.3 million. The decrease in net electric revenues reflects the sale of the nuclear



generation unit and the same factors (other than lower fuel and purchased power costs) as discussed above with respect to the decrease in electric operating income. The decrease in net electric

revenues was offset in part by reduced other operations and maintenance expenses (\$136.8 million) reflecting nuclear production expenses incurred in 2001 but not in 2002, and productivity improvements, lower depreciation and amortization expense (\$31.5 million) and lower revenue taxes (\$26.2 million). The decrease is also offset by lower operating income tax of \$61.8 million.

## Gas

Con Edison of New York's gas operating revenues decreased \$223.4 million, resulting primarily from the lower cost of purchased gas (\$194.2 million) in 2002 compared with 2001. The lower cost of purchased gas reflects primarily lower unit costs. The lower revenues also reflect reduced sales volumes, resulting primarily from the mild winter weather in the first quarter of 2002 and revenue reductions implemented in accordance with the gas rate agreement approved by the PSC in April 2002. Gas operating income decreased \$7.9 million in 2002, reflecting a \$29.2 million decrease in net revenues (operating revenues less gas purchased for resale), and increased property tax expense (\$9.6 million), offset in part by reduced operations and maintenance expenses (\$16.2 million), reduced revenue taxes (\$10.3 million) and lower income taxes (\$8.7 million).

Gas sales and transportation volumes for firm customers decreased 3.5 percent in the year ended December 31, 2002 compared with the year ended December 31, 2001. After adjusting for variations, principally weather and billing days in each period, firm gas sales and transportation volumes in the Company's service territory decreased 1.5 percent in the 2002 period.

The Company's gas sales and transportation volumes vary seasonally in response to weather and peak in the winter. A weather-normalization provision that applies to the Company's gas business moderates, but does not completely eliminate, the effect of weather-related changes on gas operating income.

## Steam

Con Edison of New York's steam operating revenues decreased \$99.7 million. The lower revenues reflect reduced sales volumes and lower fuel and purchased power costs primarily as a result of the loss of the World Trade Center as a customer, the mild winter weather in the first quarter of 2002 and the soft economy. The lower fuel and purchased power costs reflect primarily lower unit costs. Steam operating income increased \$8.2 million for 2002 compared with 2001 due primarily to reduced operations and maintenance expenses of \$9.3 million and lower income taxes of \$10.5 million, offset in part by a decrease in net revenues (operating revenues less fuel and purchased power costs) of \$11.1 million. See "Recoverable Energy Costs" in Note A to the financial statements.

Steam sales volume decreased 3.2 percent in the year ended December 31, 2002 compared with the year ended December 31, 2001, reflecting primarily the loss of the World Trade Center as a customer, the mild winter weather in the first quarter of 2002 and the soft economy. After adjusting for variations, principally weather and billing days in each period, steam sales volume decreased 1.4 percent.

## Taxes Other Than Income Taxes

At \$1.0 billion, taxes other than income taxes remain one of Con Edison of New York's largest operating expenses.

The principal components of, and variations in, operating taxes were:

	<i>Increase/(Decrease)</i>	
	<i>2002 Amount</i>	<i>2002 compared to 2001</i>
<i>(Millions of Dollars)</i>		
Property taxes	\$ 629.8	\$ 9.4
State and local taxes related to revenue receipts	326.9	(37.6)
Payroll taxes	54.4	(1.7)
Other taxes	28.3	2.0
<b>Total</b>	<b>\$ 1,039.4*</b>	<b>\$ (27.9)</b>

\*Including sales tax on customers' bills, total taxes other than income taxes billed to customers in 2002 were \$1,351.0 million.

Effective in 2003, New York City increased the Company's annual property taxes by \$96 million. Under the Company's rate agreements, the Company is deferring the property tax increase as a regulatory asset to be recovered from customers.

## Other Income

Investment income decreased \$4.1 million in 2002 compared to 2001, due principally to reduced interest income earned on short-term cash investments in the 2002 period as compared to the 2001 period. For the 2001 period, the Company had more cash on hand than the 2002 period, primarily as a result of the sale of its nuclear generating unit. Allowance for equity funds used during construction increased \$8.2 million in 2002 compared to 2001 primarily reflecting the East River Repowering Project. Other income increased \$41.7 million in 2002 compared to 2001 due primarily to \$26.7 million of interest income on a federal income tax refund claim, a \$10.2 million write-off in 2001 of an investment in the New York Discovery Fund in 2001, a \$9.4 million increase in interest earned on regulatory

assets (See "Application of Critical Accounting Policies—Accounting for Regulated Public Utilities—SFAS No. 71," above), offset in part by reduced income of \$2.5 million from non-utility operations. Income tax expense decreased \$4.4 million in 2002 compared to 2001 due primarily to the recognition of tax benefits relating to the September 2001 sale of the Company's nuclear generating unit.

## Net Interest Charges

Net interest charges increased \$6.6 million in the twelve months ended December 31, 2002 compared to the twelve months ended December 31, 2001. The increase reflects principally the interest expense associated with a net federal income tax deficiency related to a prior period audit (\$19.1 million), partially offset by decreased interest expense on long-term debt of \$14.9 million.

## Income Tax

Federal income tax decreased \$28.6 million in 2002 compared to 2001, reflecting lower income before tax and deductions related to removal costs and tax credits. In 2000, New York State implemented a tax law change that reduced or repealed certain revenue-based taxes and replaced them with the imposition of a net income-based tax. State income taxes decreased \$56.8 million in 2002 compared to 2001, reflecting lower income before tax, lowering of the tax rate and prior period adjustments. The state income tax expense is offset against the savings from the eliminated or reduced revenue taxes. Any over- or under-

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collection of these taxes is deferred for return to, or recovery from, customers. See Notes A and L to the financial statements.

## YEAR ENDED DECEMBER 31, 2001 COMPARED WITH YEAR ENDED DECEMBER 31, 2000

### Electric

Con Edison of New York's electric operating revenues in 2001 decreased \$116.7 million from 2000. The decrease in 2001 reflects decreased purchased power costs (see "Recoverable Energy Costs" in Note A to the financial statements) and electric rate reductions of \$374.5 million, offset by economic growth and the effects of the warmer than normal summer weather when compared to cooler than normal weather for the 2000 period.

Electricity sales volume in the Company's service territory increased 3.0 percent in 2001. The increase in sales volume reflects the warmer than normal summer weather and economic growth. The Company's electric sales vary seasonally in response to weather and peak in the summer. After adjusting for variations, principally weather and billing days, in each period, electricity sales volume in Con Edison of New York's service territory increased 2.4 percent in 2001.

The Company's electric operating income increased \$90.5 million in 2001 compared with 2000. The increase in electric operating income was primarily comprised of an increase in net revenues (operating revenues less fuel and purchased power costs) of \$63.6 million. The increase in net revenues reflects principally increased sales (\$64.1 million), recognition of revenue related to previously deferred NYPA rate increases (\$35.2 million), gain on the sale of divested generating plants (\$37.5 million), increased revenues associated with system benefits charges (\$32.8 million), recovery of incremental NUG cost (\$31.0 million), reconciliation of state income tax and gross receipts tax (\$110.8 million; see "Income Tax," below) and non-recurring charges in 2000 for replacement power costs (\$130.0 million), offset by electric rate reductions of \$374.5 million. Electric operating income also increased due to decreased other operations and maintenance expenses of \$108.4 million (discussed below) and decreased depreciation expense of \$73.6 million, offset in part by increased property taxes of \$33.7 million, federal income tax of \$40.1 million and state income tax of \$98.8 million (see "Income Tax," below).

The \$108.4 million decrease in other operations and maintenance expenses reflects principally lower expenses related to the Company's nuclear generating unit which was sold in September 2001 (\$98.4 million), increased pension credits (\$42.5 million) and decreased transmission expenses (\$9.9 million), offset in part by higher distribution expenses for the relocation of Company facilities to avoid interference with municipal infrastructure projects (\$13.4 million) and increased system benefits charges (\$32.8 million).

### Gas

Con Edison of New York's gas operating revenues increased \$186.6 million in 2001 compared with 2000, reflecting increased cost of purchased gas, offset in part by a reduction in customers' bills of \$20.0 million, reflecting a refund of previously deferred credits and other provisions of the gas rate agreement approved by the PSC in November 2000. Operating income in 2001 increased \$1.6 million compared with 2000, reflecting an increase in net revenues (operating revenues less gas purchased for resale) of \$11.2 million and increased pension credits of \$8.2 million, offset in part by increased depreciation and

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amortization expense (\$3.9 million), increased state income tax (\$8.2 million; see "Income Tax" below), increased uncollectible account write-offs (\$1.9 million) and higher distribution expenses for the relocation of Company facilities to avoid interference with municipal infrastructure projects (\$3.0 million).

Gas sales and transportation volume to firm customers decreased 0.4 percent in 2001 compared with 2000.

The Company's gas sales and transportation volumes vary seasonally in response to weather and peak in the winter. The decrease in volume in 2001 compared with 2000 reflects the warmer 2001 winter compared with 2000. After adjusting for variations, principally weather and billing days, in each period, gas sales and transportation volume to firm customers increased 2.8 percent in 2001.

### Steam

Con Edison of New York's steam operating revenues increased \$51.6 million in 2001 compared with 2000, reflecting primarily increased purchased steam and fuel costs (see "Recoverable Energy Costs" in Note A to the financial statements). Steam operating income increased \$2.3 million in 2001 compared with 2000, reflecting an October 2000 rate increase of \$16.6 million.

Steam sales volume decreased 5.3 percent in 2001 and increased 0.8 percent in 2000. The decrease in 2001 reflects the mild 2001 winter weather compared with 2000. After adjusting for variations, principally weather and billing days, in each period, steam sales volume decreased 2.7 percent in 2001.

## Taxes Other Than Income Taxes

The principal components of and variations in operating taxes were:

	<i>Increase/(Decrease)</i>	
	<i>2001 Amount</i>	<i>2001 compared to 2000</i>
	<hr/> <i>(Millions of Dollars)</i> <hr/>	
Property taxes	\$ 620.4	\$ 33.6
State and local taxes related to revenue receipts	364.5	(19.2)
Payroll taxes	56.2	1.1
Other taxes	26.3	3.5
	<hr/>	
Total	\$ 1,067.4*	\$ 19.0

\*Including sales tax on customers' bills, total taxes other than income taxes billed to customers in 2001 were \$1,414.4 million.

## Other Income

Other income increased \$0.9 million in 2001 compared with 2000, due principally to deferred federal income tax credits realized, offset by a write-off in 2001 of an investment of \$10.2 million in the New York City Discovery Fund.

## Net Interest Charges

Net interest charges increased \$16.0 million in 2001, compared with 2000, reflecting principally \$28.4 million of increased interest expense for Con Edison of New York related to long-term borrowings, offset in part by a decrease of \$8.4 million related to short-term borrowings and \$7.0 million of interest accrued on the net after tax gain from generation divestiture prior to regulatory disposition of the gain in 2000. See Note I to the financial statements.

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## Income Tax

Federal income tax increased \$19.7 million in 2001, reflecting the change in income before tax, deductions related to removal costs and tax credits. State income taxes increased \$117.5 million in 2001 compared with 2000 as the result of the change in New York State tax law, offset by a corresponding increase in other operating revenues for taxes no longer applicable but still being recovered through rates. See Notes A and J to the financial statements.

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## MANAGEMENT'S NARRATIVE ANALYSIS OF RESULTS OF OPERATIONS—ORANGE AND ROCKLAND UTILITIES, INC.

Orange and Rockland Utilities, Inc. (O&R or the Company), a wholly-owned subsidiary of Consolidated Edison, Inc. (Con Edison), meets the conditions specified in General Instruction I of Form 10-K and is permitted to use the reduced disclosure format for wholly-owned subsidiaries of companies, like Con Edison, that are reporting companies under the Securities Exchange Act of 1934. Accordingly, this O&R Management's Narrative Analysis of Results of Operations is included in this report, and O&R has omitted from this report the information called for by Part II, Item 7 of Form 10-K (Management's Discussion and Analysis of Financial Condition and Results of Operations).

This narrative analysis should be read in conjunction with the accompanying consolidated financial statements of O&R and its subsidiaries and the notes thereto. Information in the notes referred to in this narrative analysis is hereby incorporated by reference herein. The use of terms such as "see" or "refer to" shall be deemed to incorporate by reference into this narrative analysis the information to which reference is made.

### O&R'S BUSINESS

O&R is a regulated utility that, along with its regulated utility subsidiaries, provides electric service to over 285,000 customers in southeastern New York and in adjacent sections of New Jersey and northeastern Pennsylvania and gas service to over 120,000 customers in southeastern New York and northeastern Pennsylvania.

### RESULTS OF OPERATIONS – SUMMARY

O&R's net income for common stock for the year ended December 31, 2002, was \$44.9 million, \$4.7 million higher than the corresponding 2001 period. The increase in the Company's net income was attributable primarily to higher electric sales volumes due to warmer than normal weather, customer growth and higher average usage, which produced an additional \$7.3 million of net electric revenues (operating revenues less purchased power costs). While firm gas volumes were down slightly, gas net revenues increased by \$0.8 million due primarily to incentives earned from interruptible and off-system gas sales. Income taxes and revenue taxes decreased by \$3.2 million due to lowered tax rates in New York. The higher net revenues and lower taxes were partially offset by \$4.9 million in higher interest charges that resulted from a change by the New Jersey Board of Public Utilities (NJBPU) to the carrying charges allowed on the Company's deferred purchased power balance in New Jersey. This expense was offset in part by lower net financing costs of \$1.4 million. Operation and maintenance costs increased by \$1.2 million and depreciation charges were \$1.2 million higher.

See "Results of Operations—Business Segments" below for further analysis of earnings.

## APPLICATION OF CRITICAL ACCOUNTING POLICIES

O&R's financial statements reflect the application of its accounting policies, which conform to accounting principles generally accepted in the United States of America. The Company's critical accounting policies include industry-specific accounting applicable to regulated public utilities and accounting for pensions and other postretirement benefits and contingencies.

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The application of certain of these accounting policies requires the Company to use estimates. These estimates require the Company to make assumptions about matters that are highly uncertain and for which different estimates that could reasonably have been used could have resulted in material differences in its financial statements.

### Accounting for Regulated Public Utilities—SFAS No. 71

O&R is a regulated public utility subject to Statement of Financial Accounting Standards (SFAS) No. 71, "Accounting for the Effects of Certain Types of Regulation," and, in accordance with SFAS No. 71, is subject to the accounting requirements and rate making practices of the Federal Energy Regulatory Commission (FERC) and state public utility regulatory authorities having jurisdiction.

SFAS No. 71 specifies the economic effects that result from the cause and effect relationship of costs and revenues in the rate-regulated environment and how these effects are to be accounted for by a regulated enterprise. Revenues intended to cover some costs may be recorded either before or after the costs are incurred. If regulation provides assurance that incurred costs will be recovered in the future, these costs would be recorded as deferred charges or "regulatory assets" under SFAS No. 71. If revenues are recorded for costs that are expected to be incurred in the future, these revenues would be recorded as deferred credits or "regulatory liabilities" under SFAS No. 71.

O&R's principal regulatory assets and liabilities are detailed on the Company's consolidated balance sheet. The Company is receiving or being credited with a return on all of its regulatory assets for which a cash outflow has been made. The Company is paying or being charged with a return on all of its regulatory liabilities for which a cash inflow has been received. The Company's regulatory assets and liabilities will be recovered from customers, or applied for customer benefit, in accordance with rate provisions approved by the applicable public utility regulatory commission.

### Accounting for Pensions and Other Postretirement Benefits

O&R and its subsidiaries provide pension and other postretirement benefits to substantially all employees and retirees. The Company accounts for these benefits in accordance with SFAS No. 87, "Employers' Accounting for Pensions" and SFAS No. 106, "Employers' Accounting for Postretirement Benefits other than Pensions." In applying these accounting policies, the Company has made critical estimates related to actuarial assumptions, including assumptions of expected returns on plan assets, future compensation and health care cost trends, and appropriate discount rates. See Notes D and E to the financial statements for information about these assumptions, actual performance, amortization of investment and other actuarial gains and losses and calculated plan costs for 2002, 2001 and 2000. Plan expense or credit in future periods will depend on the assumptions the Company makes and the actual performance of the pension fund.

In accordance with SFAS No. 71 and consistent with rate provisions approved by the applicable state public utility authorities, O&R defers as a regulatory asset or regulatory liability, any difference between expenses recognized under SFAS No. 87 and the amounts reflected in rates for such expenses.

An actuarial valuation of Con Edison's pension plan's funded status (which applies to both Con Edison of New York and O&R) was performed as of December 31, 2002. The valuation showed that the fair value

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of the pension plan assets exceeded its Accumulated Benefit Obligation (ABO) at December 31, 2002. However, the fair market value of Con Edison's pension plan assets could fall below the plan's ABO in future years. In that event, O&R would be required, under SFAS No. 87 and SFAS No. 132, "Employers' Disclosures about Pension and Postretirement Benefits," to accrue a liability equal in the amount to the difference between the fair value of the plan assets and the ABO, less its accrued pension liability through a charge to other comprehensive income (OCI). The charge to OCI, which would be net of taxes, would not affect O&R's net income.

### Accounting for Contingencies

SFAS No. 5, "Accounting for Contingencies," applies to an existing condition, situation or set of circumstances involving uncertainty as to possible loss that will ultimately be resolved when one or more future events occur or fail to occur. The Company's known material contingencies include workers' compensation claims, and its responsibility for hazardous substances, such as asbestos, polychlorinated biphenyls (PCBs) and coal tar, that have been used or generated in the course of its operations. See Note F to the financial statements. In accordance with SFAS No. 5, the Company has accrued estimates of its losses relating to the contingencies as to which loss is probable and can be reasonably estimated, and no liability has been accrued for contingencies as to which the loss is not probable or cannot be reasonably estimated.

## RESULTS OF OPERATIONS

The Company's results of operations (which were discussed above under "Results of Operations—Summary") are discussed below for each of its business segments. The Company's principal business segments are its electric and gas utility businesses. For additional information about its business segments, see Note P to the financial statements.

### Electric

Electric operating revenues decreased \$62.9 million during 2002 compared to 2001. This decrease was primarily the result of lower purchased power costs and tax recoveries in 2002. See "Recoverable Energy Costs" in Note A to the financial statements.

Electric sales volumes in 2002 increased 5.8 percent compared to 2001 due to warmer than normal summer weather, customer growth and higher average usage. After adjusting for weather variations, total electricity sales volumes were 3.2 percent higher in 2002. Net electric revenues (operating revenues less purchased power) were \$7.3 million higher in 2002 than in 2001.

Purchased power costs decreased \$70.2 million during 2002 compared to 2001, reflecting decreases in the unit cost of purchased power and increased volumes of electricity purchased by customers from other suppliers, partially offset by higher energy usage by full-service customers.

Electric operating income increased \$7.3 million in 2002 as compared to 2001. This increase reflects the impact of higher net electric revenues along with lower New York state and local income and revenue taxes, offset in part by higher operation and maintenance charges and depreciation costs.

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## Gas

Gas operating revenues decreased \$39.0 million in 2002 as compared to 2001. This decrease was primarily the result of lower gas costs and sales to firm customers in 2002. See "Recoverable Energy Costs" in Note A to the financial statements.

Total firm gas sales volumes in 2002 decreased 1.1 percent compared to 2001. Revenues from gas sales in New York are subject to a weather normalization clause that moderates, but does not eliminate, the effect of weather-related changes on net income. After adjusting for weather variations in each period, total firm sales and transportation volumes were 0.3 percent lower for 2002 compared to 2001. Net gas revenues (operating revenues less purchased gas) were \$0.7 million higher in 2002 due primarily to incentives earned from interruptible and off-system gas sales.

The cost of gas purchased for resale was \$39.8 million less in 2002 than in 2001, reflecting lower sales volumes and unit costs.

Decreased gas revenues also reflect the reduced requirement for the Company to buy gas for resale because of an increase in the purchase of gas by customers from other suppliers.

Gas operating income increased by \$1.4 million in 2002, compared to 2001, due primarily to higher net revenues and lower operations and maintenance expenses, offset in part by lower late payment charge revenues and higher depreciation.

## Other Operations and Maintenance

Other operations and maintenance expense increased \$1.2 million in 2002 compared to 2001. The increase was attributable primarily to higher electric transmission and distribution expenditures, partially offset by lower customer bad debt and collections expense.

## Taxes Other Than Income Taxes

Taxes other than income taxes decreased by \$1.5 million in 2002 compared to 2001. The decrease was primarily the result of lower New York State revenue taxes of \$2.7 million, which resulted from reduced tax rates and lower energy costs billed to customers. Partially offsetting this decrease were higher property taxes of \$0.9 million.

The principal components of, and variations, in operating taxes were:

	<i>Increase/(Decrease)</i>	
	<i>2002 Amount</i>	<i>2002 compared to 2001</i>
<i>(Millions of Dollars)</i>		
Property taxes	\$ 27.3	\$ 0.9
State and local taxes related to revenue receipts	21.2	(2.7)
Payroll taxes	3.8	0.1
Other taxes	0.1	0.2
<b>Total</b>	<b>\$ 52.4*</b>	<b>\$ (1.5)</b>

\* Including sales tax on customers' bills, total taxes other than income taxes, billed to customers in 2002 was \$70.8 million.

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## Net Interest Charges

Interest charges increased by \$4.1 million in 2002 compared to 2001, primarily as a result of a change by the NJBPU in the carrying charges allowed on the Company's deferred purchased power balance in New Jersey (\$4.9 million) and lower allowance for borrowed funds used during construction (\$0.6 million). These expenses were offset in part by lower net financing costs of \$1.4 million that resulted from lower average debt balances and interest rates in 2002.

## Income Taxes

Income taxes decreased by \$1.6 million in 2002 compared to 2001, reflecting primarily lower state income taxes. State income taxes decreased primarily as a result of a 0.5 percent reduction in the New York State tax rate. Excluding certain taxes in New York that are reconciled to amounts included in rates, income

**ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

**Con Edison**

For information about Con Edison's primary market risks associated with activities in derivative financial instruments, other financial instruments and derivative commodity instruments, see "Financial Market Risks" in Con Edison's MD&A in Item 7 (which information is incorporated herein by reference).

**Con Edison of New York**

For information about Con Edison of New York's primary market risks associated with activities in derivative financial instruments, other financial instruments and derivative commodity instruments, see "Financial Market Risks" in Con Edison of New York's MD&A in Item 7 (which information is incorporated herein by reference).

**O&R**

O&R's primary financial market risks are interest rate risk, commodity price risk, credit risk and investment risk.

**Interest Rate Risk**

The interest rate risk relates primarily to variable rate debt and to new debt financing needed to fund capital requirements, including utility construction expenditures and maturing debt securities. O&R and its subsidiaries manage interest rate risk through the issuance of mostly fixed-rate debt with varying maturities and through opportunistic refinancing of debt. The Company estimates that, as of December 31, 2002, a 10 percent variation in interest rates applicable to its variable rate debt of \$45.0 million would result in a change in annual interest expense of \$0.1 million.

In addition, O&R and its subsidiaries from time to time enter into derivative financial instruments to hedge interest rate risk on certain debt securities. See Note P to the financial statements.

**Commodity Price Risk**

O&R's commodity price risk relates primarily to the purchase and sale of electricity and gas that the Company delivers to its customers. The Company has risk management strategies to mitigate its related exposure and uses derivative instruments to hedge this price risk. See Note P to the financial statements.

In general, the rates O&R and its subsidiaries charge customers for electric and gas service fluctuate with the cost of purchased power, gas purchased for resale and fuel used in the generation of electricity, including gains or losses on certain derivative instruments and related transaction costs. See "Recoverable Energy Costs" in Note A to the financial statements.

O&R estimates that, as of December 31, 2002, a 10 percent change in market prices would result in a change in fair value of \$1.7 million for the derivative instruments used by it to hedge purchases of electricity and gas. The Company expects that any such change in fair value would be largely offset by directionally opposite changes in the cost of the electricity and gas purchased.

**Credit Risk**

O&R is exposed to credit risk related to over-the-counter transactions entered into primarily for various energy supply and hedging activities. Credit risk is the loss that may result from a counterparty's

nonperformance. The Company uses credit policies to manage its credit risk, including an established credit approval process, monitoring of counterparty limits, master netting agreements, and credit mitigation measures such as margin, collateral, or prepayment arrangements.

**Investment Risk**

O&R's investment risk relates to the investment of the assets in the Company's pension and other postretirement benefit plans. See "Critical Accounting Policies—Accounting for Pensions and Other Postretirement Benefits," in Part II Item 7.

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

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### O&R

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All other schedules are omitted because they are not applicable or the required information is shown in financial statements or notes thereto.

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## B. Supplementary Financial Information

### Selected Quarterly Financial Data for the years ended December 31, 2002 and 2001 (Unaudited)

Con Edison	2002			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
	<i>(Millions of Dollars)</i>			
Operating revenues	\$ 2,036.4	\$ 1,849.0	\$ 2,539.5	\$ 2,057.0
Operating income	257.5	200.1	386.3	216.2
Income for common stock before cumulative effect of changes in accounting principles	166.6	97.6	283.7	120.2
Cumulative effect of changes in accounting principles	20.2	-	-	1.9
Net income for common stock	146.4	97.6	283.7	118.3
Basic earnings per common share before cumulative effect of changes in accounting principles	\$ 0.78	\$ 0.46	\$ 1.34	\$ 0.56
Cumulative effect of changes in accounting principles	0.10	-	-	0.01
Basic earnings per common share after cumulative effect of changes in accounting principles	\$ 0.68	\$ 0.46	\$ 1.34	\$ 0.55
Diluted earnings per common share before cumulative effect of changes in accounting principles	\$ 0.78	\$ 0.46	\$ 1.33	\$ 0.56
Cumulative effect of changes in accounting principles	0.10	-	-	0.01
Diluted earnings per common share after cumulative effect of changes in accounting principles	\$ 0.68	\$ 0.46	\$ 1.33	\$ 0.55
	2001			
	<i>(Millions of Dollars)</i>			
Operating revenues	\$ 2,761.9	\$ 2,112.2	\$ 2,627.6	\$ 1,887.1
Operating income	286.5	215.8	386.4	238.9
Net income for common stock	179.1	100.7	277.3	125.1
Basic earnings per common share	\$ 0.84	\$ 0.48	\$ 1.31	\$ 0.59
Diluted earnings per common share	\$ 0.84	\$ 0.48	\$ 1.30	\$ 0.59

In the opinion of Con Edison, these quarterly amounts include all adjustments, consisting only of normal recurring accruals, necessary for a fair presentation.

2002

**Con Edison of New York**

	<i>First Quarter</i>	<i>Second Quarter</i>	<i>Third Quarter</i>	<i>Fourth Quarter</i>
<i>(Millions of Dollars)</i>				
Operating revenues	\$ 1,759.1	\$ 1,568.2	\$ 2,180.2	\$ 1,716.5
Operating income	229.7	185.8	352.0	186.6
Net income for common stock	150.7	97.2	258.7	98.8

2001

	<i>First Quarter</i>	<i>Second Quarter</i>	<i>Third Quarter</i>	<i>Fourth Quarter</i>
<i>(Millions of Dollars)</i>				
Operating revenues	\$ 2,438.9	\$ 1,755.4	\$ 2,297.0	\$ 1,630.9
Operating income	267.6	199.1	366.5	213.3
Net income for common stock	171.8	102.9	269.0	105.8

In the opinion of Con Edison of New York, these quarterly amounts include all adjustments, consisting only of normal recurring accruals, necessary for a fair presentation.

2002

<b>O&amp;R</b>	<i>First Quarter</i>	<i>Second Quarter</i>	<i>Third Quarter</i>	<i>Fourth Quarter</i>
<i>(Millions of Dollars)</i>				
Operating revenues	\$ 156.0	\$ 144.6	\$ 179.2	\$ 154.5
Operating income	18.6	12.4	24.3	16.4
Net income for common stock	12.4	7.1	18.9	6.5

2001

	<i>First Quarter</i>	<i>Second Quarter</i>	<i>Third Quarter</i>	<i>Fourth Quarter</i>
<i>(Millions of Dollars)</i>				
Operating revenues	\$ 229.4	\$ 171.6	\$ 195.7	\$ 139.6
Operating income	19.2	9.4	21.5	12.9
Net income for common stock	13.2	3.8	16.8	6.4

In the opinion of O&R, these quarterly amounts include all adjustments, consisting only of normal recurring accruals, necessary for a fair presentation.

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## REPORT OF INDEPENDENT ACCOUNTANTS

### To the Stockholders and Board of Directors of Consolidated Edison, Inc.:

In our opinion, the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of Consolidated Edison, Inc. and its subsidiaries (the company) at December 31, 2002 and 2001, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2002 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedules listed in the accompanying index present fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. These financial statements and financial statement schedules are the responsibility of the company's management; our responsibility is to express an opinion on these financial statements and financial statement schedules based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

PricewaterhouseCoopers LLP  
New York, NY  
February 20, 2003



# CONSOLIDATED BALANCE SHEET

As at

December 31, 2002

December 31, 2001

(Thousands of Dollars)

	December 31, 2002	December 31, 2001
<b>ASSETS</b>		
<b>UTILITY PLANT, AT ORIGINAL COST (Note A)</b>		
Electric	\$ 11,568,262	\$ 11,145,400
Gas	2,530,230	2,405,730
Steam	767,831	758,600
General	1,434,407	1,354,099
<b>TOTAL</b>	<b>16,300,730</b>	<b>15,663,829</b>
Less: Accumulated depreciation	4,669,748	4,472,994
<b>NET</b>	<b>11,630,982</b>	<b>11,190,835</b>
Construction work in progress	988,662	654,107
<b>NET UTILITY PLANT</b>	<b>12,619,644</b>	<b>11,844,942</b>
<b>NON-UTILITY PLANT (Note A)</b>		
Unregulated generating assets, less accumulated depreciation of \$30,166 and \$21,289 in 2002 and 2001, respectively	221,894	131,652
Non-utility property, less accumulated depreciation of \$19,476 and \$10,902 in 2002 and 2001, respectively	140,017	53,885
Construction work in progress	347,620	264,784
<b>NET PLANT</b>	<b>13,329,175</b>	<b>12,295,263</b>
<b>CURRENT ASSETS</b>		
Cash and temporary cash investments (Note A)	117,858	271,348
Restricted cash	14,579	87,985
Funds held for the redemption of long-term debt	275,121	-
Accounts receivable - customers, less allowance for uncollectible accounts of \$34,692 and \$34,775 in 2002 and 2001, respectively	682,989	586,573
Accrued unbilled revenue (Note A)	54,109	47,654
Other receivables	169,203	99,155
Fuel, at average cost	22,745	18,216
Gas in storage, at average cost	80,520	111,507
Materials and supplies, at average cost	92,186	90,976
Prepayments	72,674	78,363
Other current assets	125,116	106,193
<b>TOTAL CURRENT ASSETS</b>	<b>1,707,100</b>	<b>1,497,970</b>
<b>INVESTMENTS (Note A)</b>	<b>235,464</b>	<b>216,845</b>
<b>DEFERRED CHARGES, REGULATORY ASSETS AND NONCURRENT ASSETS</b>		
Goodwill (Note K)	405,802	439,944
Intangible asset, less accumulated amortization of \$9,712 and \$5,953 in 2002 and 2001, respectively	82,023	85,783
Accrued pension credits (Note D)	1,024,244	697,807
<b>Regulatory assets</b>		
Future federal income tax (Notes A and L)	667,259	659,890
Recoverable energy costs (Note A)	322,250	209,262
Sale of nuclear generating plant (Note I)	127,231	174,804
Real estate sale costs - First Avenue properties	134,353	105,407
Deferred retirement program costs	83,972	81,796
Deferred unbilled gas revenue	43,594	43,594
Deferred environmental remediation costs (Note F)	83,102	62,559
Workers' compensation (Note F)	55,866	62,109
Deferred asbestos - related costs (Note F)	37,700	4,000
Divestiture - capacity replacement reconciliation (Note I)	28,850	58,850
Deferred revenue taxes	78,141	41,256

World Trade Center restoration costs (Note Q)	62,856	32,933
Other	115,115	80,699
<b>TOTAL REGULATORY ASSETS</b>	<b>1,840,289</b>	<b>1,617,159</b>
Other deferred charges and noncurrent assets	196,213	183,684
<b>TOTAL DEFERRED CHARGES, REGULATORY ASSETS AND NONCURRENT ASSETS</b>	<b>3,548,571</b>	<b>3,024,377</b>
<b>TOTAL ASSETS</b>	<b>\$ 18,820,310</b>	<b>\$ 17,034,455</b>

The accompanying notes are an integral part of these financial statements.

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## Consolidated Edison, Inc.

### CONSOLIDATED BALANCE SHEET

As at

December 31, 2002      December 31, 2001

(Thousands of Dollars)

<b>CAPITALIZATION AND LIABILITIES</b>		
CAPITALIZATION (see Statement of Capitalization and Note B)		
Common shareholders' equity	\$ 5,921,079	\$ 5,666,268
Preferred stock	212,563	212,563
Long-term debt	6,168,430	5,501,217
<b>TOTAL CAPITALIZATION</b>	<b>12,302,072</b>	<b>11,380,048</b>
MINORITY INTERESTS	8,907	9,522
NONCURRENT LIABILITIES		
Obligations under capital leases (Note J)	38,487	41,088
Accumulated provision for injuries and damages (Note F)	197,483	175,665
Pension and benefits reserve	206,000	187,366
Superfund and other environmental costs (Note F)	142,800	132,254
Other noncurrent liabilities	48,688	53,335
<b>TOTAL NONCURRENT LIABILITIES</b>	<b>633,458</b>	<b>589,708</b>
CURRENT LIABILITIES		
Long-term debt due within one year	472,631	310,950
Preferred stock to be redeemed in one year	-	37,050
Notes payable	161,680	343,722
Accounts payable	918,586	678,876
Customer deposits	221,476	214,121
Accrued taxes	100,436	145,742
Accrued interest	93,765	80,238
System benefit charge	26,980	30,024
Independent power producer buyout	32,700	33,750
Accrued wages	82,443	77,131
Other current liabilities	196,306	192,618
<b>TOTAL CURRENT LIABILITIES</b>	<b>2,307,003</b>	<b>2,144,222</b>
DEFERRED CREDITS AND REGULATORY LIABILITIES		
Accumulated deferred income tax (Note L)	2,575,646	2,236,210
Accumulated deferred investment tax credits (Note A)	111,760	118,350
Regulatory liabilities		
NYISO reconciliation (Note A)	106,908	92,504
World Trade Center casualty loss (Note Q)	78,787	81,483

Gain on divestiture (Note I)	42,407	59,030
Deposit from sale of First Avenue properties	50,000	50,000
Refundable energy costs	43,651	45,008
Accrued electric rate reduction (Note A)	38,018	38,018
DC service incentive	35,293	28,455
Transmission congestion contracts	124,809	4,896
Gas rate plan - World Trade Center recovery	36,319	-
Electric excess earnings	40,000	-
Other	282,278	156,735
<b>TOTAL REGULATORY LIABILITIES</b>	<b>878,470</b>	<b>556,129</b>
Other deferred credits	2,994	266
<b>TOTAL DEFERRED CREDITS AND REGULATORY LIABILITIES</b>	<b>3,568,870</b>	<b>2,910,955</b>
<b>TOTAL CAPITALIZATION AND LIABILITIES</b>	<b>\$ 18,820,310</b>	<b>\$ 17,034,455</b>

The accompanying notes are an integral part of these financial statements.

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## Consolidated Edison, Inc.

### CONSOLIDATED INCOME STATEMENT

For the Years Ended December 31,

2002                      2001                      2000

(Thousands of Dollars)

<b>OPERATING REVENUES (Note A)</b>					
Electric	\$	6,250,896	\$	6,887,863	\$ 6,938,128
Gas		1,204,033		1,465,956	1,261,970
Steam		404,044		503,736	452,135
Non-utility		622,887		531,244	664,991
<b>TOTAL OPERATING REVENUES</b>		<b>8,481,860</b>		<b>9,388,799</b>	<b>9,317,224</b>
<b>OPERATING EXPENSES</b>					
Purchased power		3,180,394		3,380,274	3,536,274
Fuel		288,741		393,831	350,816
Gas purchased for resale		596,606		860,102	789,080
Other operations		961,865		1,066,572	1,140,832
Maintenance		387,287		430,291	458,046
Depreciation and amortization (Note A)		494,553		526,121	586,407
Taxes, other than income taxes (Note A)		1,114,205		1,139,518	1,121,843
Income taxes (Notes A and L)		398,072		464,532	317,790
<b>TOTAL OPERATING EXPENSES</b>		<b>7,421,723</b>		<b>8,261,241</b>	<b>8,301,088</b>
<b>OPERATING INCOME</b>		<b>1,060,137</b>		<b>1,127,558</b>	<b>1,016,136</b>
<b>OTHER INCOME (DEDUCTIONS)</b>					
Investment income (Note A)		2,447		8,568	8,476
Allowance for equity funds used during construction (Note A)		9,969		1,281	1,299
Other income		48,010		(4,442)	19,616
Other income deductions		(20,106)		(28,171)	(52,276)
Income taxes (Notes A and L)		21,680		21,921	10,622
<b>TOTAL OTHER INCOME (DEDUCTIONS)</b>		<b>62,000</b>		<b>(843)</b>	<b>(12,263)</b>
<b>INCOME BEFORE INTEREST CHARGES</b>		<b>1,122,137</b>		<b>1,126,715</b>	<b>1,003,873</b>
Interest on long-term debt		385,323		396,948	363,994

Other interest	60,984	41,823	49,527
Allowance for borrowed funds used during construction (Note A)	(4,725)	(7,891)	(6,076)
<b>NET INTEREST CHARGES</b>	<b>441,582</b>	<b>430,880</b>	<b>407,445</b>
<b>INCOME BEFORE PREFERRED STOCK DIVIDENDS</b>	<b>680,555</b>	<b>695,835</b>	<b>596,428</b>
<b>PREFERRED STOCK DIVIDEND REQUIREMENTS</b>	<b>12,458</b>	<b>13,593</b>	<b>13,593</b>
<b>INCOME BEFORE CUMULATIVE EFFECT OF CHANGES IN ACCOUNTING PRINCIPLES</b>	<b>668,097</b>	<b>682,242</b>	<b>582,835</b>
<b>CUMULATIVE EFFECT OF CHANGES IN ACCOUNTING PRINCIPLES (NET OF INCOME TAXES OF \$15,259)</b>	<b>22,061</b>	<b>-</b>	<b>-</b>
<b>NET INCOME FOR COMMON STOCK</b>	<b>\$ 646,036</b>	<b>\$ 682,242</b>	<b>\$ 582,835</b>
<b>EARNINGS PER COMMON SHARE - BASIC</b>			
Before cumulative effect of changes in accounting principles	\$ 3.14	\$ 3.22	\$ 2.75
Cumulative effect of changes in accounting principles	\$ 0.11	\$ -	\$ -
After cumulative effect of changes in accounting principles	\$ 3.03	\$ 3.22	\$ 2.75
<b>EARNINGS PER COMMON SHARE - DILUTED</b>			
Before cumulative effect of changes in accounting principles	\$ 3.13	\$ 3.21	\$ 2.74
Cumulative effect of changes in accounting principles	\$ 0.11	\$ -	\$ -
After cumulative effect of changes in accounting principles	\$ 3.02	\$ 3.21	\$ 2.74
<b>DIVIDENDS DECLARED PER SHARE OF COMMON STOCK</b>	<b>\$ 2.22</b>	<b>\$ 2.20</b>	<b>\$ 2.18</b>
<b>AVERAGE NUMBER OF SHARES OUTSTANDING - BASIC</b>	<b>212,989,784</b>	<b>212,146,750</b>	<b>212,186,412</b>
<b>AVERAGE NUMBER OF SHARES OUTSTANDING - DILUTED</b>	<b>214,049,653</b>	<b>212,919,524</b>	<b>212,417,885</b>

The accompanying notes are an integral part of these financial statements.

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## Consolidated Edison, Inc.

### CONSOLIDATED STATEMENT OF RETAINED EARNINGS

For the Years Ended December 31,

2002                      2001                      2000

(Thousands of Dollars)

<b>BALANCE, JANUARY 1</b>	<b>\$ 5,251,017</b>	<b>\$ 5,040,931</b>	<b>\$ 4,921,089</b>
Less: Stock options exercised	3,849	5,430	1,026
Orange & Rockland purchase accounting adjustment	-	-	(46)
Income before preferred stock dividends	680,555	695,835	596,428
Less: Cumulative effect of changes in accounting principles	22,061	-	-
<b>NET INCOME AFTER CUMULATIVE EFFECT OF CHANGES IN ACCOUNTING PRINCIPLES</b>	<b>658,494</b>	<b>695,835</b>	<b>596,428</b>
<b>TOTAL</b>	<b>5,905,662</b>	<b>5,731,336</b>	<b>5,516,445</b>
<b>DIVIDENDS DECLARED ON CAPITAL STOCK</b>			
Cumulative preferred, at required annual rates	12,458	13,593	13,593
Common, \$2.22, \$2.20 and \$2.18 per share, respectively	472,767	466,726	461,921
<b>TOTAL DIVIDENDS DECLARED</b>	<b>485,225</b>	<b>480,319</b>	<b>475,514</b>

## Consolidated Edison, Inc.

## CONSOLIDATED STATEMENT OF COMPREHENSIVE INCOME

For the Years Ended December 31,

2002 2001 2000

(Thousands of Dollars)

	2002	2001	2000
NET INCOME FOR COMMON STOCK	\$ 646,036	\$ 682,242	\$ 582,835
OTHER COMPREHENSIVE INCOME/(LOSS), NET OF TAXES			
Investment in marketable equity securities, net of (\$854), (\$703) and (\$454) taxes in 2002, 2001 and 2000, respectively	(1,218)	(808)	(843)
Minimum pension liability adjustments, net of (\$2,536), (\$1,680) and (\$703) taxes in 2002, 2001 and 2000, respectively	(3,668)	(2,095)	(1,304)
Unrealized gains/(losses) on derivatives qualified as hedges due to cumulative effect of a change in accounting principle, net of (\$5,635) taxes in 2001	-	(8,002)	-
Unrealized gains/(losses) on derivatives qualified as hedges, net of \$12,718 and (\$21,901) taxes in 2002 and 2001, respectively	18,361	(31,191)	-
Less: Reclassification adjustment for gains/(losses) included in net income, net of (\$1,662) and (\$10,291) taxes in 2002 and 2001, respectively	(2,334)	(14,807)	-
TOTAL OTHER COMPREHENSIVE INCOME/(LOSS), NET OF TAXES	15,809	(27,289)	(2,147)
COMPREHENSIVE INCOME	\$ 661,845	\$ 654,953	\$ 580,688

The accompanying notes are an integral part of these financial statements.

## Consolidated Edison, Inc.

## CONSOLIDATED STATEMENT OF CASH FLOWS

For the Years Ended December 31,

2002 2001 2000

(Thousands of Dollars)

	2002	2001	2000
OPERATING ACTIVITIES			
Income before preferred stock dividends	\$ 680,555	\$ 695,835	\$ 596,428
PRINCIPAL NON-CASH CHARGES (CREDITS) TO INCOME			
Depreciation and amortization	494,553	526,121	586,407
Deferred income tax (excluding taxes resulting from divestiture of plant)	301,183	5,629	177,736
Common equity component of allowance for funds used during construction	(9,969)	(1,281)	(1,299)
Accrued pension costs (net of capitalized amounts)	(262,273)	(259,107)	(201,666)
Other non-cash charges	65,012	33,551	(11,316)
CHANGES IN ASSETS AND LIABILITIES NET OF EFFECTS OF DIVESTITURE OF UTILITY PLANTS AND PURCHASE OF THE LAKEWOOD PROJECT IN 2001 AND 2000, RESPECTIVELY			
Accounts receivable - customers, less allowance for uncollectibles	(96,416)	296,611	(262,799)
Materials and supplies, including fuel and gas in storage	25,248	(20,086)	(19,980)
Prepayments, other receivables and other current assets	(89,948)	119,525	(131,203)
Recoverable energy costs	(112,989)	130,231	(221,804)
Accounts payable	239,711	(353,601)	402,861
Retiree benefit reserve	18,634	6,393	26,284
Accrued taxes	(45,306)	81,399	45,956

Accrued interest	13,527	(5,038)	25,215
Deferred charges and regulatory assets	(94,018)	(46,379)	11,566
Deferred credits and regulatory liabilities	192,937	45,830	(56,563)
Transmission congestion contracts	119,913	4,896	-
Other assets	29,324	176,261	240,624
Other liabilities	35,643	151,179	135,986
<b>NET CASH FLOWS FROM OPERATING ACTIVITIES</b>	<b>1,505,321</b>	<b>1,587,969</b>	<b>1,342,433</b>
<b>INVESTING ACTIVITIES</b>			
Utility construction expenditures	(1,216,097)	(1,103,823)	(1,002,607)
Cost of removal less salvage	(123,966)	(101,163)	(130,895)
Non-utility construction expenditures	(276,661)	(153,921)	(182,602)
Common equity component of allowance for funds used during construction	9,969	1,281	1,299
Nuclear fuel expenditures	-	(6,111)	(27,357)
Contributions to nuclear decommissioning trust	-	(89,185)	(21,301)
Payment for purchase of the Lakewood Project, net of cash and cash equivalents	-	-	(98,090)
Divestiture of utility plants (net of federal income tax)	-	671,473	-
Investments by unregulated subsidiaries	(19,197)	(157,500)	(33,363)
Demolition and remediation costs for First Avenue properties	(2,161)	(2,398)	(101,935)
Deposit from sale of First Avenue properties	-	-	50,000
<b>NET CASH FLOWS USED IN INVESTING ACTIVITIES</b>	<b>(1,628,113)</b>	<b>(941,347)</b>	<b>(1,546,851)</b>
<b>FINANCING ACTIVITIES</b>			
Repurchase of common stock	-	-	(68,531)
Net proceeds/(repayments) from/of short-term debt	(182,042)	39,720	(265,031)
Issuance of long-term debt	1,125,000	722,600	1,030,000
Retirement of long-term debt	(300,000)	(309,590)	(403,230)
Redemption of preferred stock	(37,050)	-	-
Issuance of common stock	25,098	-	-
Advance refunding of long-term debt	(275,121)	(328,150)	-
Issuance and refunding costs	(16,365)	(23,218)	(5,468)
Common stock dividends	(430,700)	(469,755)	(460,177)
Preferred stock dividends	(12,924)	(13,724)	(13,367)
<b>NET CASH FLOWS USED IN FINANCING ACTIVITIES</b>	<b>(104,104)</b>	<b>(382,117)</b>	<b>(185,804)</b>
<b>CASH AND TEMPORARY CASH INVESTMENTS:</b>			
<b>NET CHANGE FOR THE PERIOD</b>	<b>(226,896)</b>	<b>264,505</b>	<b>(390,222)</b>
<b>BALANCE AT BEGINNING OF PERIOD</b>	<b>\$ 359,333</b>	<b>\$ 94,828</b>	<b>\$ 485,050</b>
<b>BALANCE AT END OF PERIOD</b>	<b>\$ 132,437</b>	<b>\$ 359,333</b>	<b>\$ 94,828</b>
<b>LESS: RESTRICTED CASH</b>	<b>14,579</b>	<b>87,985</b>	<b>-</b>
<b>BALANCE: CASH AND TEMPORARY CASH INVESTMENTS</b>	<b>\$ 117,858</b>	<b>\$ 271,348</b>	<b>\$ 94,828</b>
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION</b>			
Cash paid during the period for:			
Interest	\$ 389,293	\$ 398,861	\$ 351,165
Income taxes	225,933	217,175	136,573
<b>Business Acquisitions</b>			
Assets	\$ -	\$ -	\$ 225,462
Purchase price in excess of net assets acquired	-	-	66,336
<b>Total assets</b>	<b>-</b>	<b>-</b>	<b>291,798</b>
<b>Long-term debt, minority interest and liability assumed</b>	<b>-</b>	<b>-</b>	<b>193,708</b>
<b>Net cash used in acquisitions</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 98,090</b>

The accompanying notes are an integral part of these financial statements.

## CONSOLIDATED STATEMENT OF CAPITALIZATION

### Shares outstanding

	December 31,		Years Ended December 31,	
	2002	2001	2002	2001
	<i>(Thousands of Dollars)</i>			
<b>COMMON SHAREHOLDERS' EQUITY (NOTE B)</b>				
Common stock	213,932,934	212,257,244	\$ 1,550,861	\$ 1,482,341
Retained earnings			5,420,437	5,251,017
Treasury stock, at cost: 23,210,700, shares and 23,230,850 shares at December 31, 2002 and 2001, respectively			(1,001,242)	(1,002,107)
Capital stock expense			(35,350)	(35,547)
<b>ACCUMULATED OTHER COMPREHENSIVE INCOME/(LOSS)</b>				
Investment in marketable equity securities, net of (\$2,011) and (\$1,157) taxes in 2002 and 2001, respectively			(2,869)	(1,651)
Minimum pension liability adjustments, net of (\$4,919) and (\$2,383) taxes in 2002 and 2001, respectively			(7,067)	(3,399)
Unrealized gains/(losses) on derivatives qualified as hedges arising during the period due to cumulative effect of a change in accounting principle, net of (\$5,635) taxes in 2001			-	(8,002)
Unrealized gains/(losses) on derivatives qualified as hedges, net of (\$14,818) and (\$21,901) taxes in 2002 and 2001, respectively			(20,832)	(31,191)
Less: Reclassification adjustment for gains/(losses) included in net income, net of (\$11,953) and (\$10,291) taxes in 2002 and 2001, respectively			(17,141)	(14,807)
<b>TOTAL ACCUMULATED OTHER COMPREHENSIVE INCOME/(LOSS), NET OF TAXES</b>			<b>(13,627)</b>	<b>(29,436)</b>
<b>TOTAL COMMON SHAREHOLDERS' EQUITY</b>			<b>5,921,079</b>	<b>5,666,268</b>
<b>PREFERRED STOCK (NOTE B)</b>				
Subject to mandatory redemption Cumulative Preferred, \$100 par value, 6 <sup>1</sup> / <sub>8</sub> % Series J	-	370,500	-	37,050
<b>TOTAL SUBJECT TO MANDATORY REDEMPTION</b>			<b>-</b>	<b>37,050</b>
<b>OTHER PREFERRED STOCK</b>				
\$5 Cumulative Preferred, without par value, authorized 1,915,319 shares	1,915,319	1,915,319	175,000	175,000
Cumulative Preferred, \$100 par value, authorized 6,000,000 shares*				
4.65% Series C	153,296	153,296	15,330	15,330
4.65% Series D	222,330	222,330	22,233	22,233
<b>TOTAL OTHER PREFERRED STOCK</b>			<b>212,563</b>	<b>212,563</b>
<b>TOTAL</b>			<b>212,563</b>	<b>249,613</b>
Less: Preferred stock due within one year			-	37,050
<b>TOTAL PREFERRED STOCK</b>			<b>\$ 212,563</b>	<b>\$ 212,563</b>

\* Represents total authorized shares of cumulative preferred stock, \$100 par value, including preferred stock subject to mandatory redemption.

The accompanying notes are an integral part of these financial statements.

Consolidated Edison, Inc.

CONSOLIDATED STATEMENT OF CAPITALIZATION

At December 31,

Long-term debt (Note B)

Maturity	Interest Rate	Series	2002	2001
<i>(Thousands of Dollars)</i>				
DEBENTURES:				
2002	6 <sup>5</sup> / <sub>8</sub>	1993C	\$ -	\$ 150,000
2002	2.06*	1997A	-	150,000
2003	6 <sup>3</sup> / <sub>8</sub>	1993D	150,000	150,000
2003	6.56	1993D	35,000	35,000
2004	7 <sup>5</sup> / <sub>8</sub>	1992B	150,000	150,000
2005	6 <sup>5</sup> / <sub>8</sub>	1995A	100,000	100,000
2005	6 <sup>5</sup> / <sub>8</sub>	2000C	350,000	350,000
2007	6.45	1997B	330,000	330,000
2007	7 <sup>1</sup> / <sub>8</sub>	1997J	20,000	20,000
2008	6 <sup>1</sup> / <sub>4</sub>	1998A	180,000	180,000
2008	6.15	1998C	100,000	100,000
2009	7.15	1999B	200,000	200,000
2010	8 <sup>1</sup> / <sub>8</sub>	2000A	325,000	325,000
2010	7 <sup>1</sup> / <sub>2</sub>	2000A	55,000	55,000
2010	7 <sup>1</sup> / <sub>2</sub>	2000B	300,000	300,000
2012	5 <sup>5</sup> / <sub>8</sub>	2002A	300,000	-
2013	4 <sup>7</sup> / <sub>8</sub>	2002B	500,000	-
2023	7 <sup>1</sup> / <sub>2</sub>	1993G	380,000	380,000
2026	7 <sup>3</sup> / <sub>4</sub>	1996A	100,000	100,000
2027	6 <sup>1</sup> / <sub>2</sub>	1997F	80,000	80,000
2028	7.1	1998D	105,000	105,000
2028	6.9	1998D	75,000	75,000
2029	7 <sup>1</sup> / <sub>8</sub>	1994A	150,000	150,000
2029	7.0	1999G	45,000	45,000
2039	7.35	1999A	275,000	275,000
2041	7 <sup>1</sup> / <sub>2</sub>	2001A	400,000	400,000
2042	7 <sup>1</sup> / <sub>4</sub>	2002A	325,000	-
TOTAL DEBENTURES			5,030,000	4,205,000
TAX-EXEMPT DEBT - NOTES ISSUED TO NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY FOR FACILITIES REVENUE BONDS:				
2014	6.09	1994**	55,000	55,000
2015	1.45	1995**	44,000	44,000
2020	5 <sup>1</sup> / <sub>4</sub>	1993B	127,715	127,715
2020	6.10	1995A	128,285	128,285
2022	5 <sup>3</sup> / <sub>8</sub>	1993C	19,760	19,760
2028	6.00	1993A	101,000	101,000
2029	7 <sup>1</sup> / <sub>8</sub>	1994A	100,000	100,000
2034	1.35***	1999A	292,700	292,700
2036	4.70	2001A****	232,302	224,600
2036	1.37***	2001B	98,000	98,000
TOTAL TAX-EXEMPT DEBT			1,198,762	1,191,060
SUBORDINATED DEFERRABLE INTEREST DEBENTURES:				
2031	7 <sup>3</sup> / <sub>4</sub>	1996A	275,000	275,000
OTHER LONG-TERM DEBT			164,350	167,845
UNAMORTIZED DEBT DISCOUNT			(27,051)	(26,738)
TOTAL			6,641,061	5,812,167
LESS: LONG-TERM DEBT DUE WITHIN ONE YEAR			472,631	310,950



TOTAL LONG-TERM DEBT		6,168,430		5,501,217
TOTAL CAPITALIZATION	\$	12,302,072	\$	11,380,048

- \* 2.06% rate shown for the period March 15, 2002 - June 14, 2002.
- \*\* Issued for O&R pollution control financing.
- \*\*\* Rates reset weekly, quarterly or by auction held every 35 days; December 31, 2002 rate shown.
- \*\*\*\* See Note O

The accompanying notes are an integral part of these financial statements.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

These notes form an integral part of the accompanying consolidated financial statements of Consolidated Edison, Inc. (Con Edison) and its subsidiaries.

### Con Edison

Con Edison is a holding company that provides a wide range of energy-related and telecommunications services to its customers through its regulated and unregulated subsidiaries. Con Edison's core business is energy distribution and it is also pursuing related growth opportunities in competitive businesses.

Con Edison's principal subsidiary is Consolidated Edison Company of New York, Inc. (Con Edison of New York), a regulated utility that provides electric service to over 3.1 million customers and gas service to approximately 1.1 million customers in New York City and Westchester County. It also provides steam service in parts of Manhattan.

Orange and Rockland Utilities, Inc. (O&R), a regulated utility that Con Edison acquired in July 1999, provides electric service to over 285,000 customers in southeastern New York and in adjacent sections of New Jersey and northeastern Pennsylvania. O&R also provides gas service to over 120,000 customers in southeastern New York and northeastern Pennsylvania.

Con Edison has four unregulated subsidiaries: Consolidated Edison Solutions, Inc. (Con Edison Solutions), a retail energy services company that sells electricity, gas and energy-related services to delivery customers of utilities, including Con Edison of New York and O&R; Consolidated Edison Energy, Inc. (Con Edison Energy), a wholesale energy supply company; Consolidated Edison Development, Inc. (Con Edison Development), a company that owns and operates generating plants and energy and other infrastructure projects; and Con Edison Communications, LLC (Con Edison Communications), a company that builds and operates fiber optic networks to provide telecommunications services. The unregulated subsidiaries participate in competitive energy supply and services businesses that are subject to different risks than those found in the businesses of the regulated utility subsidiaries.

### Note A - Summary of Significant Accounting Policies

#### Principles of Consolidation

Con Edison's consolidated financial statements include the accounts of Con Edison and its consolidated subsidiaries, including the regulated utilities, Con Edison of New York and O&R. All intercompany balances and transactions have been eliminated.

#### Accounting Policies

The accounting policies of Con Edison and its subsidiaries conform to accounting principles generally accepted in the United States of America. For regulated public utilities, like Con Edison of New York and O&R, accounting principles generally accepted in the United States of America include the Financial Accounting Standards Board's (FASB) Statement of Financial Accounting Standards (SFAS) No. 71, "Accounting for the Effects of Certain Types of Regulation," and, in accordance with SFAS No. 71, the accounting requirements of the Federal Energy Regulatory Commission (FERC) and the state public utility regulatory commissions having jurisdiction.

SFAS No. 71 specifies the economic effects that result from the cause and effect relationship of costs and revenues in the rate-regulated environment and how these effects are to be accounted for by a regulated enterprise. Revenues intended to cover some costs may be recorded either before or after the costs are incurred. If regulation provides assurance that incurred costs will be recovered in the future, these costs would be recorded as deferred charges or "regulatory assets" under SFAS No. 71. If revenues are recorded for costs that are expected to be incurred in the future, these revenues would be recorded as deferred credits or "regulatory liabilities" under SFAS No. 71.

Con Edison's principal regulatory assets and liabilities are detailed on the consolidated balance sheet. The company is receiving or being credited with a return on all of its regulatory assets for which a cash outflow has been made, and is paying or being charged with a return on all of its regulatory liabilities for which a cash inflow has been received. The company's regulatory assets and liabilities will be recovered from customers, or applied for customer benefit, in accordance with rate provisions approved by the applicable public utility regulatory commission.

The standards in SFAS No. 101, "Regulated Enterprises - Accounting for the Discontinuation of Application of the FASB Statement No. 71," have been applied to Con Edison's regulated electric supply business, including electric generating assets (see Note I) and non-utility generator (NUG) contracts (see Note H) and

related regulatory assets and liabilities, following the 1997 Restructuring Agreement (defined below). The application of SFAS No. 101 to the electric supply business had no material effect on the financial position, results of operations or liquidity of Con Edison.

Other significant accounting policies of the company are referenced in Note D (Pension Benefits), Note E (Other Postretirement Benefits), Note J (Leases), Note K (Goodwill and Intangible Assets) and Note O (Derivative Instruments and Hedging Activities) to the financial statements.

## Rate and Restructuring Agreements

### Electric

In September 1997, the New York State Public Service Commission (PSC) approved a restructuring agreement between Con Edison of New York, the PSC staff and certain other parties (the 1997 Restructuring Agreement). The 1997 Restructuring Agreement provided for a transition to a competitive electric market through the development of a retail access plan, a rate plan for the period ended March 31, 2002, a reasonable opportunity for recovery of "strandable costs" and the divestiture of electric generation capacity by Con Edison of New York.

At December 31, 2002, approximately 163,000 Con Edison of New York customers representing approximately 25 percent of aggregate customer load were purchasing electricity from other suppliers under the electric retail access program (which is available to all of Con Edison of New York's electric customers). Con Edison of New York delivers electricity to customers in this program through its regulated transmission and distribution systems. In general, Con Edison of New York's delivery rates for retail access customers are equal to the full-service rates applicable to other comparable Con Edison of New York customers, less an amount reflecting costs otherwise associated with supplying customers with energy and capacity.

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Pursuant to the 1997 Restructuring Agreement, Con Edison of New York reduced electric rates, on an annual basis, by \$129 million in 1998, \$80 million in April 1999, \$103 million in April 2000 and \$209 million in April 2001. The effect of the April 2001 decrease for the rate year ended March 31, 2002 was partially offset by recognition in income of \$36 million relating to rates for distributing electricity to customers of the New York Power Authority (NYPA) and \$50 million (after tax) of deferred generation divestiture gain. Rates were also reduced, on an annual basis, effective September 2001 by \$313 million to reflect the divestiture of the nuclear generating facility and the Roseton generating plant, which resulted in a reduction in operating and other expenses. See Note I.

Pursuant to the 1997 Restructuring Agreement, as amended by a July 1998 PSC order, Con Edison of New York sold approximately 7,790 MW of the approximately 8,300 MW of generating capacity that it owned at the time the 1997 Restructuring Agreement was executed. See Note I.

In November 2000, the PSC approved an agreement (the 2000 Electric Rate Agreement) that revises and extends the rate plan provisions of the 1997 Restructuring Agreement. Pursuant to the 2000 Electric Rate Agreement, Con Edison of New York reduced the distribution component of its electric rates by \$170 million on an annual basis, effective October 2000.

In general, under the 2000 Electric Rate Agreement, Con Edison of New York's base electric transmission and distribution rates will not otherwise be changed during the five-year period ending March 2005 except (i) with respect to certain changes in costs above anticipated annual levels resulting from legal or regulatory requirements, inflation in excess of a 4 percent annual rate, property tax changes and environmental cost increases or (ii) if the PSC determines that circumstances have occurred that either threaten Con Edison of New York's economic viability or ability to provide, safe and adequate service, or render Con Edison of New York's rate of return unreasonable for the provision of safe and adequate service.

Under the 2000 Electric Rate Agreement, as approved by the PSC and as modified in December 2001, 35 percent of any earnings in each of the rate years ending March 2002 through 2005 above a specified rate of return on electric common equity will be retained for shareholders and the balance will be applied for customer benefit as determined by the PSC. As of December 31, 2002, Con Edison of New York established an electric shared earnings reserve of \$40 million for the rate year ending March 2003. There was no sharing of earnings for the rate years ended March 2002 and 2001. The earnings threshold for rate years ending March 2003 through March 2005 of 11.75 percent can be increased up to 50 basis points. The threshold will increase by 25 basis points if certain demand reductions and supply increases exceed targeted projections and by an additional 25 basis points if certain customer service and reliability objectives are achieved. Con Edison of New York could be required to pay up to \$40 million annually in penalties if certain threshold service and reliability objectives are not achieved.

Con Edison of New York's potential electric strandable costs are utility investments and commitments that may not be recoverable in a competitive electric supply market. Con Edison of New York is recovering these costs in the rates it charges all of its electric customers. The 2000 Electric Rate Agreement continues the stranded cost recovery provisions of the 1997 Restructuring Agreement, stating that Con Edison of New York "will be given a reasonable opportunity to recover stranded and

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strandable costs remaining at March 31, 2005, including a reasonable return on investments, under the parameters and during the time periods set forth therein."

The 2000 Electric Rate Agreement also continues the rate provisions pursuant to which Con Edison of New York recovers prudently incurred purchased power and fuel costs from customers. See "Recoverable Energy Costs" below.

In 1997, the PSC approved a four-year O&R restructuring plan effective through December 31, 2002, pursuant to which O&R sold all of its generating assets, made retail access available to all of its electric customers effective May 1999 and reduced its electric rates by \$32.4 million through rate reductions implemented in December 1997 and 1998. In 1998 and 1999, similar plans for O&R's utility subsidiaries in Pennsylvania and New Jersey were approved by state regulators. The Pennsylvania plan provided for retail access for all customers effective May 1999. The New Jersey plan provided for retail access for all customers effective August 1999 and rate reductions of \$6.8 million effective August 1999, an additional reduction of \$2.7 million effective January 2001 and a final reduction of \$6.2 million effective August 2002.

In accordance with the April 1999 PSC order approving Con Edison's acquisition of O&R, Con Edison of New York has reduced its annual electric and gas rates by \$12 million and \$2 million, respectively, and O&R has reduced its annual electric rates and gas rates by \$6.1 million and \$1.1 million, respectively.

In October 2002, O&R's New Jersey utility subsidiary filed a request with the New Jersey Board of Public Utilities (NJBP) seeking an increase in electric rates of \$7.3 million (5.5 percent) annually, to take effect on August 1, 2003, principally to reflect the costs of electric system infrastructure improvements required for

service reliability and security. A final ruling by the NJBPU is expected in the third quarter of 2003.

## Gas

In November 2000, the PSC approved an agreement between Con Edison of New York, the PSC staff and certain other parties that revised and extended the 1996 gas rate settlement agreement through September 2001. The 1996 agreement, with limited exceptions, continued base rates at September 1996 levels through September 2000.

Under the 2000 agreement, the rate of return on gas common equity above which Con Edison of New York shared with customers 50 percent of earnings was increased from 13 percent to 14 percent. In addition, customer bills were reduced by \$20 million during the January through March 2001 period.

At December 31, 2001, Con Edison of New York reserved \$11.5 million for customers' share of gas earnings in excess of the 14 percent threshold for the rate year ended September 2001. No additional amounts were reserved for the rate year ended September 2002.

In April 2002, the PSC approved a Con Edison of New York gas rate agreement for the three-year period ending September 30, 2004. The rate agreement reduces gas rates, on an annualized basis, by \$25 million.

During the term of the 2002 agreement, Con Edison of New York retains 100 percent of the rate year return on equity up to 11.5 percent. If the return on equity is between 11.5 percent and 12.0 percent,

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100 percent of the incremental return over 11.5 percent will be set aside for customer benefit. If the return on equity is above 12.0 percent, 50 percent of the incremental return over 12.0 percent will be retained by shareholders, and the remaining 50 percent will be shared with customers.

The 2002 agreement also continued the retail access credit for firm transportation customers and other programs designed to increase customer and marketer participation in the gas retail access program, the net costs of which are to be recovered from customers.

Under the 2002 agreement, in May 2002, Con Edison of New York established a \$36.4 million reserve, funded by previously deferred customer credits, to recover unreimbursed costs directly related to the World Trade Center attack.

In December 2000, the PSC also authorized implementation of a gas rate settlement agreement between O&R, the PSC staff, and certain other parties covering the period November 2000 through April 2002. In October 2001, the PSC approved an extension of this agreement covering the period May 2002 through October 2003. With limited exceptions, the agreement provides for no changes to base rates. O&R was permitted to retain, and is amortizing to income, \$18.1 million of deferred credits that otherwise would have been credited to customers.

In November 2002, O&R filed a request with the PSC for approval of a \$27.2 million gas rate increase effective November 2003. O&R also submitted a multi-year plan that addresses rates for two additional years, with an increase of \$2.5 million to cover infrastructure costs, inflation and property taxes. The Administrative Law Judge is expected to issue a recommended decision in the third quarter 2003.

## Steam

In November 2000, the PSC authorized implementation of an agreement between Con Edison of New York, the PSC staff and certain other parties, that provided for a \$16.6 million steam rate increase in October 2000 and, with limited exceptions, no further changes in steam rates prior to October 2004. Con Edison of New York is required to share with customers 50 percent of any earnings for any rate year covered by the agreement above of a specified rate of return on steam common equity (11.0 percent for the first rate year, the 12-month period ended September 2001; 10.5 percent thereafter if the repowering of its steam-electric generating plant is not completed). The net revenue effect associated with sales increases related to colder than normal winter weather (November through April) will be excluded from any earnings measurement. Earnings on steam common equity did not exceed the specific rates of return for the rate years ended September 30, 2001 and 2002.

Under the steam rate agreement, upon completion of the project to add incremental generating capacity at the East River steam-electric generating plant, the net benefits of the project (including the net after-tax gain from the sale of a nine-acre development site in mid-town Manhattan along the East River) allocable to steam operations will inure to the benefit of steam customers.

The agreement continues the rate provisions pursuant to which Con Edison of New York recovers prudently incurred purchased steam and fuel costs and requires Con Edison of New York to develop a strategy for hedging price variations for a portion of the steam produced each year.

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## Plant and Depreciation

### Utility Plant

Utility plant is stated at original cost. The capitalized cost of additions to utility plant includes indirect costs such as engineering, supervision, payroll taxes, pensions, other benefits and an allowance for funds used during construction (AFDC). The original cost of property, together with removal cost, less salvage, is charged to accumulated depreciation as property is retired. The cost of repairs and maintenance is charged to expense and the cost of betterments is capitalized.

Rates used for AFDC include the cost of borrowed funds and a reasonable rate on the regulated utilities own funds when so used, determined in accordance with PSC and FERC regulations. The rate is compounded semiannually, and the amounts applicable to borrowed funds are treated as a reduction of interest charges, while the amounts applicable to the regulated utilities' own funds were credited to other income (deductions).

Con Edison's utility subsidiaries generally compute annual charges for depreciation using the straight-line method for financial statement purposes, with rates based on average service lives and net salvage factors. Con Edison's utility depreciation rates averaged 3.0 percent in 2002, 3.1 percent in 2001 and 3.6 percent in

2000. The estimated lives for Con Edison's utility plant range from 5 to 80 years for electric, 7 to 75 years for gas, 30 to 75 years for steam and 5 to 50 years for general plant.

## Non-utility Plant

Non-utility plant is stated at original cost. For the regulated utilities, non-utility plant consists primarily of land and telecommunication facilities that are currently not utilized within utility operations. For the unregulated subsidiaries, non-utility plant consists primarily of generating assets and telecommunication facilities that are in-service or under construction. Depreciation is computed using the straight-line method for financial statement purposes, over the estimated useful lives of the assets, which range from 5 to 40 years for generating assets and 3 to 50 years for other property.

In 2002, in accordance with SFAS No. 34, "Capitalization of Interest Costs," Con Edison capitalized interest on its borrowings associated with the unregulated subsidiaries' capital projects in progress. Capitalized interest is added to the asset cost, and is amortized over the useful lives of the assets. The amount of such capitalized interest cost for 2002 is \$14.3 million. No amounts were capitalized in 2001 and 2000.

## Revenues

Con Edison's utility subsidiaries and Con Edison Solutions recognize revenues for electric, gas or steam service on a monthly billing cycle basis. O&R and Con Edison Solutions accrue revenues at the end of each month for estimated energy usage not yet billed to customers, while Con Edison of New York does not accrue such revenues, in accordance with current regulatory agreements. The accrued unbilled revenue included in Con Edison's balance sheet at December 31, 2002 and 2001 was \$54.1 million and \$47.7 million, respectively.

## Recoverable Energy Costs

Con Edison's utility subsidiaries generally recover all of their prudently incurred fuel, purchased power and gas costs, including hedging gains and losses, in accordance with rate provisions approved by the

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applicable state public utility commissions. If the actual energy costs for a given month are more or less than the amounts billed to customers for that month, the difference is recoverable from or refundable to customers. Differences between actual and billed energy costs are generally deferred for charge or refund to customer during the next billing cycle (normally within one or two months). For Con Edison of New York, the rate provisions also include a possible incentive or penalty of up to \$25 million annually relating to electric costs (see "Energy Price Hedging" in Note O). Con Edison of New York defers over a 12-month period all net interruptible gas revenues not authorized by the PSC to be retained by Con Edison of New York for refund to firm gas sales and transportation customers.

In August 2002, O&R's New Jersey utility subsidiary submitted a petition to the NJBPU requesting recovery under New Jersey's 1999 Electric Discount and Energy Competition Act of \$110 million of electric purchased power costs in excess of amounts previously billed to customers, associated interest and other deferred charges. Recovery of these costs from customers is requested over a four-year period or pursuant to a plan to securitize the costs (under which O&R's subsidiary would be reimbursed these costs with the proceeds of a financing that would be repaid over time by its customers). In January 2003, the initial results of an independent audit, commissioned by the NJBPU to review the prudence of these deferred costs, were issued. The audit recommends that the utility be disallowed recovery of \$26.8 million of such costs and associated interest of \$2.6 million. O&R believes that its actions were prudent and has filed a response to the audit findings. A decision on the recovery of these purchased power costs by the NJBPU is expected in the third quarter of 2003.

The difference between amounts for purchased power initially billed to the utility subsidiaries by the New York Independent System Operator (NYISO) and amounts subsequently determined by the NYISO to have actually been supplied by the NYISO is refunded by the NYISO to the utility subsidiaries, or paid to the NYISO by the utility subsidiaries. The reconciliation payments or receipts are recoverable from or refundable to the utility subsidiaries' customers. At December 31, 2002, the utility subsidiaries had deferred \$106.9 million of refunds received from the NYISO as a regulatory liability.

## Temporary Cash Investments

Temporary cash investments are short-term, highly liquid investments that generally have maturities of three months or less. They are stated at cost, which approximates market. Con Edison considers temporary cash investments to be cash equivalents.

## Investments

Investments consist primarily of the investments of Con Edison's unregulated subsidiaries, which, depending on the subsidiaries' percentage ownership, are recorded at cost, accounted for under the equity method or accounted for as leveraged leases in accordance with SFAS No. 13, "Accounting for Leases." See Note J for a discussion of investments in Lease In/Lease Out transactions.

## Federal Income Tax

In accordance with SFAS No. 109, "Accounting for Income Taxes," Con Edison has recorded an accumulated deferred federal income tax liability for temporary differences between the book and tax basis of assets and liabilities at current tax rates. In accordance with rate agreements, the utility subsidiaries have recovered amounts from customers for a portion of the tax liability they will pay in the

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future as a result of the reversal or "turn-around" of these temporary differences. As to the remaining tax liability, in accordance with SFAS No. 71, the utility subsidiaries have established regulatory assets for the net revenue requirements to be recovered from customers for the related future tax expense (see Note L). In 1993, the PSC issued a Policy Statement approving accounting procedures consistent with SFAS No. 109 and providing assurances that these future increases in taxes will be recoverable in rates.

Accumulated deferred investment tax credits are amortized ratably over the lives of the related properties and applied as a reduction to future federal income tax expense.

Con Edison and its subsidiaries file a consolidated federal income tax return. The consolidated income tax liability is allocated to each member of the consolidated group using the separate return method. Each member pays tax or receives a benefit based on its own taxable income or loss in accordance with tax sharing agreements between the members of the consolidated group.

### State Income Tax

The New York State tax laws applicable to utility companies were changed effective January 1, 2000. Certain revenue-based taxes were repealed or reduced and replaced by a net income-based tax. In June 2001, the PSC issued its final Order relating to the tax law changes. It authorized each utility to use deferral accounting to record the difference between taxes being collected and the tax expense resulting from the tax law changes, until those changes are incorporated in base rates.

Con Edison and its subsidiaries file a combined New York State Corporation Business Franchise Tax Return. Similar to a federal consolidated income tax return, the income of all entities in the combined group is subject to New York State taxation, after adjustments for differences between federal and New York law and apportionment of income among the states in which the company does business. Each member of the group pays or receives a benefit based on its own New York State taxable income or loss.

### Taxes Other than Income Taxes

The PSC requires New York regulated utility companies to record gross receipts tax revenues and expenses on a gross income statement presentation basis (i.e., included in both revenue and expense). The recovery of these taxes is part of the PSC approved revenue requirement within each of the respective rate agreements.

### Research and Development Costs

Research and development costs relating to specific utility construction projects are capitalized. All other such costs are charged to operating expenses as incurred. Research and development costs in 2002, 2001 and 2000 amounting to \$11.2 million, \$14.0 million and \$14.1 million, respectively, were charged to operating expenses. No research and development costs were capitalized in these years.

### Reclassification

Certain prior year amounts have been reclassified to conform with the current year presentation.

### Earnings Per Common Share

In accordance with SFAS No. 128, "Earnings per Share," Con Edison presents basic and diluted earnings per share on the face of the consolidated income statement. Basic earnings per share is calculated by

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dividing earnings available to common shareholders ("Net income for common stock" on the consolidated income statement) by the weighted average number of common shares outstanding during the period. In the calculation of diluted EPS, weighted average shares outstanding are increased for additional shares that would be outstanding if potentially dilutive securities were converted to common stock.

Potentially dilutive securities for Con Edison consist of restricted stock and stock options whose exercise price is less than the average market price of the common shares during the reporting period. See Note M.

Basic and diluted EPS are calculated as follows:

	<i>For the Years Ended December 31,</i>		
	2002	2001	2000
	<i>(Millions of Dollars/Share Data in Thousands)</i>		
Net income	\$ 680.6	\$ 695.8	\$ 596.4
Less: Preferred stock dividend requirements	12.5	13.6	13.6
Income available to common shareholders	\$ 668.1	\$ 682.2	\$ 582.8
Less cumulative effect of changes in accounting principles, net of tax	22.1	-	-
Net income applicable to common stock	\$ 646.0	\$ 682.2	\$ 582.8
Number of shares on which basic EPS is calculated	212,990	212,147	212,186
Add: Incremental shares attributable to effect of dilutive securities:	1,060	773	232
Number of share on which diluted EPS is calculated	214,050	212,920	212,418
<b>EARNINGS PER COMMON SHARE - BASIC</b>			
Before cumulative effect of changes in accounting principles	\$ 3.14	\$ 3.22	\$ 2.75
Cumulative effect of changes in accounting principles	0.11	-	-
After cumulative effect of changes in accounting principles	\$ 3.03	\$ 3.22	\$ 2.75

**EARNINGS PER COMMON SHARE - DILUTED**

Before cumulative effect of changes in accounting principles	\$	3.13	\$	3.21	\$	2.74
Cumulative effect of changes in accounting principles		0.11		-		-
After cumulative effect of changes in accounting principles	\$	3.02	\$	3.21	\$	2.74

Stock options to purchase 6.08 million, 5.33 million and 4.67 million common shares for the years ended December 31, 2002, 2001 and 2000, respectively, were not included in the respective period's computation of diluted earnings per share because the exercise price of the option was greater than the average market price of the common shares.

**Stock-Based Compensation**

Con Edison applies the recognition and measurement principles of Accounting Principles Board (APB) Opinion No. 25, "Accounting for Stock Issued to Employees," and related interpretations in accounting for its stock-based compensation plans. See Note M. The following table illustrates the effect on net

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income and earnings per share if Con Edison had applied the fair value recognition provisions of SFAS No. 123, "Accounting for Stock-Based Compensation," to stock-based employee compensation.

	<i>For the Years Ended December 31,</i>		
	<i>2002</i>	<i>2001</i>	<i>2000</i>
	<i>(Millions of Dollars/Share Data in Thousands)</i>		
Net income, as reported	\$ 646	\$ 682	\$ 583
Add: Stock-based compensation expense included in reported net income, net of related tax effects	6	3	1
Deduct: Total stock-based employee compensation expense determined under fair value method for all awards, net of related tax effects	(13)	(7)	(6)
Pro forma net income	639	678	578
Number of shares on which basic EPS is calculated	212,990	212,147	212,186
Add: Incremental shares attributable to effect of dilutive securities:	1,060	773	232
Number of share on which diluted EPS is calculated	214,050	212,920	212,418
Earnings per share:			
Basic - as reported	\$ 3.03	\$ 3.22	\$ 2.75
Basic - pro forma	\$ 3.00	\$ 3.19	\$ 2.72
Diluted - as reported	\$ 3.02	\$ 3.21	\$ 2.74
Diluted - pro forma	\$ 2.99	\$ 3.18	\$ 2.71

These pro forma amounts may not be representative of future year pro forma amount disclosures due to changes in future market conditions and additional grants in future years.

**Estimates**

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**Note B - Capitalization****Capitalization of Con Edison**

Con Edison's outstanding capitalization, on a consolidated basis, consists of its common shareholders' equity and long-term debt and the outstanding preferred stock and long-term debt of its subsidiaries. Con Edison's authorized capitalization also includes six million authorized, but unissued, Preferred Shares, \$1.00 par value.

**Preferred Stock of Utility Subsidiaries**

As of December 31, 2002, 1,915,319 shares of Con Edison of New York's \$5 Cumulative Preferred Stock (the "\$5 Preferred") and 375,626 shares of its Cumulative Preferred Stock (\$100 par value) were outstanding.

must be declared by Con Edison of New York's Board of Trustees to become payable. See "Dividends" below.

With respect to any corporate action to be taken by a vote of shareholders of Con Edison of New York, Con Edison (which owns all of the 235,488,094 shares of Con Edison of New York's Common Shares (\$2.50 par value) that are outstanding) and the holders of the \$5 Preferred are each entitled to one vote for each share held. Except as otherwise required by law, holders of the Cumulative Preferred Stock have no right to vote; provided, however, that, if the \$5 Preferred is no longer outstanding, the holders of the Cumulative Preferred Stock are entitled to one vote for each share with respect to any corporate action to be taken by a vote of the shareholders of Con Edison of New York. In addition, if dividends are in arrears for certain periods, the holders are entitled to certain rights with respect to the election of Con Edison of New York's Trustees. Without the consent of the holders of the Cumulative Preferred Stock, Con Edison of New York may not create or authorize any kind of stock ranking prior to the Cumulative Preferred Stock or, if such actions would affect the holders of the Cumulative Preferred Stock adversely, be a party to any consolidation or merger, create or amend the terms of the Cumulative Preferred Stock or reclassify the Cumulative Preferred Stock. Con Edison of New York may redeem the \$5 Preferred at a redemption price of \$105 per share and the Cumulative Preferred Stock at a redemption price of \$101 per share (in each case, plus accrued and unpaid dividends). In the event of the dissolution, liquidation or winding up of the affairs of Con Edison of New York, before any distribution of capital assets could be made to the holders of the company's common stock, the holders of the \$5 Preferred and the Cumulative Preferred Stock would each be entitled to receive \$100 per share, in the case of an involuntary liquidation, or an amount equal to the redemption price per share, in the case of a voluntary liquidation, in each case together with all accrued and unpaid dividends.

### Dividends

In accordance with PSC requirements, the dividends that the utility subsidiaries may pay are limited to not more than 100 percent of their respective income available for dividends calculated on a two-year rolling average basis. Excluded from the calculation of "income available for dividends" are non-cash charges to income resulting from accounting changes or charges to income resulting from significant unanticipated events. The restriction also does not apply to dividends paid in order to transfer to Con Edison proceeds from major transactions, such as asset sales, or to dividends reducing each utility subsidiary's equity ratio to a level appropriate to its business risk.

In addition, no dividends may be paid, or funds set apart for payment, on Con Edison of New York common stock until all dividends accrued on the \$5 Preferred Stock and Cumulative Preferred Stock have been paid, or declared and set apart for payment.

### Long-term Debt

Long-term debt maturing in the period 2003-2007 is as follows:

*(Millions of Dollars)*

2003	\$473*
2004	163
2005	464
2006	17
2007	368

\* Includes redemption in advance of maturity of \$275 million of Con Edison of New York's Subordinated Deferrable Interest Debentures Series 1996A in January 2003.

Long-term debt includes notes issued by O&R to the New York State Energy Research and Development Authority (NYSERDA) for the net proceeds of NYSERDA's \$55 million aggregate principal amount of Series 1994A and \$44 million aggregate principal amount of Series 1995A Pollution Control Refunding Revenue Bonds. The interest rate determination method for this debt is subject to change in accordance with the related indenture, and the debt currently bears interest at a weekly rate determined by its remarketing agent. The debt is subject to optional and, in certain circumstances, mandatory tender for purchase by O&R. See "Interest Rate Hedging" in Note O.

Long-term debt is stated at cost, which, as of December 31, 2002, approximates fair value (estimated based on current rates for debt of the same remaining maturities), except for \$224.6 million of Con Edison of New York's tax-exempt financing. See "Interest Rate Hedging" in Note O.

At December 31, 2002, long-term debt includes \$23.2 million of mortgage bonds collateralized by substantially all the utility plant and other physical property of O&R's New Jersey and Pennsylvania utility subsidiaries, and \$148.8 million of debt of a Con Edison Development subsidiary collateralized by a pledge of a power plant, a related power purchase agreement and project assets. At December 31, 2002, restricted cash was \$14.6 million relating to this project.

### Significant Debt Covenants

There are no significant debt covenants, other than obligations to pay principal and interest when due and covenants not to consolidate with or merge into any other corporation unless certain conditions are met, and no cross default provisions, under the financing arrangements for the debentures of Con Edison, Con Edison of New York or O&R. The tax-exempt financing arrangements of Con Edison of New York and O&R are subject to these covenants and the covenants discussed below.

The tax-exempt financing arrangements involved the issuance of uncollateralized promissory notes of Con Edison of New York and O&R to NYSERDA in exchange for the net proceeds of a like amount of tax-exempt bonds with substantially the same terms sold to the public by NYSERDA.

The tax-exempt financing arrangements include covenants with respect to the tax-exempt status of the financing, including covenants with respect to the use of the facilities financed. The failure to comply with these covenants would, except as otherwise provided, constitute an event of default with respect to the debt to which such provisions applied. Certain series of Con Edison of New York's tax-exempt financing (Series 1993A, B and C, Series 1994A and Series 1995A), aggregating \$476.8 million, each contain as events of default a default in the payment of the other series and events of default under the company's mortgage trust indenture (which has been satisfied and discharged). The arrangements for the other series of Con Edison of New York's tax-exempt financing (Series 1999A, 2001A and 2001B), aggregating \$615.3 million, and O&R's tax-exempt financing (Series 1994A and Series 1995A), aggregating \$99.0 million, include provisions for the maintenance of liquidity and credit facilities, the failure to comply with which would, except as otherwise provided, constitute an event of default with respect to the debt to which such provisions applied. If an event of default occurred, the principal and accrued interest on the debt to which such event of default applied may and, in certain circumstances would, become due and payable immediately.

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The liquidity and credit facilities currently in effect for the tax-exempt financing include covenants that the ratio of debt to total capital of the company does not at any time exceed 0.65 to 1 and that, subject to certain exceptions, the company shall not mortgage, lien, pledge or otherwise encumber its assets. Certain of the facilities also include as events of default, defaults in payments of other debt obligations in excess of specified levels (\$100 million for Con Edison of New York; \$12.5 million for O&R).

#### Note C - Short Term Borrowing

At December 31, 2002, Con Edison and its utility subsidiaries had commercial paper programs under which short-term borrowings are made at prevailing market rates, totaling \$950 million. These programs are supported by revolving credit agreements with banks. At December 31, 2002, \$149.5 million, at a weighted average interest rate of 1.2 percent, was outstanding under Con Edison's \$350 million program; no commercial paper was outstanding under Con Edison of New York's \$500 million program; and \$1 million, at a weighted average interest rate of 1.3 percent, was outstanding under O&R's \$100 million program. Con Edison of New York changes the amount of its program from time to time, subject to a \$1 billion FERC-authorized limit.

Bank commitments under the revolving credit agreements total \$950 million, of which \$775 million was renewed in November 2002. The commitments may terminate upon a change of control of Con Edison, and borrowings under the agreements are subject to certain conditions, including that the ratio (calculated in accordance with the agreements) of debt to total capital of the borrower not at any time exceed 0.65 to 1. At December 31, 2002, this ratio was 0.54 to 1 for Con Edison, 0.53 to 1 for Con Edison of New York and 0.49 to 1 for O&R. Borrowings under the agreements are not subject to maintenance of credit rating levels. The fees charged for the revolving credit facilities and borrowings under the agreements reflect the credit ratings of the respective companies.

During 2002, Con Edison borrowed funds on a short-term basis from an affiliate of the lessor of the Newington Project. See Note S. The average daily outstanding amount was \$28.9 million at an average interest rate of 4.2 percent. At December 31, 2002, \$11.1 million was outstanding at an interest rate of 4.2 percent.

#### Note D - Pension Benefits

Con Edison maintains a tax-qualified, non-contributory pension plan that covers substantially all employees of Con Edison of New York and O&R and certain employees of other Con Edison subsidiaries. The plan is designed to comply with the Internal Revenue Code and the Employee Retirement Income Security Act of 1974.

Investment gains and losses are fully recognized in expense over a 15-year period. Other actuarial gains and losses are fully recognized in expense over a 10-year period. This amortization is in accordance with the Statement of Policy issued by the New York State Public Service Commission (PSC) and is permitted under SFAS No. 87, "Employers' Accounting for Pensions," which provides a "corridor method" for moderating the effect of investment gains and losses on pension expense, or alternatively, allows for any systematic method of amortization of unrecognized gains and losses that is faster than the corridor method and is applied consistently to both gains and losses.

Consistent with the provisions of SFAS No. 71, O&R defers for future recovery any difference between expenses recognized under SFAS No. 87 and the current rate allowance authorized by each regulatory jurisdiction in which it operates.

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The components of Con Edison of New York and O&R's net periodic benefit costs for 2002, 2001 and 2000 were as follows:

	2002	2001	2000
	(Millions of Dollars)		
Service cost - including administrative expenses	\$ 93.9	\$ 95.3	\$ 90.0
Interest cost on projected benefit obligation	440.1	425.2	408.7
Expected return on plan assets	(685.5)	(657.4)	(565.7)
Amortization of net actuarial (gain)	(173.2)	(193.9)	(186.1)
Amortization of prior service cost	14.1	13.6	10.5
Amortization of transition (asset)/obligation	(0.6)	3.0	3.0
<b>NET PERIODIC BENEFIT COST</b>	<b>(311.2)</b>	<b>(314.2)</b>	<b>(239.6)</b>
Amortization of regulatory asset*	4.2	4.2	17.7
<b>TOTAL PERIODIC BENEFIT COST</b>	<b>\$ (307.0)</b>	<b>\$ (310.0)</b>	<b>\$ (221.9)</b>



Cost capitalized		(51.2)	(61.4)	(41.4)
Cost charged to operating expenses	\$	(255.8)	\$ (248.6)	\$ (180.5)

\* Relates to increases in Con Edison of New York's pension obligations of \$33.3 million from a 1993 special retirement program and \$45 million from a 1999 special retirement program.

The funded status at December 31, 2002, 2001 and 2000 was as follows:

	2002	2001	2000
<i>(Millions of Dollars)</i>			
<b>CHANGE IN BENEFIT OBLIGATION</b>			
Projected benefit obligation at beginning of year	\$ 5,904.3	\$ 5,630.4	\$ 5,241.6
Service cost - excluding administrative expenses	92.2	93.6	88.7
Interest cost on projected benefit obligation	440.1	425.2	408.7
Plan amendments	-	9.8	37.7
Net actuarial loss	299.0	30.4	128.5
Benefits paid	(302.0)	(285.1)	(274.8)
<b>PROJECTED BENEFIT OBLIGATION AT END OF YEAR</b>	<b>\$ 6,433.6</b>	<b>\$ 5,904.3</b>	<b>\$ 5,630.4</b>
<b>CHANGE IN PLAN ASSETS</b>			
Fair value of plan assets at beginning of year	\$ 6,633.7	\$ 7,347.5	\$ 7,720.1
Actual return on plan assets	(553.1)	(406.6)	(84.7)
Employer contributions	3.9	3.7	4.7
Benefits paid	(302.0)	(285.1)	(274.8)
Administrative expenses	(22.8)	(25.8)	(17.8)
<b>FAIR VALUE OF PLAN ASSETS AT END OF YEAR</b>	<b>\$ 5,759.7</b>	<b>\$ 6,633.7</b>	<b>\$ 7,347.5</b>
Funded status	\$ (673.9)**	\$ 729.4	\$ 1,717.1
Unrecognized net loss/(gain)	1,547.7	(184.2)	(1,496.8)
Unrecognized prior service costs	81.8	95.9	99.8
Unrecognized net transition (asset)/liability at January 1, 1987*	-	(0.6)	2.4
<b>NET PREPAID BENEFIT COST</b>	<b>\$ 955.6</b>	<b>\$ 640.5</b>	<b>\$ 322.5</b>

\* Being amortized over approximately 15 years.

\*\* As of December 31, 2002, the fair value of plan assets exceeded the accumulated benefit obligation (ABO) by \$104 million. The ABO excludes future compensation increases.

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The amounts recognized in the consolidated balance sheet at December 31, 2002 and 2001 were as follows:

	2002	2001
<i>(Millions of Dollars)</i>		
Accrued pension credits - Con Edison of New York	\$ 1,024.2	\$ 697.8
Accrued benefit cost - O&R	(57.5)	(43.9)
Additional minimum pension liability	(12.2)	(6.3)
Intangible asset	0.2	0.6
Accumulated other comprehensive income	12.0	5.7
1993 special retirement program	(11.1)	(13.4)
<b>Net prepaid benefit cost</b>	<b>\$ 955.6</b>	<b>\$ 640.5</b>

The actuarial assumptions for Con Edison of New York and O&R at December 31, 2002, 2001 and 2000 were as follows:

	2002	2001	2000
Discount Rate	6.75%	7.50%	7.75%
Expected Return on Plan Assets	9.20%	9.20%	8.50%

Rate of Compensation Increase - Con Edison	4.30%	4.30%	4.55%
Rate of Compensation Increase - O&R	4.15%	4.15%	4.40%

Con Edison also offers a defined contribution savings plan that covers substantially all employees and made contributions to the plan of \$16.8 million, \$16.7 million and \$16.4 million for years 2002, 2001 and 2000, respectively.

#### Note E - Other Postretirement Benefits

Con Edison of New York and O&R have contributory comprehensive hospital, medical and prescription drug programs for all retirees, their dependents and surviving spouses.

Con Edison of New York also has a contributory life insurance program for bargaining unit employees and provides basic life insurance benefits up to a specified maximum at no cost to retired management employees. O&R has a non-contributory life insurance program for retirees.

Certain employees of other Con Edison subsidiaries are eligible to receive benefits under these programs. The company has reserved the right to amend or terminate these programs.

Investment plan gains and losses are fully recognized in expense over a 15-year period for Con Edison of New York and O&R. Other actuarial gains and losses are fully recognized in expense over a 10-year period.

For O&R, plan assets are used to pay benefits and expenses for participants who retired on or after January 1, 1995. O&R pays benefits for other participants who retired prior to January 1, 1995. Plan assets include amounts owed by the trust to O&R of \$0.8 million in 2002, \$0.3 million in 2001, \$2.2 million in 2000.

Consistent with the provisions of SFAS No. 71, O&R defers for future recovery any difference between expenses recognized under SFAS No. 106, "Employers' Accounting for Postretirement Benefits Other

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Than Pensions," and the current rate allowance authorized by each regulatory jurisdiction in which it operates.

The components of Con Edison of New York and O&R's net periodic postretirement benefit costs for 2002, 2001 and 2000 were as follows:

	2002	2001	2000
	(Millions of Dollars)		
Service cost	\$ 10.0	\$ 12.2	\$ 10.7
Interest cost on accumulated postretirement benefit obligation	87.7	88.4	78.8
Expected return on plan assets	(79.7)	(73.8)	(62.3)
Amortization of net actuarial loss	24.2	10.2	1.2
Amortization of prior service cost	(0.1)	1.4	1.4
Amortization of transition obligation	5.0	17.4	17.4
<b>NET PERIODIC POSTRETIREMENT BENEFIT COST</b>	<b>\$ 47.1</b>	<b>\$ 55.8</b>	<b>\$ 47.2</b>
Cost capitalized/deferred	13.8	13.2	10.3
Cost charged to operating expenses	33.3	42.6	36.9

The funded status of the programs at December 31, 2002, 2001 and 2000 was as follows:

	2002	2001	2000
	(Millions of Dollars)		
<b>CHANGE IN BENEFIT OBLIGATION</b>			
Benefit obligation at beginning of year	\$ 1,351.1	\$ 1,169.8	\$ 1,012.5
Service cost	10.0	12.2	10.7
Interest cost on accumulated postretirement benefit obligation	87.7	88.4	78.8
Plan amendments	(305.6)	-	(0.4)
Net actuarial loss	177.6	148.7	127.6
Benefits paid and administrative expenses	(89.1)	(82.0)	(71.4)
Participant contributions	15.7	14.0	12.0
<b>BENEFIT OBLIGATION AT END OF YEAR</b>	<b>\$ 1,247.4</b>	<b>\$ 1,351.1</b>	<b>\$ 1,169.8</b>
<b>CHANGE IN PLAN ASSETS</b>			
Fair value of plan assets at beginning of year	\$ 804.2	\$ 844.1	\$ 872.3
Actual return on plan assets	(61.3)	(29.3)	4.4

Employer contributions	44.9	55.9	23.5
Participant contributions	15.6	13.9	11.9
Benefits paid	(81.9)	(75.5)	(62.9)
Administrative expenses	(4.5)	(4.9)	(5.1)
<b>FAIR VALUE OF PLAN ASSETS AT END OF YEAR</b>	<b>\$ 717.0</b>	<b>\$ 804.2</b>	<b>\$ 844.1</b>
Funded status	\$ (530.4)	\$ (546.9)	\$ (325.7)
Unrecognized net (gain)/loss	505.5	210.9	(32.1)
Unrecognized prior service costs	(147.9)	8.0	9.4
Unrecognized transition obligation at January 1, 1993*	36.7	191.4	208.8
<b>ACCRUED POSTRETIREMENT BENEFIT COST</b>	<b>\$ (136.1)</b>	<b>\$ (136.6)</b>	<b>\$ (139.6)</b>

\* Being amortized over a period of 20 years and reduced by an additional amount in 2002 due to plan amendments.

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The actuarial assumptions for Con Edison of New York and O&R at December 31, 2002, 2001 and 2000 were as follows:

	2002	2001	2000
Discount rate	6.75%	7.50%	7.75%
<b>EXPECTED RETURN ON PLAN ASSETS</b>			
Tax-exempt assets	9.20%	9.20%	8.50%
Taxable assets:			
Con Edison of New York	8.20%	8.20%	7.50%
O&R	8.70%	8.70%	8.00%

The health care cost trend rate assumed for 2003 is 9.0 percent. The rate is assumed to decrease gradually to 4.75 percent for 2009 and remain at that level thereafter.

A one-percentage point change in the assumed health care cost trend rate would have the following effects:

	1-Percentage-Point Increase	1-Percentage-Point Decrease
<i>(Millions of Dollars)</i>		
Effect on accumulated postretirement benefit obligation	\$ 129.0	\$ (114.7)
Effect on service cost and interest cost components	\$ 11.8	\$ (10.3)

#### Note F - Environmental Matters

Hazardous substances, such as asbestos, polychlorinated biphenyls (PCBs) and coal tar, have been used or generated in the course of operations of Con Edison's utility subsidiaries and are present in facilities and equipment currently or previously owned by the utility subsidiaries.

The Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund) and similar state statutes impose joint and several strict liabilities, regardless of fault, upon generators of hazardous substances for resulting removal and remediation costs and environmental damages. Liabilities under these laws can be material and in some instances may be imposed without regard to fault, or may be imposed for past acts, even though such past acts may have been lawful at the time they occurred.

The environmental remediation costs for the sites at which Con Edison's utility subsidiaries have been asserted to have liability for remediation under Superfund or similar state statutes, including their manufactured gas sites, (Superfund Sites) include investigation, demolition, removal, disposal, storage, replacement, containment and monitoring costs.

For sites where there are other potentially responsible parties and the utility subsidiaries are not managing the site investigation and remediation, the liability accrued represents the company's estimate of what it will need to pay to settle its obligations with respect to the site. For other sites, the liability accrued represents the company's estimate of its investigation and remediation costs for the site. In either case, the company makes its estimate of its undiscounted liability for each site in light of the applicable remediation standards, experience with similar sites, the information it has available to it at the time

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about the site and site-specific assumptions about such matters as the extent of contamination and remediation and monitoring methods to be used.

For the cleanup of coal tar and/or other manufactured gas plant-related environmental contaminants at the manufactured gas sites, estimates of the aggregate undiscounted potential liability for the cleanup of coal tar and/or other manufactured gas plant-related environmental contaminants range from approximately

\$90 million to \$1.2 billion. To develop these estimates, the assumption was made that there is contamination at the sites where investigation has not yet been started or completed. Additional assumptions were made as to the extent of contamination, the level of cleanup required and the type and extent of remediation that will be required. Actual experience may be materially different from these assumptions.

At December 31, 2002, Con Edison had accrued \$142.8 million as its estimate of its undiscounted liability for Superfund Sites, including approximately \$110 million relating to manufactured gas sites. Most of the accrued liability relates to Superfund Sites where contamination has been detected and investigated in whole or in part. There will be additional liability relating to the Superfund Sites and other sites, the amount of which is not presently determinable but may be material to Con Edison's financial position, results of operations or liquidity.

In 2002, Con Edison's utility subsidiaries incurred \$23.1 million for environmental remediation costs, and received an insurance recovery of \$7.2 million related to Superfund Sites.

Con Edison's utility subsidiaries are permitted under current rate agreements to defer certain site investigation and remediation costs for subsequent recovery through rates. At December 31, 2002, \$83.1 million of such costs had been deferred as a regulatory asset.

Suits have been brought in New York State and federal courts against Con Edison's utility subsidiaries and many other defendants, wherein a large number of plaintiffs sought large amounts of compensatory and punitive damages for deaths and injuries allegedly caused by exposure to asbestos at various premises of the utility subsidiaries. The suits that have been resolved, which are many, have been resolved without any payment by the utility subsidiaries, or for amounts that were not, in the aggregate, material to the company. The amounts specified in all the remaining thousands of suits total billions of dollars but Con Edison believes that these amounts are greatly exaggerated, as experienced through the disposition of previous claims. Based upon a combination of modeling, historical data analysis and risk factor assessment, Con Edison of New York's undiscounted potential liability over the next 50 years is estimated to range between \$37.7 million and \$162.1 million for these suits and additional such suits that may be brought (with no amount within the range considered more reasonable than any other). At December 31, 2002, Con Edison had accrued a \$37.7 million provision for these suits, and a like amount had been deferred as a regulatory asset in accordance with PSC authorization.

Workers' compensation administrative proceedings have been commenced, wherein current and former employees claim benefits based upon alleged disability from exposure to asbestos. Based on the information and relevant circumstances known to Con Edison at this time, these claims are not expected to have

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a material adverse effect on Con Edison's financial position, results of operations or liquidity. At December 31, 2002, the company had accrued a \$130.5 million provision as its estimate of the utility subsidiaries' liability for workers' compensation claims, including those related to asbestos exposure. Of this amount \$55.9 million was deferred as a regulatory asset in accordance with PSC authorization.

In May 2000, the New York State Department of Environmental Conservation issued notices of violation to O&R and four other companies that have operated coal-fired electric generating facilities in New York State. The notices allege violations of the Federal Clean Air Act and the New York State Environmental Conservation Law resulting from the alleged failure to install pollution control equipment that would have reduced emissions of certain chemicals deemed potentially hazardous. The notice of violations received by O&R relates to the Lovett Generating Station that it sold in June 1999. O&R is unable to predict whether or not alleged violations will have a material adverse effect on its financial position, results of operations or liquidity.

#### **Note G - Nuclear Generation**

In September 2001, Con Edison of New York completed the sale of its nuclear generating facilities. See Note I.

The PSC is investigating a February 2000 to January 2001 outage of the nuclear generating unit, its causes and the prudence of Con Edison of New York's actions regarding the operation and maintenance of the generating unit. The proceeding covers, among other things, Con Edison of New York's inspection practices, the circumstances surrounding prior outages, the basis for postponement of the unit's steam generator replacement and whether, and to what extent, increased replacement power costs and repair and replacement costs should be borne by Con Edison's shareholders.

Con Edison of New York has not billed to customers \$90 million of replacement power costs incurred during the outage. In addition, in 2000, Con Edison of New York accrued a \$40 million liability for the possible disallowance of replacement power costs that it had previously recovered from customers.

Con Edison of New York is unable to predict whether or not any proceedings, lawsuits, legislation or other actions relating to the nuclear generating unit will have a material adverse effect on its financial position, results of operations or liquidity.

#### **Note H - Non-utility Generators**

Con Edison's utility subsidiaries have long-term contracts with non-utility generators (NUGs) for approximately 3,100 MW of electric generating capacity. Assuming performance by the NUGs, the utility subsidiaries are obligated over the terms of the contracts (which extend for various periods, up to 2036) to make capacity and other fixed payments.

For the years 2003 through 2007, the capacity and other fixed payments under the contracts are estimated to be \$543 million, \$547 million, \$529 million, \$526 million and \$535 million. Such payments gradually increase to approximately \$600 million in 2013, and thereafter decline significantly. For energy delivered under most of these contracts, the utility subsidiaries are obligated to pay variable prices that are estimated to be lower overall than expected market levels.

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The NUG contracts include firm contracts for capacity (commitment ends 2005) and energy (commitment ends 2004) from the approximately 1,000 MW nuclear generating unit that Con Edison of New York sold in 2001. For energy from the unit, Con Edison of New York is obligated to pay an average annual price of 3.9 cents per kWh. From time to time, certain parties have petitioned governmental authorities to shut down the nuclear generating unit. In the event that government



The future minimum lease commitments for the above assets are as follows:

(Millions of Dollars)

2003	\$	7.8
2004		7.5
2005		7.3
2006		7.2
2007		7.1
All years thereafter		35.1
<b>Total</b>	<b>\$</b>	<b>72.0</b>
Less: amount representing interest		30.9
<b>Present value of net minimum lease payments</b>	<b>\$</b>	<b>41.1</b>

In November 2000, a Con Edison Development subsidiary entered into an operating lease arrangement with a limited partnership (Lessor) to finance construction of a 525 MW gas-fired electric generating facility in Newington, New Hampshire (Newington Project). See Note S.

Operating leases: The future minimum lease commitments under Con Edison's non-cancelable operating lease agreements, excluding the Newington Project, are as follows:

(Millions of Dollars)

2003	\$	45.6
2004		46.8
2005		15.5
2006		12.9
2007		8.6
All years thereafter		39.1
<b>Total</b>	<b>\$</b>	<b>168.5</b>

As part of a broad initiative, the Internal Revenue Service is reviewing certain categories of transactions. Among these are transactions in which a taxpayer leases property and then immediately subleases it back to the lessor (termed "Lease In/Lease Out," or LILO transactions). In 1997 and 1999, Con Edison's unregulated subsidiaries invested \$93 million in two LILO transactions, involving gas distribution and electric generating facilities in the Netherlands, which represented approximately 36 percent of the purchase price; the remaining 64 percent or \$166 million was furnished by third-party financing in the form of long-term debt that provides no recourse against the subsidiaries and is primarily secured by the assets, except for guarantees of up to \$10 million of the debt. Approximately half of these guarantees expired prior to December 31, 2002 and the other half will expire at the end of May 2004. At December 31, 2002, the company's investment (\$187 million) in these leveraged leases net of deferred tax liabilities (\$117 million) amounted to \$70 million, which was included at cost on Con Edison's consolidated balance sheet. On audit, the Internal Revenue Service has proposed that the tax losses recognized in connection with the 1997 LILO transaction be disallowed. Con Edison believes its position is correct and is currently appealing the auditors' proposal within the Internal Revenue Service. The estimated total tax savings from the two LILO transactions during the tax years 1997 through 2002, in the aggregate, was \$82 million.

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## Note K - Goodwill and Intangible Assets

On January 1, 2002, Con Edison adopted SFAS No. 142, "Goodwill and Other Intangible Assets." SFAS No. 142 provides that goodwill (i.e., the excess of cost over fair value of the net assets of a business acquired) and intangible assets with indefinite useful lives will no longer be amortized, but instead be tested for impairment at least annually. Other intangible assets will continue to be amortized over their finite useful lives. The goodwill impairment test is a two-step process. The first step identifies potential impairment by comparing the estimated fair value of a reporting unit to its carrying amount, including goodwill. If the fair value is less than the carrying amount, the second step of the impairment test is performed. The second step compares the implied fair value of goodwill, determined in the same manner as the amount of goodwill recognized in a business combination under SFAS No. 141, "Business Combinations," to its carrying amount to determine the amount of the impairment loss, if any.

Con Edison completed its initial goodwill impairment test and recorded a loss of \$34.1 million (\$20.2 million after-tax) as an offset to goodwill recorded in Con Edison's "Unregulated Subsidiaries and Other" business segment relating to certain generation assets owned by Con Edison Development. The fair values of the reporting units were estimated using the expected present value of future cash flows. The impairment loss reflects changes in forecast market prices of energy and capacity and in risk-adjusted discount rates. The impairment loss is recognized net of taxes as a cumulative effect of a change in accounting principle at January 1, 2002.

The change in the carrying amount of goodwill at December 31, 2002 is as follows:

(Millions of Dollars)

Balance at the beginning of the period (January 1, 2002)	\$	439.9
Impairment loss recognized		(34.1)
Balance at the end of the period (December 31, 2002)	\$	405.8

Had Con Edison been accounting for goodwill under SFAS No. 142 for all periods presented, its income and earnings per share would have been as follows:

For the years ended December 31,

2002 2001 2000

(Millions of Dollars)

Net income for common stock			
As reported	\$	646.0	\$ 582.8
Add back: goodwill amortization (net of tax)		-	11.0 11.9
Adjusted	\$	646.0	\$ 693.2 594.7
Basic earnings per share			
As reported	\$	3.03	\$ 3.22 2.75
Add back: goodwill amortization (net of tax)		-	.05 .06
Adjusted	\$	3.03	\$ 3.27 2.81
Diluted earnings per share			
As reported	\$	3.02	\$ 3.21 2.74
Add back: goodwill amortization (net of tax)		-	.05 .06
Adjusted	\$	3.02	\$ 3.26 2.80

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In July 1999, Con Edison acquired O&R and accounted for the acquisition under the purchase method of accounting in accordance with generally accepted accounting principles. Con Edison recorded in its consolidated financial statements goodwill in the amount of \$437 million and began the amortization of goodwill to income over a 40-year period. Upon adoption of SFAS No. 142 in January 2002, Con Edison discontinued the amortization of goodwill. The unamortized goodwill of \$405.8 million was tested for impairment and determined not to be impaired.

Con Edison's finite life intangible asset relates to a power purchase agreement of an unregulated subsidiary and is being amortized on a straight-line basis over an approximately 25-year contract period. At December 31, 2002, the gross carrying amount and accumulated amortization were \$91.7 million and \$9.7 million, respectively. Amortization expense was \$3.8 million at December 31, 2002 and is estimated to remain at \$3.8 million per year from 2003 to 2007.

#### Note L - Income Tax

The components of income tax are as follows:

For the Years Ended December 31,

2002 2001 2000

(Thousands of Dollars)

Charge/(benefit) to operations:			
State			
Current	\$	(2,876)	\$ 69,259 28,941
Deferred - net		96,531	78,988 -
Federal			
Current		93,469	380,509 103,670
Deferred - net		217,192	(57,089) 193,257
Amortization of investment tax credit		(6,244)	(7,135) (8,078)

TOTAL CHARGE TO OPERATIONS	398,072	464,532	317,790
Charge/(benefit) to other income:			
State			
Current	(2,819)	(4,102)	(5,304)
Deferred - net	(1,006)	73	-
Federal			
Current	(12,566)	(8,684)	(1,095)
Deferred - net	(1,162)	(7,045)	(3,892)
Amortization of investment tax credit	(4,127)	(2,163)	(331)
TOTAL BENEFIT TO OTHER INCOME	(21,680)	(21,921)	(10,622)
TOTAL	\$ 376,392	\$ 442,611	\$ 307,168

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The tax effect of temporary differences, which gave rise to deferred tax assets and liabilities, is as follows:

	<i>For the Years Ended December 31,</i>	
	2002	2001
	(Millions of dollars)	
<b>Liabilities:</b>		
Depreciation	\$ 1,556.2	\$ 1,348.5
Regulatory Liability - Future Federal Income Tax	667.3	659.8
Other	542.4	414.3
TOTAL LIABILITIES	2,765.9	2,422.6
<b>Assets:</b>		
Other	(190.3)	(186.4)
TOTAL ASSETS	(190.3)	(186.4)
NET LIABILITY	\$ 2,575.6	\$ 2,236.2

Reconciliation of the difference between income tax expense and the amount computed by applying the prevailing statutory income tax rate to income before income taxes is as follows:

	<i>For the Years Ended December 31,</i>		
	2002	2001	2000
	(% of Pre-tax income)		
<b>STATUTORY TAX RATE</b>			
Federal	35%	35%	35%
<b>Changes in computed taxes resulting from:</b>			
State income tax	6	9	2
Depreciation related differences	5	3	4
Cost of removal	(5)	(4)	(6)
Other	(6)	(4)	(1)
Effective Tax Rate	35%	39%	34%

#### Note M - Stock-based Compensation

Under Con Edison's Stock Option Plan (the Plan), options may be granted to officers and key employees of Con Edison and its subsidiaries for up to a total of 10 million shares of Con Edison's common stock. Generally options become exercisable three years after the grant date and remain exercisable until 10 years from the grant date.



As permitted by SFAS No. 123, Con Edison elected to follow APB No. 25 and related interpretations in accounting for its employee stock options. Under the intrinsic value method of APB No. 25, no compensation expense is recognized because the exercise price of Con Edison's employee stock options equals the market price of the underlying stock on the date of grant.

Under the plan, exercise of Con Edison's employee stock options requires payment in full of the exercise price, unless the committee of Con Edison's Board of Directors that administers the Plan determines that options may be settled by paying to the option holder the difference between the fair market value of the common stock subject to the option and the exercise price (cash settlement). In 2002, to ensure that the exercise of currently exercisable options would comply with certain technical requirements of the Sarbanes-Oxley Act of 2002 applicable to certain officers of Con Edison and its subsidiaries, the

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committee determined that 1996 and 1997 stock options covering 295,500 shares of common stock held by those officers may be settled by the cash settlement method. A \$3.8 million charge to expense was recognized for Con Edison in 2002 for these options. Additional changes to expense will be recognized with respect to these options to the extent the fair market value of the common shares changes in future periods.

Disclosure of pro forma information regarding net income and earnings per share is required by SFAS No. 123 and SFAS No. 148, "Accounting for Stock Based Compensation, Transition and Disclosures." See "Stock-Based Compensation" in Note A for an illustration of the effect on net income and earnings per share if Con Edison had applied the fair value recognition provisions of SFAS No. 123 to its stock-based employee compensation. The fair values of 2002, 2001 and 2000 options are \$6.37, \$5.23 and \$4.42 per share, respectively. These values were estimated at the date of grant using the Black-Scholes option pricing model with the following weighted-average assumptions:

	<i>2002</i>	<i>2001</i>	<i>2000</i>
Risk-free interest rate	5.08%	5.22%	6.25%
Expected lives - in years	6	8	8
Expected stock volatility	21.43%	21.32%	20.51%
Dividend yield	5.22%	5.83%	6.60%

A summary of changes in the status of stock options awarded to officers and employees of Con Edison as of December 31, 2002, 2001 and 2000 is as follows:

	<i>Shares</i>	<i>Weighted Average Price</i>
Outstanding at 12/31/99	3,556,210	\$ 39.607
Granted	1,349,500	32.499
Exercised	(68,697)	29.732
Forfeited	(46,100)	39.231
Outstanding at 12/31/00	4,790,913	37.749
Granted	1,487,050	37.758
Exercised	(363,013)	29.740
Forfeited	(160,300)	41.333
Outstanding at 12/31/01	5,754,650	38.157
Granted	1,584,350	42.510
Exercised	(413,899)	30.813
Forfeited	(127,450)	44.103
Outstanding at 12/31/02	6,797,651	\$ 39.506

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The following summarizes the Plan's stock options outstanding at December 31, 2002 for each plan year:

<i>Plan Year</i>	<i>Weighted Average Exercise Price</i>	<i>Shares Outstanding At 12/31/02</i>	<i>Remaining Contractual Life</i>
2002	\$ 42.510	1,581,850	9 years
2001	37.758	1,474,050	8 years
2000	32.499	1,283,750	7 years
1999	47.876	1,149,900	6 years
1998	42.609	747,450	5 years
1997	31.500	395,526	4 years
1996	27.875	165,125	3 years

As of December 31, 2002, 2001 and 2000 there were vested options outstanding to purchase 1,308,101, 939,850 and 1,304,863 shares of common stock, respectively, at an exercise price below the closing market price on that day. The weighted average exercise prices were \$37.36, \$30.11 and \$31.50, respectively.

As of December 31, 2002, 2001 and 2000 the total number of vested options outstanding were 2,458,001, 1,765,200 and 1,304,863 with weighted average exercise prices of \$42.28, \$35.95 and \$31.50, respectively.

Pursuant to employment agreements, effective September 2000, certain senior officers of Con Edison and its subsidiaries were granted an aggregate of 350,000 restricted stock units, subject to the officers meeting the terms and conditions of the agreements. In June 2002, an additional 150,000 restricted stock units were granted to certain senior officers of Con Edison and its subsidiaries under similar terms. The units, each of which represents the right to receive one share of Con Edison common stock and related dividends, vest ratably through August 2005 or immediately upon the occurrence of certain events. Pursuant to APB No. 25, Con Edison is recognizing compensation expense and accruing a liability for the units over the vesting period. The expense recognized for restricted stock during 2002, 2001 and 2000 was \$4.4 million, \$3.1 million and \$0.9 million, respectively.

In June 2002, Con Edison terminated its Directors' Retirement Plan applicable to non-officer directors (the termination is not applicable to directors who had previously retired from the board) and adopted a deferred stock compensation plan for these directors. Under the plan, directors were granted stock units for accrued service. Pursuant to APB No. 25, Con Edison recognizes compensation expense and accrues a liability for the units. An expense of \$2.4 million was recorded in 2002.

#### Note N - Financial Information By Business Segment

Con Edison's business segments were determined based on similarities in economic characteristics, the regulatory environment, and management's reporting requirements. Con Edison's principal business segments are:

- Regulated Electric - consists of regulated activities of Con Edison of New York and O&R relating to the generation, transmission, distribution and sale of electricity in New York, New Jersey and Pennsylvania.

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- Regulated Gas - consists of regulated activities of Con Edison of New York and O&R relating to the transportation, storage, distribution and sale of natural gas in New York and Pennsylvania.
- Regulated Steam - consists of regulated activities of Con Edison of New York relating to the generation, distribution and sale of steam in New York.
- Unregulated Subsidiaries - represents the operations of the subsidiaries that participate in the competitive electric and gas supply, energy infrastructure, energy-related products and services and telecommunications businesses.
- Other - - includes the operations of the parent company, Con Edison, and consolidation adjustments.

All revenues of Con Edison's business segments, excluding revenues earned by Con Edison Development on certain energy infrastructure projects, which are deemed to be immaterial, are from customers located in the United States of America. Also, all assets of its business segments, excluding certain investments in energy infrastructure projects by Con Edison Development, are located in the United States of America. The accounting policies of the segments are the same as those described in the summary of significant accounting policies. See Note A.

Common services shared by the business segments are assigned directly or allocated based on various cost factors, depending on the nature of the service provided.

The financial data for business segments are as follows:

	<b>Regulated Electric</b>		
	<i>2002</i>	<i>2001</i>	<i>2000</i>
	<i>(Thousands of Dollars)</i>		
Operating revenues	\$ 6,250,896	\$ 6,887,863	\$ 6,938,128
Intersegment revenues	9,612	12,589	53,514
Depreciation and amortization	377,462	407,992	477,352
Income tax expense	317,960	382,153	239,772
Operating income	816,733	902,176	808,960
Interest charge	326,790	316,449	309,753
Changes in accounting principles	-	-	-
Total assets	13,308,802	12,193,525	12,386,304
Construction expenditures	870,590	810,821	786,211

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<b>Regulated Gas</b>		
<i>2002</i>	<i>2001</i>	<i>2000</i>

(Thousands of Dollars)

Operating revenues	\$ 1,204,033	\$ 1,465,956	\$ 1,261,970
Intersegment revenues	2,874	3,181	6,113
Depreciation and amortization	76,106	72,050	66,780
Income tax expense	65,946	73,768	64,942
Operating income	173,317	179,823	176,171
Interest charge	71,262	72,068	66,498
Changes in accounting principles	-	-	-
Total assets	2,902,813	2,711,008	2,607,624
Construction expenditures	200,981	169,739	140,702

**Regulated Steam**

2002 2001 2000

(Thousands of Dollars)

Operating revenues	\$ 404,044	\$ 503,736	\$ 452,135
Intersegment revenues	1,810	1,903	2,023
Depreciation and amortization	18,330	17,902	18,173
Income tax expense	(4,832)	5,695	2,407
Operating income	36,046	27,893	25,557
Interest charge	21,950	20,768	18,191
Changes in accounting principles	-	-	-
Total assets	977,315	746,587	686,807
Construction expenditures	82,887	64,308	32,014

**Unregulated Subsidiaries**

2002 2001 2000

(Thousands of Dollars)

Operating revenues	\$ 647,279	\$ 540,577	\$ 679,573
Intersegment revenues	-	-	-
Depreciation and amortization	22,615	17,356	13,547
Income tax expense	18,998	2,916	10,669
Operating income	33,051	29,675	18,024
Interest charge	15,556	16,863	9,652
Changes in accounting principles	22,061	-	-
Total assets	1,321,519	1,020,602	820,942
Construction expenditures	213,457	163,921	121,214

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**Other**

2002 2001 2000

(Thousands of Dollars)

Operating revenues	\$ (24,392)	\$ (9,333)	\$ (14,582)
Intersegment revenues	24,392	9,333	14,582
Depreciation and amortization	40	10,821	10,555
Income tax expense	-	-	-
Operating income	990	(12,009)	(12,576)
Interest charge	6,024	4,732	3,351
Changes in accounting principles	-	-	-
Total assets	309,861	362,733	265,568
Construction expenditures	-	-	-

**Total**

2002 2001 2000

(Thousands of Dollars)

Operating revenues	\$ 8,481,860	\$ 9,388,799	\$ 9,317,224
Intersegment revenues	38,688	27,006	76,232
Depreciation and amortization	494,553	526,121	586,407
Income tax expense	398,072	464,532	317,790

Operating income	1,060,137	1,127,558	1,016,136
Interest charge	441,582	430,880	407,445
Changes in accounting principles	22,061	-	-
Total assets	18,820,310	17,034,455	16,767,245
Construction expenditures	1,367,915	1,208,789	1,080,141

#### Note O - Derivative Instruments and Hedging Activities

Effective January 2001, Con Edison adopted SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended (SFAS No. 133). Upon adoption, Con Edison's subsidiaries recognized after-tax transition gains of \$1.7 million in other comprehensive income (OCI) and \$0.4 million in current income.

#### Energy Price Hedging

Con Edison's subsidiaries use derivative instruments to hedge market price fluctuations in related underlying transactions for the physical purchase or sale of electricity and gas (hedges). As of December 31, 2002, the fair value of the derivatives for such use was \$38.8 million, comprised of \$16.9 million at the regulated utility subsidiaries and \$21.9 million at the unregulated subsidiaries.

Con Edison's regulated utility subsidiaries, pursuant to SFAS No. 71, defer recognition in income of gains and losses on hedges until the underlying transactions are completed. In accordance with rate provisions that permit the recovery of the cost of purchased power and gas for resale, Con Edison's regulated utility subsidiaries credit or charge to their customer's gains or losses on hedges and related transaction costs. See "Recoverable Energy Costs" in Note A.

For Con Edison of New York, the 2000 Electric Rate Agreement provides that 10 percent of gains or losses on hedges flow to net income as rewards or penalties. Con Edison of New York has elected cash flow hedge accounting under SFAS No. 133 for a qualifying portion of its electric hedges. Con Edison

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Solutions, which provides competitive gas and electric supply and energy-related products and services, has also elected cash flow hedge accounting.

Pursuant to cash flow hedge accounting, except as described below, the mark-to-market unrealized gain or loss on each hedge is recorded in OCI and reclassified to income at the time the underlying transaction is completed.

Unrealized gains and losses on cash flow hedges for energy transactions, net of tax, included in accumulated OCI for the years ended December 31, 2002 and 2001 were as follows:

	2002	2001
	<i>(Millions of Dollars)</i>	
Unrealized gains/(losses) on derivatives qualified as hedges due to cumulative effect of a change in accounting principle, net of \$0 and \$1.2 taxes	\$ -	\$ 1.7
Unrealized gains/(losses) on derivatives qualified as hedges, net of \$19.1 and (\$18.8) taxes	27.5	(26.8)
Less: Reclassification adjustment for gains/(losses) included in net income, net of \$1.1 and (\$8.6) taxes	1.6	(12.4)
Unrealized gains/(losses) on derivatives qualified as hedges for the period	\$ 25.9	(\$ 12.7)

As of December 31, 2002, the cash flow hedges had a remaining term of less than two years and \$13.2 million of existing after-tax net gains relating to these hedges are expected to be reclassified from accumulated OCI to income within the next 12 months.

Under cash flow hedge accounting, any gain or loss relating to any portion of the hedge determined to be "ineffective" is recognized in income in the period in which such determination is made. As a result, changes in value of a hedge may be recognized in income in an earlier period than the period in which the underlying transaction is recognized in income. Con Edison recognized in income mark-to-market unrealized pre-tax net gains of \$6.2 million in 2002 and \$6.2 million of pre-tax net losses in 2001 relating to hedge ineffectiveness at Con Edison Solutions.

#### Interest Rate Hedging

Con Edison's subsidiaries use interest rate swaps to manage interest rate exposures associated with debt. In October 2002, Con Edison of New York entered into a swap agreement in connection with its \$224.6 million tax-exempt Facilities Revenue Bonds, Series 2001A. Pursuant to the swap agreement provisions, Con Edison of New York pays interest at a variable rate equal to the three-month London Inter-Bank Offered Rate (LIBOR) and is paid interest at a fixed rate of 5.375 percent. The agreement has a term of 10 years and is callable at par after three years. The swap is designated as a fair value hedge and qualifies for "short-cut" hedge accounting under SFAS No. 133. Under this method, changes in the fair value of the swap instrument are recorded directly against the carrying value of the hedged bonds and have no impact on earnings. As of December 31, 2002, the fair value of the interest rate swap was \$7.7 million and recorded as an asset and the fair value of the hedged bonds was \$232.3 million.

O&R and Con Edison Development use interest rate swaps to convert a portion of their variable-rate debt into fixed-rate debt. The swap agreements, displayed in the table below, are designated as cash flow

hedged under SFAS No. 133. Any gain or loss on the hedges is recorded in OCI and reclassified to interest expense and included in earnings during the periods in which the hedged interest payments occur. At December 31, 2002 and 2001, the fair value of the O&R interest rate swap was a loss of \$19.1 million and \$14.2 million, respectively, and the fair value of the Con Edison Development interest rate swap was a loss of \$9.7 million and \$5.7 million, respectively.

The contractual components of the interest rate swaps accounted for as cash flow hedges are as follows:

<i>Debt</i>	<i>Maturity Date of Swaps</i>	<i>Notional Amount (\$000)</i>	<i>Fixed Rate Paid</i>	<i>Variable Rate Received</i>
Pollution Control Refunding Revenue Bond, 1994 Series A	2014	55,000	6.09%	Current bond rate
Variable rate loans - Lakewood	2008	77,500	6.68%	LIBOR

Unrealized gains and losses on cash flow hedges for interest rate swaps, net of tax, included in accumulated OCI for the years ended December 31, 2002 and 2001 were as follows:

	<u>2002</u>	<u>2001</u>
Unrealized gains/(losses) on derivatives qualified as hedges due to cumulative effect of a change in accounting principle, net of \$0 and (\$6.8) taxes	\$ -	(\$ 9.7)
Unrealized gains/(losses) on derivatives qualified as hedges, net of (\$6.4) and (\$3.1) taxes	(9.1)	(4.4)
Less: Reclassification adjustment for gains/(losses) included in net income, net of (\$2.8) and (\$1.7) taxes	(3.9)	(2.4)
Unrealized gains/(losses) on derivatives qualified as hedges for the period	<u>(\$ 5.2)</u>	<u>(\$ 11.7)</u>

As of December 31, 2002, \$3.5 million of existing after-tax losses relating to the interest rate swap agreements are expected to be reclassified from accumulated OCI to income within the next 12 months.

#### **Energy Trading Activities**

Unregulated subsidiaries of Con Edison engage in energy trading activities that are accounted for at fair value. Con Edison Energy utilizes commodity contracts such as two-party forward contracts for the purchase or sale of electricity and capacity, over-the-counter swap contracts, exchange-traded natural gas and crude oil futures and options, transmission congestion contracts, natural gas transportation contracts, and other physical and financial contracts.

Prior to October 1, 2002, these contracts were accounted for under FASB's Emerging Issues Task Force (EITF) No. 98-10, "Accounting for Contracts Involved in Energy Trading and Risk Management Activities." As of October 1, 2002, energy and energy-related trading contracts that meet the definition of derivatives are accounted for under SFAS No. 133. Such contracts are marked to market, with gains and losses recognized in earnings. For the years ended December 31, 2002 and 2001, Con Edison recognized in income net unrealized pre-tax losses of \$1.4 million, excluding the effect of a cumulative adjustment due to a change in accounting principle, and net gains of \$9.6 million, respectively. Contracts that did not fall within the scope of SFAS No. 133 were included in the cumulative effect of a change in accounting principle. See Note T for further discussion.

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The fair value of energy trading net assets as of December 31, 2002 and 2001 was \$4.9 million and \$11.2 million, respectively.

#### **Note P - Northeast Utilities**

In March 2001, Con Edison commenced an action in the United States District Court for the Southern District of New York, entitled Consolidated Edison, Inc. v. Northeast Utilities, seeking a declaratory judgment that Northeast Utilities has failed to meet certain conditions precedent to Con Edison's obligation to complete its acquisition of Northeast Utilities pursuant to their agreement and plan of merger, dated as of October 13, 1999, as amended and restated as of January 11, 2000 (the merger agreement). In May 2001, Con Edison amended its complaint. As amended, Con Edison's complaint seeks, among other things, recovery of damages sustained by it as a result of the material breach of the merger agreement by Northeast Utilities, the court's declaration that under the merger agreement Con Edison has no further or continuing obligations to Northeast Utilities and that Northeast Utilities has no further or continuing rights against Con Edison.

In June 2001, Northeast Utilities withdrew the separate action it commenced in March 2001 in the same court and filed as a counter-claim to Con Edison's amended complaint its claim that Con Edison materially breached the merger agreement and that, as a result, Northeast Utilities and its shareholders have suffered substantial damages, including the difference between the consideration to be paid to Northeast Utilities shareholders pursuant to the merger agreement and the market value of Northeast Utilities common stock, expenditures in connection with regulatory approvals and lost business opportunities. Pursuant to the merger agreement, Con Edison agreed to acquire Northeast Utilities for \$26.00 per share (an estimated aggregate of not more than \$3.9 billion) plus \$0.0034 per share for each day after August 5, 2000 through the day prior to the completion of the transaction, payable 50 percent in cash and 50 percent in stock.

Con Edison believes that Northeast Utilities has materially breached the merger agreement, and that Con Edison has not materially breached the merger agreement. Con Edison believes it is not obligated to acquire Northeast Utilities because Northeast Utilities does not meet the merger agreement's conditions that Northeast Utilities perform all of its obligations under the merger agreement. Those obligations include the obligation that it carry on its businesses in the ordinary course consistent with past practice; that the representations and warranties made by it in the merger agreement were true and correct when made and remain true and correct; and that there be no material adverse change with respect to Northeast Utilities.

Both parties have filed motions for summary judgment. Con Edison is unable to predict whether or not any Northeast Utilities related lawsuits or other actions will have a material adverse effect on Con Edison's financial position, results of operations or liquidity.

#### Note Q - World Trade Center Attack

Con Edison of New York estimates that it will incur \$430 million of costs for emergency response, temporary restoration and permanent replacement of electric, gas and steam transmission and distribution facilities damaged as a result of the September 11, 2001 attack on the World Trade Center. Most of

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the costs are expected to be capital in nature. The company estimates that \$96 million of the costs will be covered by insurance. In December 2001, Con Edison of New York filed a petition with the PSC for authorization to defer these costs, which the company expects the PSC to permit it to recover from customers, net of any federal reimbursement, insurance payment and tax savings. In August 2002, President Bush signed into law an appropriations bill that authorizes funds, for which the company is eligible to apply, to recover costs it incurred in connection with the attack. The procedural guidelines for disbursement of the federal funds are in the process of being developed. At December 31, 2002, the company had capitalized \$134 million of such costs as utility plant and deferred \$63 million of such costs as a regulatory asset. In addition, at December 31, 2001, the company accrued a regulatory liability to defer recognition in income of an \$81.5 million tax refund claim resulting from a casualty loss deduction taken by the company relating to the attack.

#### Note R - Guarantees

In November 2002, the FASB issued Interpretation No. 45 (FIN 45), "Guarantor's Accounting and Disclosure Requirements, Including Indirect Guarantees of Indebtedness of Others." FIN 45 requires that upon issuance of certain types of guarantees, a guarantor recognize and account for the fair value of the guarantee as a liability. FIN 45 contains exclusions to this requirement, including the exclusion of a parent's guarantee of its subsidiaries' debt to a third party. FIN 45 is effective on a prospective basis to guarantees issued or modified after December 31, 2002.

Con Edison and its subsidiaries enter into various agreements providing financial or performance assurance to third parties on behalf of their subsidiaries. In addition, a Con Edison Development subsidiary has issued guarantees on behalf of entities in which it has an equity interest. Con Edison's guarantees had maximum limits totaling \$1.1 billion at December 31, 2002 and 2001, of which \$588.2 million and \$456.2 million, respectively, were outstanding. Management believes the likelihood that Con Edison would be required to perform with respect to these guarantees is remote. The adoption of FIN 45 is not expected to have a material impact on Con Edison's consolidated financial position, results of operations or liquidity.

The following table summarizes, by type and term, the total maximum amount of guarantees:

Guarantee Type	Maximum Amount			
	0-3 years	4-10 years	10 years	Total
	<i>(Thousands of Dollars)</i>			
Commodity Transactions	\$ 611,464	\$ 31,000	\$ 17,487	\$ 659,951
Newington Lease Agreement	-	-	353,333	353,333
Affordable Housing Program	-	56,682	-	56,682
Lease Obligations	1,412	1,375	24,358	27,145
Other Guarantees	5,170	10,392	2,698	18,260
<b>TOTAL</b>	<b>\$ 618,046</b>	<b>\$ 99,449</b>	<b>\$ 397,876</b>	<b>\$ 1,115,371</b>

**Commodity Transactions**—Con Edison guarantees payments on behalf of its subsidiaries in order to facilitate physical and financial transactions in gas, pipeline capacity, transportation, oil, electricity and related commodity services. In addition, a Con Edison Development subsidiary guaranteed payment for fuel oil purchases by a foreign generating project in which it has an equity interest. To the extent that

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liabilities exist under the contracts subject to these guarantees, such liabilities are included in the consolidated balance sheet.

**Newington Lease Agreement**—Con Edison guarantees the payment and performance obligations of a Con Edison Development subsidiary. See Note S.

**Affordable Housing Program**—Con Edison Development guarantees the repurchase and remarketing obligations of one of its subsidiaries with respect to the debt (\$56.7 million, including interest) relating to moderate-income rental apartment properties eligible for tax credits under Section 42 of the Internal Revenue Code. In accordance with EITF Issue No. 94-01, "Accounting for Tax Benefits Resulting from Investments in Affordable Housing Projects," neither the rental apartment properties nor the related indebtedness is included on Con Edison's consolidated balance sheet.

**Lease Obligations**—Con Edison guarantees certain rent payment obligations of its subsidiaries under various property lease agreements for office buildings. Of the maximum guarantee amount, \$15.0 million relates to a guarantee given to Con Edison of New York.

**Other**—Con Edison, Con Edison Development and its subsidiaries also guarantee the following:

\$15.1 million of guarantees for standby financial letters of credit and comfort letters in connection with investments in energy infrastructure power and cogeneration projects

- \$2.7 million of guarantees for franchise agreements with the City of New York and other localities
- \$0.4 million of letters of credit from financial institutions primarily for security deposits

#### Note S - Consolidation of Variable Interest Entities

In January 2003, the FASB issued Interpretation No. 46, "Consolidation of Variable Interest Entities" (FIN 46), which addresses the consolidation of variable interest entities (VIE's) by business enterprises that are the primary beneficiaries. A VIE is an entity that does not have sufficient equity investment at risk to permit it to finance its activities without additional subordinated financial support, or whose equity investors lack the characteristics of a controlling financial interest. The primary beneficiary of a VIE is the enterprise with the majority of the risks or rewards associated with the VIE. The consolidation requirements apply immediately to VIE's created after January 31, 2003. For VIE's created earlier, the consolidation requirements apply in the first fiscal year or interim period beginning after June 15, 2003. Certain disclosure requirements apply in all financial statements issued after January 31, 2003, regardless of when the VIE was established. Con Edison has identified the Newington Project, which is described in the following paragraphs, as a VIE that will require consolidation upon adoption of FIN 46. In addition, Con Edison is evaluating certain other investments to determine if they require consolidation or disclosure upon adoption of FIN 46. These include two LILO transactions that are accounted for as leveraged leases under SFAS No. 13 (see Note J), an investment in the Affordable Housing Program (see Note R), and three investments in power and cogeneration plants with assets of \$82.9 million and debt of \$42.5 million that are accounted for under the equity method. Con Edison is in the process of

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completing its evaluation but does not expect the results to have a material impact on its consolidated financial position, results of operation or liquidity.

In November 2000, a Con Edison Development subsidiary entered into an operating lease arrangement with Hawkeye L.P. (Lessor) to finance construction of a 525 MW gas-fired electric generating facility in Newington, New Hampshire. In accordance with SFAS No. 13, and related EITF issues (including EITF Issue No. 90-15, "Impact of Non-substantive Lessors, Residual Value Guarantees, and Other Provisions in Leasing Transactions" and EITF Issue No. 97-10, "The Effect of Lessee Involvement in Asset Construction"), the Newington Project and the related obligations are not included on Con Edison's consolidated balance sheet.

At the expiration of the initial lease term in June 2010, the subsidiary has the option to extend the lease or purchase the project for the then outstanding amounts expended by the Lessor for the project. In the event the subsidiary chooses not to extend the lease or acquire the project, Con Edison has guaranteed a residual value of the Newington Project for an amount not to exceed \$239.7 million. The subsidiary also has contingent payment obligations to the Lessor if an event of default should occur during either the construction period or the lease period. If the subsidiary were to default, its obligation would equal up to 100% of the Lessor's investment in the Newington Project, which could exceed the aforementioned residual value guarantee. At December 31, 2002, projected project costs were \$353 million. The subsidiary's payment and performance obligations relating to the Newington Project are fully and unconditionally guaranteed by Con Edison. See Note R.

Future minimum rental payments under the Newington Project operating lease are as follows:

	<i>(Millions of Dollars)</i>	
2003	\$	33.3
2004		33.3
2005		33.3
2006		33.3
2007		33.3
All years thereafter		83.2
Total	\$	249.7

Upon adoption of FIN 46, Con Edison will be required to include the Newington Project assets and the related debt on its consolidated balance sheet. Con Edison estimates that this will result in a decrease in annual after tax net income of \$3.8 million and increases of \$353 million in non-utility plant and long-term debt and other liabilities. Con Edison expects that its maximum exposure to loss would equal the total assets of the project.

Substantial completion on the Newington project occurred in the fourth quarter of 2002. The subsidiary and the construction contractor for this plant have initiated legal proceedings with respect to whether the subsidiary is entitled to damages for a delay in completion of this plant and whether the contractor is entitled to additional project costs. Con Edison does not expect that this dispute will have a material adverse effect on its financial position, results of operations or liquidity.

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#### Note T - New Financial Accounting Standards

During 2002, the FASB issued four new accounting standards: SFAS No. 145, "Rescission of FASB Statements No. 4, 44, and 64, Amendment of FASB Statement No. 13, and Technical Corrections," SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities," SFAS No. 147, "Acquisitions of Certain Financial Institutions," and SFAS No. 148, "Accounting for Stock-Based Compensation." The FASB also issued Interpretation No. 45 (FIN 45), "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others," in November 2002, and

Interpretation No. 46 (FIN 46), "Consolidation of Variable Interest Entities," in January 2003. In addition, during 2002, the EITF reached a consensus on several issues within EITF Issue No. 02-3, "Issues Involved in Accounting for Derivative Contracts Held for Trading Purposes and Contracts Involved in Energy Trading and Risk Management Activities," one of which was the rescission of EITF Issue No. 98-10, "Accounting for Contracts Involved in Energy Trading and Risk Management Activities."

SFAS No. 145 rescinds SFAS No. 4, "Reporting Gains and Losses from Extinguishment of Debt," and SFAS No. 64, "Extinguishment of Debt Made to Satisfy Sinking-Fund Requirements," effective January 1, 2003. This statement also amends SFAS No. 13 to require sale-leaseback accounting for certain lease modifications that have an economic impact similar to sale-leaseback transactions and amends certain other authoritative pronouncements, effective May 15, 2002. SFAS No. 146, which was effective January 1, 2003, requires companies to recognize costs associated with exit or disposal activities when they are incurred rather than at the date of a commitment to an exit or disposal plan. SFAS No. 147, which was effective October 1, 2002, provides guidance on the accounting for the acquisition of a financial institution. SFAS No. 148, which amends SFAS No. 123, provides alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. In addition, SFAS No. 148 amends the financial statements disclosure requirements of SFAS No. 123 regarding the method of accounting for stock-based employee compensation and the effects of the method used on reported results. Finally, this statement amends APB No. 28, "Interim Financial Reporting," to require disclosure about those effects in interim financial information. The amendment of SFAS No. 123 is effective for fiscal years ending after December 15, 2002. The amendment of Opinion No. 28 is effective for interim periods beginning after December 15, 2002. For information about the company's stock-based compensation, see Note M.

The adoption of these statements had no impact on Con Edison's consolidated financial position, results of operations or liquidity.

See Note R for a discussion on FIN 45 and Note S for a discussion on FIN 46.

In June 2002, the EITF reached a partial consensus on EITF Issue No. 02-3, "Issues Involved in Accounting for Derivative Contracts Held for Trading Purposes and Contracts Involved in Energy Trading and Risk Management Activities," which provides that revenue resulting from energy trading contracts, whether realized or unrealized and whether financially or physically settled, should be shown net in the income statement. This ruling became effective for periods ending after July 2002, with reclassification of prior period amounts required. Beginning in the third quarter of 2002, Con Edison is

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presenting all mark-to-market, realized and unrealized, gains and losses on a net basis. Upon the application of the consensus, comparative financial statements for prior periods were reclassified to conform to the consensus. As a result, Con Edison's non-utility revenues and energy costs were reduced by \$245 million in 2001 and \$114 million in 2000.

On October 25, 2002, the EITF reached a consensus to rescind EITF Issue No. 98-10, "Accounting for Contracts Involved in Energy Trading and Risk Management Activities." As a result, new energy trading and energy-related contracts entered into after October 25, 2002, that do not qualify as derivatives under SFAS No. 133 are not marked to market. All derivative contracts will be accounted for in accordance with SFAS No. 133. Therefore, previously recognized mark-to-market gains and losses on non-derivative contracts must be reversed upon adoption of this consensus. The effective date for the full rescission of EITF 98-10 was January 1, 2003, with early application permitted. Con Edison adopted this consensus effective on October 1, 2002 and reported the effect of the transition as a cumulative effect of a change in accounting principle in the after-tax loss amount of \$1.9 million.

In October 2002, the EITF reached a consensus that gains and losses, realized and unrealized, on all derivative instruments within the scope of SFAS No. 133 should be shown net in the income statement, whether or not settled physically, if the derivative instruments are held for trading purposes. This consensus was effective January 1, 2003, with early adoption permitted. Con Edison chose to adopt this consensus effective October 1, 2002. The adoption of the consensus had no impact on Con Edison's consolidated financial position, results of operations or liquidity. Additional disclosures regarding energy trading activities required by EITF Issue No. 02-3 in June 2002 were eliminated in October 2002, with the rescission of EITF Issue No. 98-10.

The EITF did not reach consensus on whether or not recognition of unrealized gains and losses at inception of an energy-trading contract is appropriate. However, the FASB staff observed that unrealized gains or losses at inception should not be recognized unless the fair value of the derivative instrument is evidenced by a quoted market price, similar current market transactions or valuations based on observable market information. For the year ended December 31, 2002, Con Edison's unregulated subsidiaries recognized in income \$10.9 million related to unrealized gains at inception of contracts. There were no such amounts in 2001.

Con Edison has also adopted the following accounting standards that were issued in 2001.

On January 1, 2002, Con Edison adopted SFAS No. 142, "Goodwill and Other Intangible Assets." See Note K.

On January 1, 2003 Con Edison adopted SFAS No. 143, "Accounting for Asset Retirement Obligations," which requires entities to record the fair value of a liability associated with an asset retirement obligation in the period incurred. When the liability is initially recorded, the entity will capitalize the cost by increasing the amount of the related asset. The liability will be increased to its present value each period and the capitalized cost will be depreciated over the useful life of the related asset. Upon retirement of the asset, the entity will settle the obligation for the amount recorded or incur a gain or loss.

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The adoption of SFAS No. 143 did not have a material impact on Con Edison's consolidated financial position, results of operations or liquidity.

SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," which Con Edison adopted on January 1, 2002, replaces SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of." SFAS No. 144 requires that all long-lived assets held for sale or meeting other specified criteria be measured at the lower of book value or fair value less cost to sell. SFAS No. 144 also broadens the reporting of discontinued operations. The adoption of SFAS No. 144 had no impact on Con Edison's consolidated financial position, results of operations or liquidity.

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# REPORT OF INDEPENDENT ACCOUNTANTS

**To the Stockholders and Board of Trustees of Consolidated Edison Company of New York, Inc.:**

In our opinion, the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of Consolidated Edison Company of New York, Inc. and its subsidiaries (the Company) at December 31, 2002 and 2001, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2002 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the accompanying index present fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. These financial statements and financial statement schedule are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

PricewaterhouseCoopers LLP  
New York, NY  
February 20, 2003

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## Consolidated Edison Company of New York, Inc.

### CONSOLIDATED BALANCE SHEET

*As at*

*December 31, 2002*

*December 31, 2001*

*(Thousands of Dollars)*

	<i>December 31, 2002</i>	<i>December 31, 2001</i>
<b>ASSETS</b>		
<b>UTILITY PLANT, AT ORIGINAL COST (Note A)</b>		
Electric	\$ 10,834,071	\$ 10,441,779
Gas	2,229,894	2,113,664
Steam	767,831	758,600
General	1,316,898	1,241,746
<b>Total</b>	<b>15,148,694</b>	<b>14,555,789</b>
Less: Accumulated depreciation	4,264,144	4,083,760
<b>Net</b>	<b>10,884,550</b>	<b>10,472,029</b>
Construction work in progress	965,629	626,835
<b>NET UTILITY PLANT</b>	<b>11,850,179</b>	<b>11,098,864</b>
<b>NON-UTILITY PLANT (Note A)</b>		
Non-utility property	34,775	29,408
<b>NET PLANT</b>	<b>11,884,954</b>	<b>11,128,272</b>
<b>CURRENT ASSETS</b>		
Cash and temporary cash investments (Note A)	88,081	264,776
Funds held for the redemption of long-term debt	275,121	-
Accounts receivable - customers, less allowance for uncollectible accounts of \$29,200 and \$29,400 in 2002 and 2001, respectively	602,376	527,635
Other receivables	83,795	63,885
Accounts receivable - from affiliated companies	24,964	27,929
Fuel, at average cost	18,076	16,719
Gas in storage, at average cost	63,065	85,534
Materials and supplies, at average cost	83,368	82,301
Prepayments	55,673	58,628
Other current assets	54,056	33,247
<b>TOTAL CURRENT ASSETS</b>	<b>1,348,575</b>	<b>1,160,654</b>

INVESTMENTS (Note A)	3,449	4,950
<b>DEFERRED CHARGES, REGULATORY ASSETS AND NONCURRENT ASSETS</b>		
Accrued pension credits (Note D)	1,024,244	697,807
<b>Regulatory assets</b>		
Future federal income tax (Notes A and J)	627,891	624,625
Sale of nuclear generating unit (Note I)	127,231	174,804
Recoverable energy costs (Note A)	223,507	121,748
Real estate sale costs - First Avenue properties	134,353	105,407
Workers' compensation (Note F)	54,266	60,466
Divestiture - capacity replacement reconciliation (Note I)	28,850	58,850
Deferred unbilled gas revenue	43,594	43,594
Deferred environmental remediation costs (Note F)	52,340	22,085
Deferred retirement program costs	37,644	42,197
Deferred revenue taxes	72,270	34,404
World Trade Center restoration costs (Note P)	62,856	32,933
Deferred asbestos-related costs (Note F)	37,700	4,000
Other	89,915	52,532
<b>TOTAL REGULATORY ASSETS</b>	<b>1,592,417</b>	<b>1,377,645</b>
Other deferred charges and noncurrent assets	164,380	149,490
<b>TOTAL DEFERRED CHARGES, REGULATORY ASSETS AND NONCURRENT ASSETS</b>	<b>2,781,041</b>	<b>2,224,942</b>
<b>TOTAL ASSETS</b>	<b>\$ 16,018,019</b>	<b>\$ 14,518,818</b>

The accompanying notes are an integral part of these financial statements.

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## Consolidated Edison Company of New York, Inc.

### CONSOLIDATED BALANCE SHEET

	<i>As at</i>	
	<i>December 31, 2002</i>	<i>December 31, 2001</i>
	<i>(Thousands of Dollars)</i>	
<b>CAPITALIZATION AND LIABILITIES</b>		
<b>CAPITALIZATION (see Statement of Capitalization and Note B)</b>		
Common shareholders' equity	4,890,486	4,665,805
Preferred stock (Note B)	212,563	212,563
Long-term debt	5,394,021	5,011,752
<b>TOTAL CAPITALIZATION</b>	<b>10,497,070</b>	<b>9,890,120</b>
<b>NONCURRENT LIABILITIES</b>		
Obligations under capital leases (Note N)	38,487	41,088
Accumulated provision for injuries and damages (Note F)	188,097	163,632
Retiree benefit reserve	107,627	101,759
Superfund and other environmental costs (Note F)	107,521	93,837
Other noncurrent liabilities	9,305	12,187
<b>TOTAL NONCURRENT LIABILITIES</b>	<b>451,037</b>	<b>412,503</b>
<b>CURRENT LIABILITIES</b>		
Long-term debt due within one year	425,000	300,000
Preferred stock to be redeemed in one year	-	37,050
Accounts payable	743,175	591,135
Accounts payable to affiliated companies	19,391	7,000
Customer deposits	208,718	204,873
Accrued taxes	92,664	141,260

Accrued interest	79,946	73,311
System benefit charge	26,980	30,024
Independent power producer buyout	32,700	33,750
Accrued wages	76,248	71,177
Other current liabilities	129,824	112,498
<b>TOTAL CURRENT LIABILITIES</b>	<b>1,834,646</b>	<b>1,602,078</b>
<b>DEFERRED CREDITS AND REGULATORY LIABILITIES</b>		
Accumulated deferred federal income tax (Note J)	2,322,338	2,022,639
Accumulated deferred investment tax credits (Note A)	105,809	111,925
Regulatory liabilities		
NYISO reconciliation (Note A)	106,908	92,504
World Trade Center casualty loss (Note P)	78,787	81,483
Gain on divestiture (Note I)	37,877	52,784
Deposit from sale of First Avenue properties	50,000	50,000
Accrued electric rate reduction (Note A)	38,018	38,018
DC service incentive	35,293	28,455
Transmission congestion contracts	124,809	4,896
Gas rate plan - World Trade Center recovery	36,319	-
Electric excess earnings	40,000	-
Other	259,108	131,413
<b>TOTAL REGULATORY LIABILITIES</b>	<b>807,119</b>	<b>479,553</b>
<b>TOTAL DEFERRED CREDITS AND REGULATORY LIABILITIES</b>	<b>3,235,266</b>	<b>2,614,117</b>
<b>TOTAL CAPITALIZATION AND LIABILITIES</b>	<b>\$ 16,018,019</b>	<b>\$ 14,518,818</b>

The accompanying notes are an integral part of these financial statements.

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## Consolidated Edison Company Of New York, Inc.

### CONSOLIDATED INCOME STATEMENT

*For the Years Ended December 31,*

	<i>2002</i>	<i>2001</i>	<i>2000</i>
<i>(Thousands of Dollars)</i>			
OPERATING REVENUES (Note A)			
Electric	\$ 5,775,200	\$ 6,350,360	\$ 6,467,074
Gas	1,044,717	1,268,095	1,081,534
Steam	404,044	503,736	452,135
<b>TOTAL OPERATING REVENUES</b>	<b>7,223,961</b>	<b>8,122,191</b>	<b>8,000,743</b>
OPERATING EXPENSES			
Purchased power	2,622,273	2,818,936	2,988,096
Fuel	231,807	350,619	322,064
Gas purchased for resale	471,807	665,964	490,565
Other operations	751,664	868,092	947,545
Maintenance	360,639	404,158	430,870
Depreciation and amortization (Note A)	437,896	465,164	535,179
Taxes, other than income taxes (Note A)	1,039,427	1,067,370	1,048,509
Income taxes (Notes A and J)	354,365	435,364	285,847
<b>TOTAL OPERATING EXPENSES</b>	<b>6,269,878</b>	<b>7,075,667</b>	<b>7,048,675</b>
<b>OPERATING INCOME</b>	<b>954,083</b>	<b>1,046,524</b>	<b>952,068</b>

OTHER INCOME (DEDUCTIONS)			
Investment income (Note A)	165	4,230	2,294
Allowance for equity funds used during construction (Note A)	9,531	1,294	1,086
Other income	42,154	417	17,669
Other income deductions	(8,918)	(12,453)	(16,223)
Income taxes (Notes A and J)	12,607	8,196	(4,079)
<b>TOTAL OTHER INCOME (DEDUCTIONS)</b>	<b>55,539</b>	<b>1,684</b>	<b>747</b>
<b>INCOME BEFORE INTEREST CHARGES</b>	<b>1,009,622</b>	<b>1,048,208</b>	<b>952,815</b>
Interest on long-term debt	344,849	359,787	331,426
Other interest	51,358	32,323	43,224
Allowance for borrowed funds used during construction (Note A)	(4,425)	(6,963)	(5,550)
<b>NET INTEREST CHARGES</b>	<b>391,782</b>	<b>385,147</b>	<b>369,100</b>
<b>INCOME BEFORE PREFERRED STOCK DIVIDEND</b>	<b>617,840</b>	<b>663,061</b>	<b>583,715</b>
<b>PREFERRED STOCK DIVIDEND REQUIREMENTS</b>	<b>12,458</b>	<b>13,593</b>	<b>13,593</b>
<b>NET INCOME FOR COMMON STOCK</b>	<b>\$ 605,382</b>	<b>\$ 649,468</b>	<b>\$ 570,122</b>

The accompanying notes are an integral part of these financial statements.

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## Consolidated Edison Company of New York, Inc.

### CONSOLIDATED STATEMENT OF RETAINED EARNINGS

For the Years Ended December 31,

	2002	2001	2000
	<i>(Thousands of Dollars)</i>		
BALANCE, JANUARY 1	\$ 4,185,575	\$ 3,995,825	\$ 3,887,993
INCOME BEFORE PREFERRED STOCK DIVIDEND	617,840	663,061	583,715
<b>TOTAL</b>	<b>4,803,415</b>	<b>4,658,886</b>	<b>4,471,708</b>
DIVIDENDS DECLARED ON CAPITAL STOCK			
Cumulative preferred, at required annual rates	12,458	13,593	13,593
Common	379,856	459,718	462,290
<b>TOTAL DIVIDENDS DECLARED</b>	<b>392,314</b>	<b>473,311</b>	<b>475,883</b>
BALANCE, DECEMBER 31	\$ 4,411,101	\$ 4,185,575	\$ 3,995,825

## Consolidated Edison Company of New York, Inc.

### CONSOLIDATED STATEMENT OF COMPREHENSIVE INCOME

For the Years Ended December 31,

	2002	2001	2000
	<i>(Thousands of Dollars)</i>		
NET INCOME FOR COMMON STOCK	\$ 605,382	\$ 649,468	\$ 570,122
OTHER COMPREHENSIVE INCOME/(LOSS), NET OF TAXES			
Minimum pension liability adjustments, net of (\$2,550), (\$1,402) and (\$363) taxes in 2002, 2001 and 2000, respectively	(3,688)	(1,844)	(673)

Unrealized gains/(losses) on derivatives qualified as hedges, net of \$2,348 and (\$3,559) taxes in 2002 and 2001, respectively	3,364	(4,938)	-
Less: Reclassification adjustment for gains/(losses) included in net income, net of \$501 and (\$2,087) taxes in 2002 and 2001, respectively	718	(2,983)	-
<b>TOTAL OTHER COMPREHENSIVE INCOME/(LOSS), NET OF TAXES</b>	<b>(1,042)</b>	<b>(3,799)</b>	<b>(673)</b>
<b>COMPREHENSIVE INCOME</b>	<b>\$ 604,340</b>	<b>\$ 645,669</b>	<b>\$ 569,449</b>

The accompanying notes are an integral part of these financial statements.

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## Consolidated Edison Company of New York, Inc.

### CONSOLIDATED STATEMENT OF CASH FLOWS

For the Years Ended December 31,

2002                      2001                      2000

(Thousands of Dollars)

<b>OPERATING ACTIVITIES</b>			
Income before preferred stock dividend	\$ 617,840	\$ 663,061	\$ 583,715
<b>PRINCIPAL NON-CASH CHARGES (CREDITS) TO INCOME</b>			
Depreciation and amortization	437,896	465,164	535,179
Deferred income tax (excluding taxes resulting from divestiture of plant)	259,570	(50,078)	158,743
Common equity component of allowance for funds used during construction	(9,531)	(1,294)	(1,086)
Accrued pension credits (net of capitalized amounts)	(262,273)	(259,107)	(201,666)
Other non-cash charges	51,305	122,217	195,109
<b>CHANGES IN ASSETS AND LIABILITIES</b>			
Accounts receivable - customers, less allowance for uncollectibles	(74,530)	216,248	(201,905)
Materials and supplies, including fuel and gas in storage	20,045	(15,929)	(8,722)
Prepayments, other receivables and other current assets	(35,010)	132,651	(147,628)
Recoverable energy costs	(101,759)	152,540	(195,638)
Accounts payable	152,040	(280,007)	374,245
Retiree benefit reserve	5,868	(3,365)	28,317
Accrued taxes	(48,596)	91,751	26,237
Accrued interest	6,635	(4,919)	26,649
Deferred charges and regulatory assets	(100,985)	754	(44,145)
Deferred credits and regulatory liabilities	195,433	37,909	(73,730)
Transmission congestion contracts	119,913	4,896	-
Other assets	13,732	(16,723)	4,514
Other liabilities	68,070	49,842	10,896
<b>NET CASH FLOWS FROM OPERATING ACTIVITIES</b>	<b>1,315,663</b>	<b>1,305,611</b>	<b>1,069,084</b>
<b>INVESTING ACTIVITIES</b>			
Construction expenditures	(1,164,263)	(1,044,660)	(951,328)
Cost of removal less salvage	(122,130)	(99,106)	(130,590)
Common equity component of allowance for funds used during construction	9,531	1,294	1,086
Nuclear fuel expenditures	-	(6,111)	(27,357)
Contributions to nuclear decommissioning trust	-	(89,185)	(21,301)
Divestiture of utility plant (net of federal income tax)	-	671,473	-
Demolition and remediation costs for First Avenue properties	(2,161)	(2,398)	(101,935)
Deposit received from sale of First Avenue properties	-	-	50,000
<b>NET CASH FLOWS USED IN INVESTING ACTIVITIES</b>	<b>(1,279,023)</b>	<b>(568,693)</b>	<b>(1,181,425)</b>
<b>FINANCING ACTIVITIES</b>			
Repurchase of common stock	-	-	(29,454)

Net repayments of short-term debt	-	(139,969)	(355,402)
Issuance of long-term debt	800,000	722,600	975,000
Retirement of long-term debt	(300,000)	(300,000)	(275,000)
Redemption of preferred stock	(37,050)	-	-
Advance refunding of long-term debt	(275,121)	(328,150)	-
Issuance and refunding costs	(7,588)	(23,218)	(5,468)
Common stock dividends	(380,652)	(459,954)	(462,728)
Preferred stock dividends	(12,924)	(13,724)	(13,367)
<b>NET CASH FLOWS USED IN FINANCING ACTIVITIES</b>	<b>(213,335)</b>	<b>(542,415)</b>	<b>(166,419)</b>
<b>CASH AND TEMPORARY CASH INVESTMENTS:</b>			
<b>NET CHANGE FOR THE PERIOD</b>	<b>(176,695)</b>	<b>194,503</b>	<b>(278,760)</b>
<b>BALANCE AT BEGINNING OF PERIOD</b>	<b>264,776</b>	<b>70,273</b>	<b>349,033</b>
<b>BALANCE AT END OF PERIOD</b>	<b>\$ 88,081</b>	<b>\$ 264,776</b>	<b>\$ 70,273</b>
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION</b>			
Cash paid during the period for:			
Interest	\$ 336,593	\$ 360,219	\$ 313,056
Income taxes	219,420	220,752	141,823

The accompanying notes are an integral part of these financial statements.

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## Consolidated Edison Company of New York, Inc.

### CONSOLIDATED STATEMENT OF CAPITALIZATION

#### Shares outstanding

	December 31,		Years Ended December 31,	
	2002	2001	2002	2001
<i>(Thousands of Dollars)</i>				
<b>COMMON SHAREHOLDER'S EQUITY (NOTE B)</b>				
Common stock, \$2.50 par value, authorized 340,000,000 shares	235,488,094	235,488,094	\$ 1,482,341	\$ 1,482,341
Retained earnings			4,411,101	4,185,575
<b>ACCUMULATED OTHER COMPREHENSIVE INCOME/(LOSS)</b>				
Minimum pension liability adjustments, net of (\$4,315) and (\$1,765) taxes in 2002 and 2001, respectively			(6,205)	(2,517)
Unrealized gains/(losses) on derivatives qualified as hedges, net of (\$1,211) and (\$3,559) taxes in 2002 and 2001, respectively			(1,574)	(4,938)
Less: Reclassification adjustments for gains/(losses) included in net income, net of (\$1,586) and (\$2,087) taxes in 2002 and 2001, respectively			(2,265)	(2,983)
<b>TOTAL ACCUMULATED OTHER COMPREHENSIVE INCOME/(LOSS), NET OF TAXES</b>			<b>(5,514)</b>	<b>(4,472)</b>
<b>REPURCHASED CONSOLIDATED EDISON, INC. COMMON STOCK</b>				
Capital stock expense			(962,092)	(962,092)
			(35,350)	(35,547)
<b>TOTAL COMMON SHAREHOLDER'S EQUITY</b>			<b>4,890,486</b>	<b>4,665,805</b>
<b>PREFERRED STOCK (NOTE B)</b>				

Subject to mandatory redemption Cumulative Preferred, \$100 par value, 6 <sup>1</sup> / <sub>8</sub> % Series J	-	370,500	-	37,050
<b>TOTAL SUBJECT TO MANDATORY REDEMPTION</b>				
			-	37,050
<b>OTHER PREFERRED STOCK</b>				
\$5 Cumulative Preferred, without par value, authorized 1,915,319 shares	1,915,319	1,915,319	175,000	175,000
Cumulative Preferred, \$100 par value, authorized 6,000,000 shares*				
4.65% Series C	153,296	153,296	15,330	15,330
4.65% Series D	222,330	222,330	22,233	22,233
<b>TOTAL OTHER PREFERRED STOCK</b>			212,563	212,563
<b>TOTAL</b>			212,563	249,613
Less: Preferred stock due within one year			-	37,050
<b>TOTAL PREFERRED STOCK</b>			\$ 212,563	\$ 212,563

\* Represents total authorized shares of cumulative preferred stock, \$100 par value, including preferred stock subject to mandatory redemption.

The accompanying notes are an integral part of these financial statements.

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### Consolidated Edison Company of New York, Inc.

## CONSOLIDATED STATEMENT OF CAPITALIZATION

At December 31,

#### Long-term debt (Note B)

Maturity	Interest Rate	Series	2002	2001
<i>(Thousands of Dollars)</i>				
<b>DEBENTURES:</b>				
2002	6 <sup>5</sup> / <sub>8</sub>	1993C	-	150,000
2002	2.06*	1997A	-	150,000
2003	6 <sup>3</sup> / <sub>8</sub>	1993D	150,000	150,000
2004	7 <sup>5</sup> / <sub>8</sub>	1992B	150,000	150,000
2005	6 <sup>5</sup> / <sub>8</sub>	1995A	100,000	100,000
2005	6 <sup>5</sup> / <sub>8</sub>	2000C	350,000	350,000
2007	6.45	1997B	330,000	330,000
2008	6 <sup>1</sup> / <sub>4</sub>	1998A	180,000	180,000
2008	6.15	1998C	100,000	100,000
2009	7.15	1999B	200,000	200,000
2010	8 <sup>1</sup> / <sub>8</sub>	2000A	325,000	325,000
2010	7 <sup>1</sup> / <sub>2</sub>	2000B	300,000	300,000
2012	5 <sup>5</sup> / <sub>8</sub>	2002A	300,000	-
2013	4 <sup>7</sup> / <sub>8</sub>	2002B	500,000	-
2023	7 <sup>1</sup> / <sub>2</sub>	1993G	380,000	380,000
2026	7 <sup>3</sup> / <sub>4</sub>	1996A	100,000	100,000
2028	7.1	1998B	105,000	105,000
2028	6.9	1998D	75,000	75,000
2029	7 <sup>1</sup> / <sub>8</sub>	1994A	150,000	150,000
2039	7.35	1999A	275,000	275,000
2041	7 <sup>1</sup> / <sub>2</sub>	2001A	400,000	400,000
<b>TOTAL DEBENTURES</b>			4,470,000	3,970,000

#### TAX-EXEMPT DEBT - NOTES ISSUED TO NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY FOR FACILITIES REVENUE BONDS:

2020	5 <sup>1</sup> / <sub>4</sub>	1993B	127,715	127,715
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2020	6.10	1995A	128,285	128,285
2022	5 <sup>3</sup> / <sub>8</sub>	1993C	19,760	19,760
2028	6.00	1993A	101,000	101,000
2029	7 <sup>1</sup> / <sub>8</sub>	1994A	100,000	100,000
2034	1.35**	1999A	292,700	292,700
2036	4.70	2001A***	232,302	224,600
2036	1.37**	2001B	98,000	98,000
<b>TOTAL TAX-EXEMPT DEBT</b>			<b>1,099,762</b>	<b>1,092,060</b>
<b>SUBORDINATED DEFERRABLE INTEREST DEBENTURES:</b>				
2031	7 <sup>3</sup> / <sub>4</sub>	1996A	275,000	275,000
<b>UNAMORTIZED DEBT DISCOUNT</b>			<b>(25,741)</b>	<b>(25,308)</b>
<b>TOTAL</b>			<b>5,819,021</b>	<b>5,311,752</b>
<b>LESS: LONG-TERM DEBT DUE WITHIN ONE YEAR</b>			<b>425,000</b>	<b>300,000</b>
<b>TOTAL LONG-TERM DEBT</b>			<b>5,394,021</b>	<b>5,011,752</b>
<b>TOTAL CAPITALIZATION</b>			<b>\$ 10,497,070</b>	<b>\$ 9,890,120</b>

\* 2.06% rate shown for the period March 15, 2002 - June 14, 2002.

\*\* Rates reset weekly or by auction held every 35 days; December 31, 2002 rate shown.

\*\*\* See Note O

The accompanying notes are an integral part of these financial statements.

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## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS— CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

These notes form an integral part of the accompanying consolidated financial statements of Consolidated Edison Company of New York, Inc. (Con Edison of New York or the Company) and its subsidiaries.

### Con Edison

Consolidated Edison, Inc. (Con Edison) is the parent holding company for Con Edison of New York. Con Edison owns all the issued and outstanding shares of common stock, \$2.50 par value, of Con Edison of New York.

Con Edison of New York, a regulated utility, provides electric service to over 3.1 million customers and gas service to approximately 1.1 million customers in New York City and Westchester County. It also provides steam service in parts of Manhattan.

### Note A - Summary of Significant Accounting Policies

#### Principles of Consolidation

The Company's consolidated financial statements include the accounts of Con Edison of New York and its consolidated subsidiaries.

#### Accounting Policies

The accounting policies of the Company conform to accounting principles generally accepted in the United States of America. For regulated public utilities, like Con Edison of New York, accounting principles generally accepted in the United States of America include the Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards (SFAS) No. 71, "Accounting for the Effects of Certain Types of Regulation," and, in accordance with SFAS No. 71, the accounting requirements of the Federal Energy Regulatory Commission (FERC) and the New York State Public Service Commission (PSC).

SFAS No. 71 specifies the economic effects that result from the cause and effect relationship of costs and revenues in the rate-regulated environment and how these effects are to be accounted for by a regulated enterprise. Revenues intended to cover some costs may be recorded either before or after the costs are incurred. If regulation provides assurance that incurred costs will be recovered in the future, these costs would be recorded as deferred charges or "regulatory assets" under SFAS No. 71. If revenues are recorded for costs that are expected to be incurred in the future, these revenues would be recorded as deferred credits or "regulatory liabilities" under SFAS No. 71.

The Company's principal regulatory assets and liabilities are detailed on the consolidated balance sheet. The Company is receiving or being credited with a return on all of its regulatory assets for which a cash outflow has been made, and is paying or being charged with a return on all of its regulatory liabilities for which a cash inflow has been received. Regulatory assets and liabilities will be recovered from customers, or applied for customer benefit, in accordance with rate provisions approved by the PSC.



The standards in SFAS No. 101, "Regulated Enterprises—Accounting for the Discontinuation of Application of FASB Statement No. 71," have been applied to the Company's electric supply business, including electric generating assets (see Note I) and non-utility generator (NUG) contracts (see Note H) and related regulatory assets and liabilities, following the 1997 Restructuring Agreement (defined below). The application of SFAS No. 101 to the electric supply business had no material effect on the financial position, results of operations or liquidity of the Company.

Other significant accounting policies of the Company are referenced in Note D (Pension Benefits), Note E (Other Postretirement Benefits), Note N (Leases) and Note O (Derivative Instruments and Hedging Activities) to the financial statements.

### Rate and Restructuring Agreements

#### Electric

In September 1997, the PSC approved a restructuring agreement between Con Edison of New York, the PSC staff and certain other parties (the 1997 Restructuring Agreement). The 1997 Restructuring Agreement provided for a transition to a competitive electric market through the development of a retail access plan, a rate plan for the period ended March 31, 2002, a reasonable opportunity for recovery of "strandable costs" and the divestiture of electric generation capacity by the Company.

At December 31, 2002, approximately 163,000 Con Edison of New York customers representing approximately 25 percent of aggregate customer load were purchasing electricity from other suppliers under the electric retail access program (which is available to all of the Company's electric customers). The Company delivers electricity to customers in this program through its regulated transmission and distribution systems. In general, the Company's delivery rates for retail access customers are equal to the full-service rates applicable to other comparable Con Edison of New York customers, less an amount reflecting costs otherwise associated with supplying customers with energy and capacity.

Pursuant to the 1997 Restructuring Agreement, the Company reduced electric rates, on an annual basis, by \$129 million in 1998, \$80 million in April 1999, \$103 million in April 2000 and \$209 million in April 2001. The effect of the April 2001 decrease for the rate year ended March 31, 2002 was partially offset by recognition in income of \$36 million relating to rates for distributing electricity to customers of the New York Power Authority (NYPA) and \$50 million (after tax) of deferred generation divestiture gain. Rates were also reduced, on an annual basis, effective September 2001 by \$313 million to reflect the divestiture of the nuclear generating facility and the Roseton generating plant, which resulted in a reduction in operating and other expenses. See Note I.

Pursuant to the 1997 Restructuring Agreement, as amended by a July 1998 PSC order, the Company sold approximately 7,790 MW of the approximately 8,300 MW of generating capacity that it owned at the time the 1997 Restructuring Agreement was executed. See Note I.

In November 2000, the PSC approved an agreement (the 2000 Electric Rate Agreement) that revises and extends the rate plan provisions of the 1997 Restructuring Agreement. Pursuant to the 2000 Electric Rate Agreement, the Company reduced the distribution component of its electric rates by \$170 million on an annual basis, effective October 2000.

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In general, under the 2000 Electric Rate Agreement, the Company's base electric transmission and distribution rates will not otherwise be changed during the five-year period ending March 2005 except (i) with respect to certain changes in costs above anticipated annual levels resulting from legal or regulatory requirements, inflation in excess of a 4 percent annual rate, property tax changes and environmental cost increases or (ii) if the PSC determines that circumstances have occurred that either threaten the Company's economic viability or ability to provide, safe and adequate service, or render the Company's rate of return unreasonable for the provision of safe and adequate service.

Under the 2000 Electric Rate Agreement, as approved by the PSC and as modified in December 2001, 35 percent of any earnings in each of the rate years ending March 2002 through 2005 above a specified rate of return on electric common equity will be retained for shareholders and the balance will be applied for customer benefit as determined by the PSC. As of December 31, 2002, the Company established an electric shared earnings reserve of \$40 million for the rate year ending March 2003. There was no sharing of earnings for the rate years ended March 2002 and 2001. The earnings threshold for rate years ending March 2003 through March 2005 of 11.75 percent can be increased up to 50 basis points. The threshold will increase by 25 basis points if certain demand reductions and supply increases exceed targeted projections and by an additional 25 basis points if certain customer service and reliability objectives are achieved. The Company could be required to pay up to \$40 million annually in penalties if certain threshold service and reliability objectives are not achieved.

Con Edison of New York's potential electric strandable costs are utility investments and commitments that may not be recoverable in a competitive electric supply market. The Company is recovering these costs in the rates it charges all of its electric customers. The 2000 Electric Rate Agreement continues the stranded cost recovery provisions of the 1997 Restructuring Agreement, stating that the Company "will be given a reasonable opportunity to recover stranded and strandable costs remaining at March 31, 2005, including a reasonable return on investments, under the parameters and during the time periods set forth therein."

The 2000 Electric Rate Agreement also continues the rate provisions pursuant to which the Company recovers prudently incurred purchased power and fuel costs from customers. See "Recoverable Energy Costs" below.

#### Gas

In November 2000, the PSC approved an agreement between Con Edison of New York, the PSC staff and certain other parties that revised and extended the 1996 gas rate settlement agreement through September 2001. The 1996 agreement, with limited exceptions, continued base rates at September 1996 levels through September 2000.

Under the 2000 agreement, the rate of return on gas common equity above which the Company shared with customers, 50 percent of earnings was increased from 13 percent to 14 percent. In addition, customer bills were reduced by \$20 million during the January through March 2001 period.

At December 31, 2001, the Company reserved \$11.5 million for customers' share of gas earnings in excess of the 14 percent threshold for the rate year ended September 2001. No additional amounts were reserved for the rate year ended September 2002.

In April 2002, the PSC approved a Con Edison of New York gas rate agreement for the three-year period ending September 30, 2004. The rate agreement reduces gas rates, on an annualized basis, by \$25 million.

During the term of the 2002 agreement, the Company retains 100 percent of the rate year return on equity up to 11.5 percent. If the return on equity is between 11.5 percent and 12.0 percent then 100 percent of the incremental return over 11.5 percent will be set aside for customer benefit. If the return on equity is above 12.0 percent, then 50 percent of the incremental return over 12.0 percent will be retained by shareholders, and the remaining 50 percent will be shared with customers.

The 2002 agreement also continued the retail access credit for firm transportation customers and other programs designed to increase customer and marketer participation in the gas retail access program, the net costs of which are deferred for future recovery from customers.

Under the 2002 agreement, in May 2002, the Company established a \$36.4 million reserve, funded by previously deferred customer credits, to recover unreimbursed costs directly related to the World Trade Center attack.

## Steam

In December 2000, the PSC authorized implementation of an agreement between Con Edison of New York, the PSC staff and certain other parties, that provided for a \$16.6 million steam rate increase in October 2000 and, with limited exceptions, no further changes in steam rates prior to October 2004. The Company is required to share with customers 50 percent of any earnings for any rate year covered by the agreement above of a specified rate of return on steam common equity (11.0 percent for the first rate year, the 12-month period ended September 2001; 10.5 percent thereafter if the repowering of the Company's East River steam-electric generating plant is not completed). The net revenue effect associated with sales increases related to colder than normal winter weather (November through April) will be excluded from any earnings measurement. Earnings on steam common equity did not exceed the specific rates of return for the rate years ended September 30, 2001 and 2002.

Under the steam rate agreement, upon completion of the project to add incremental generating capacity at the Company's East River steam-electric generating plant, the net benefits of the project (including the net after-tax gain from the sale of a nine-acre development site in mid-town Manhattan along the East River) allocable to steam operations will inure to the benefit of steam customers.

The agreement continues the rate provisions pursuant to which Con Edison of New York recovers prudently incurred purchased steam and fuel costs and requires the Company to develop a strategy for hedging price variations for a portion of the steam produced each year.

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## Plant and Depreciation

### Utility Plant

Utility plant is stated at original cost. The capitalized cost of additions to utility plant includes indirect costs such as engineering, supervision, payroll taxes, pensions, other benefits and an allowance for funds used during construction (AFDC). The original cost of property, together with removal cost, less salvage, is charged to accumulated depreciation as property is retired. The cost of repairs and maintenance is charged to expense and the cost of betterments is capitalized.

Rates used for AFDC include the cost of borrowed funds and a reasonable rate on the Company's own funds when so used, determined in accordance with PSC and FERC regulations. The AFDC rate was 6.8 percent in 2002, 6.8 percent in 2001 and 7.2 percent in 2000. The rate is compounded semiannually, and the amounts applicable to borrowed funds were treated as a reduction of interest charges, while the amounts applicable to the regulated utilities' own funds were credited to other income (deductions).

The Company generally computes annual charges for depreciation using the straight-line method for financial statement purposes, with rates based on appropriate average service lives and net salvage factors. The Company's depreciation rates averaged 3.0 percent in 2002, 3.1 percent in 2001 and 3.7 percent in 2000. The estimated lives for utility plant range from 30 to 80 years for electric, 15 to 75 years for gas, 30 to 75 years for steam and 8 to 50 years for general plant.

### Non-utility Plant

Non-utility plant is stated at original cost and consists primarily of land and telecommunication facilities that are not currently utilized within utility operations.

## Revenues

Con Edison of New York recognizes revenues for electric, gas and steam service on a monthly billing cycle basis. In accordance with regulatory agreements, the Company does not accrue unbilled revenues.

## Recoverable Energy Costs

Con Edison of New York generally recovers all of its prudently incurred fuel, purchased power and gas costs, including hedging gains and losses, in accordance with PSC-approved rate provisions, which also include a \$25 million annual incentive or penalty relating to electric costs (see "Energy Price Hedging" in Note O). If the actual energy costs for a given month are more or less than the amounts billed to customers for that month, the difference is recoverable from or refundable to customers. Differences between actual and billed energy costs are generally deferred for charge or refund to customers during the next billing cycle (normally within one or two months). The Company defers all net interruptible gas revenues, not authorized by the PSC to be retained by the Company, for refund to firm gas sales and transportation customers.

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Company's customers. At December 31, 2002, \$106.9 million of refunds received from the NYISO were deferred as a regulatory liability.

### **Temporary Cash Investments**

Temporary cash investments are short-term, highly liquid investments that generally have maturities of three months or less. They are stated at cost, which approximates market. The Company considers temporary cash investments to be cash equivalents.

### **Investments**

Investments are recorded on the equity method.

### **Federal Income Tax**

In accordance with SFAS No. 109, "Accounting for Income Taxes," the Company has recorded an accumulated deferred federal income tax liability for temporary differences between the book and tax basis of assets and liabilities at current tax rates. In accordance with rate agreements, the Company has recovered amounts from customers for a portion of the tax liability it will pay in the future as a result of the reversal or "turn-around" of these temporary differences. As to the remaining tax liability, in accordance with SFAS No. 71, regulatory assets have been established for the net revenue requirements to be recovered from customers for the related future tax expense (see Note J). In 1993, the PSC issued a Policy Statement approving accounting procedures consistent with SFAS No. 109 and providing assurances that these future increases in taxes will be recoverable in rates.

Accumulated deferred investment tax credits are amortized ratably over the lives of the related properties and applied as a reduction in future federal income tax expense.

Con Edison of New York files a federal income tax return on a consolidated basis with Con Edison and its other subsidiaries. The consolidated income tax liability is allocated to each member of the consolidated group using the separate return method. Each member pays tax or receives a benefit based on its own taxable income or loss in accordance with tax sharing agreements between the members of the consolidated group.

### **State Income Tax**

The New York State tax laws applicable to utility companies were changed effective January 1, 2000. Certain revenue-based taxes were repealed or reduced and replaced by a net income-based tax. In June 2001, the PSC issued its final Order relating to the tax law changes. It authorized each utility to use deferral accounting to record the difference between taxes being collected and the tax expense resulting from the tax law changes, until those changes are incorporated in base rates.

Con Edison of New York files a combined New York State Corporation Business Franchise Tax Return on a consolidated basis with Con Edison and its other subsidiaries. Similar to a federal consolidated income tax return, the income of all entities in the combined group is subject to New York State taxation, after adjustments for differences between federal and New York law and apportionment of income among the states in which the company does business. Each member of the group pays or receives a benefit based on its own New York State taxable income or loss.

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### **Taxes Other Than Income Taxes**

The PSC requires the Company to record gross receipts tax revenues and expenses on a gross income statement presentation basis (i.e., included in both revenue and expense). The recovery of these taxes is part of the PSC approved revenue requirement within each of the respective rate agreements.

### **Research and Development Costs**

Research and development costs relating to specific construction projects are capitalized. All other such costs are charged to operating expenses as incurred. Research and development costs in 2002, 2001 and 2000 amounting to \$11.0 million, \$13.8 million and \$14.0 million, respectively, were charged to operating expenses. No research and development costs were capitalized in these years.

### **Reclassification**

Certain prior year amounts have been reclassified to conform with the current year presentation.

### **Stock-Based Compensation**

Con Edison of New York applies the recognition and measurement principles of Accounting Principles Board (APB) Opinion No. 25, "Accounting for Stock Issued to Employees," and related interpretations in accounting for its stock-based compensation plans. See Note K. The following table illustrates the effect on net income if the Company had applied the fair value recognition provisions of SFAS No. 123, "Accounting for Stock-Based Compensation," to stock-based employee compensation.

*(Millions of Dollars)*

Net income, as reported	\$	605	\$	649	\$	570
Add: Stock-based compensation expense included in reported net income, net of related tax effects		6		3		1
Deduct: Total stock-based employee compensation expense determined under fair value method for all awards, net of related tax effects		(12)		(6)		(5)
Pro forma net income	\$	599	\$	646	\$	566

These pro forma amounts may not be representative of future disclosures due to changes in future market conditions and additional grants in future years.

### Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

### Note B - Capitalization

#### Common Stock

At December 31, 2002 and 2001, Con Edison owned all of the issued and outstanding shares of common stock (\$2.50 par value) of Con Edison of New York. Con Edison of New York owns \$962.1 million of

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Con Edison stock, which it purchased in 1998 and 1999 in connection with Con Edison's stock repurchase plan.

#### Preferred Stock

Con Edison of New York has outstanding 1,915,319 shares of its \$5 Cumulative Preferred Stock (the "\$5 Preferred") and 375,626 shares of its Cumulative Preferred Stock (\$100 par value) at December 31, 2002 and 2001.

Dividends on the \$5 Preferred stock are \$5 per share per annum, payable quarterly, and dividends on the Cumulative Preferred Stock are \$4.65 per share per annum, payable quarterly. The preferred dividends must be declared by Con Edison of New York's Board of Trustees to become payable. See "Dividends" below.

With respect to any corporate action to be taken by a vote of the shareholders of Con Edison of New York, Con Edison of New York has outstanding, 235,488,094 shares of its common stock, and the holders of the \$5 Preferred are each entitled to one vote for each share held. Except as otherwise required by law, holders of the Cumulative Preferred Stock have no right to vote; provided, however, that, if the \$5 Preferred is no longer outstanding, the holders of the Cumulative Preferred Stock are entitled to one vote for each share with respect to any corporate action to be taken by a vote of the shareholders of Con Edison of New York. In addition, if dividends are in arrears for certain periods the holders are entitled to certain rights with respect to the election of Con Edison of New York's Trustees. Without the consent of the holders of the Cumulative Preferred Stock, the Company may not create or authorize any kind of stock ranking prior to the Cumulative Preferred Stock or, if such actions would affect the holders of the Cumulative Preferred Stock adversely, be a party to any consolidation or merger, create or amend the terms of the Cumulative Preferred Stock or reclassify the Cumulative Preferred Stock. The Company may redeem the \$5 Preferred at a redemption price of \$105 per share and the Cumulative Preferred Stock at a redemption price of \$101 per share (in each case, plus accrued and unpaid dividends). In the event of the dissolution, liquidation or winding up of the affairs of Con Edison of New York, before any distribution of capital assets could be made to the holders of the Company's common stock, the holders of the \$5 Preferred and the Cumulative Preferred Stock would each be entitled to receive \$100 per share, in the case of an involuntary liquidation, or an amount equal to the redemption price per share, in the case of a voluntary liquidation, in each case together with all accrued and unpaid dividends.

#### Dividends

In accordance with PSC requirements, the dividends that Con Edison of New York may pay are limited to not more than 100 percent of its income available for dividends, calculated on a two-year rolling average basis. Excluded from the calculation of "income available for dividends" are non-cash charges to income resulting from accounting changes or charges to income resulting from significant unanticipated events. The restriction also does not apply to dividends paid in order to transfer to Con Edison proceeds from major transactions, such as asset sales, or to dividends reducing Con Edison of New York's equity ratio to a level appropriate to its business risk.

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In addition, no dividends may be paid, or funds set apart for payment, on Con Edison of New York's common stock until all dividends accrued on the \$5 Preferred Stock and Cumulative Preferred Stock have been paid, or declared and set apart for payment.

#### Long-Term Debt

Long-term debt maturing in the period 2003-2007 is as follows:

*(Millions of Dollars)*

2003	\$	425*
2004		150
2005		450
2006		-
2007		330

\* Includes redemption in advance of maturity of \$275 million of the Company's Subordinated Deferrable Interest Debentures Series 1996A in January 2003.

Long-term debt is principally stated at cost, which, as of December 31, 2002, approximates fair value (estimated based on current rates for debt of the same remaining maturities), except for \$224.6 million of the Company's tax-exempt financing. See "Interest Rate Hedging" in Note O.

### Significant Debt Covenants

There are no significant debt covenants, other than obligations to pay principal and interest when due and covenants not to consolidate with or merge into any other corporation unless certain conditions are met, and no cross default provisions, under the financing arrangements for the debentures of the Company. The tax-exempt financing arrangements of the Company are subject to these covenants and the covenants discussed below.

The tax-exempt financing arrangements involved the issuance of uncollateralized promissory notes of the Company to the New York State Energy Research and Development Authority (NYSERDA) in exchange for the net proceeds of a like amount of tax-exempt bonds with substantially the same terms sold to the public by NYSERDA.

The tax-exempt financing arrangements include covenants with respect to the tax-exempt status of the financing, including covenants with respect to the use of the facilities financed. The failure to comply with these covenants would, except as otherwise provided, constitute an event of default with respect to the debt to which such provisions applied. Certain series of Con Edison of New York's tax-exempt financing (Series 1993A, B and C, Series 1994A and Series 1995A), aggregating \$476.8 million, each contain as events of default a default in the payment of the other series and events of default under the Company's mortgage trust indenture (which has been satisfied and discharged). The arrangements for the other series of Con Edison of New York's tax-exempt financing (Series 1999A, 2001A and 2001B), aggregating \$615.3 million, include provisions for the maintenance of liquidity and credit facilities, the failure to comply with which would, except as otherwise provided, constitute an event of default with respect to the debt to which such provisions applied. If an event of default occurred, the principal and accrued interest on the debt to which such event of default applied may, and in certain circumstances would, become due and payable immediately.

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The liquidity and credit facilities currently in effect for the tax-exempt financing include covenants that the ratio of debt to total capital of the Company does not at any time exceed 0.65 to 1 and that, subject to certain exceptions, the Company shall not mortgage, lien, pledge or otherwise encumber its assets. Certain of the facilities also include as events of default, defaults in payments of other debt obligations in excess of specified levels (\$100 million for Con Edison of New York).

### Note C - Short Term Borrowing

At December 31, 2002, the Company had a \$500 million commercial paper program under which short-term borrowings are made at prevailing market rates. The program is supported by a revolving credit agreement with banks. At December 31, 2002, there was no commercial paper outstanding under the program. The Company changes the amount of its program from time to time, subject to a \$1 billion FERC-authorized limit.

Bank commitments under the revolving credit agreement were renewed in November 2002. The commitments may terminate upon a change of control of Con Edison or Con Edison of New York, and borrowings under the agreements are subject to certain conditions, including that the ratio (calculated in accordance with the agreements) of debt to total capital of the borrower not at any time exceed 0.65 to 1. At December 31, 2002, this ratio was 0.53 to 1 for the Company. Borrowings under the agreements are not subject to maintenance of credit rating levels. The fees charged for the revolving credit agreement and borrowing under the agreement reflect the Company's credit rating.

### Note D - Pension Benefits

Con Edison maintains a tax-qualified, non-contributory pension plan that covers substantially all employees and retirees of Con Edison of New York. The plan is designed to comply with the Internal Revenue Code and the Employee Retirement Income Security Act of 1974.

Investment gains and losses are fully recognized in expense over a 15-year period. Other actuarial gains and losses are fully recognized in expense over a 10-year period. This amortization is in accordance with the Statement of Policy issued by the PSC and is permitted under SFAS No. 87, "Employers' Accounting for Pensions," which provides a "corridor method" for moderating the effect of investment gains and losses on pension expense, or alternatively, allows for any systematic method of amortization of unrecognized gains and losses that is faster than the corridor method and is applied consistently to both gains and losses.

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The components of the Company's net periodic benefit costs for 2002, 2001 and 2000 were as follows:

2002	2001	2000
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(Millions of Dollars)

Service cost - including administrative expenses	\$ 87.5	\$ 89.0	\$ 85.1
Interest cost on projected benefit obligation	412.5	398.2	383.3
Expected return on plan assets	(660.7)	(632.6)	(543.6)
Amortization of net actuarial (gain)	(179.0)	(198.4)	(189.7)
Amortization of prior service cost	13.7	13.2	10.5
Amortization of transition (asset)/obligation	(0.6)	3.0	3.0
<b>NET PERIODIC BENEFIT COST</b>	<b>(326.6)</b>	<b>(327.6)</b>	<b>(251.4)</b>
Amortization of regulatory asset*	4.2	4.2	17.7
<b>TOTAL PERIODIC BENEFIT COST</b>	<b>\$ (322.4)</b>	<b>\$ (323.4)</b>	<b>\$ (233.7)</b>
Cost capitalized	(64.2)	(72.0)	(49.1)
Cost charged to operating expenses	(258.2)	(251.4)	(184.6)

\* Relates to increases in pension obligations of \$33.3 million from a 1993 special retirement program and \$45 million from a 1999 special retirement program.

The funded status at December 31, 2002, 2001 and 2000 was as follows:

	2002	2001	2000
	<i>(Millions of Dollars)</i>		
<b>CHANGE IN PROJECTED BENEFIT OBLIGATION</b>			
Projected benefit obligation at beginning of year	\$ 5,530.0	\$ 5,272.3	\$ 4,915.1
Service cost - excluding administrative expenses	86.2	87.7	83.8
Interest cost on projected benefit obligation	412.5	398.2	383.3
Plan amendments	-	9.5	32.6
Net actuarial loss	282.5	27.7	113.9
Benefits paid	(281.0)	(265.4)	(256.4)
<b>PROJECTED BENEFIT OBLIGATION AT END OF YEAR</b>	<b>\$ 6,030.2</b>	<b>\$ 5,530.0</b>	<b>\$ 5,272.3</b>
<b>CHANGE IN PLAN ASSETS</b>			
Fair value of plan assets at beginning of year	\$ 6,397.5	\$ 7,077.4	\$ 7,430.8
Actual return on plan assets	(533.7)	(391.6)	(82.5)
Employer contributions	2.0	1.9	1.5
Benefits paid	(281.0)	(265.4)	(256.4)
Administrative expenses	(21.8)	(24.8)	(16.0)
<b>FAIR VALUE OF PLAN ASSETS AT END OF YEAR</b>	<b>\$ 5,563.0</b>	<b>\$ 6,397.5</b>	<b>\$ 7,077.4</b>
Funded status	\$ (467.2)**	\$ 867.5	\$ 1,805.1
Unrecognized net loss/(gain)	1,403.0	(273.5)	(1,547.3)
Unrecognized prior service costs	77.3	91.0	94.7
Unrecognized net transition (asset)/liability at January 1, 1987*	-	(0.6)	2.4
<b>NET PREPAID BENEFIT COST</b>	<b>\$ 1,013.1</b>	<b>\$ 684.4</b>	<b>\$ 354.9</b>

\* Being amortized over approximately 15 years

\*\* As of December 31, 2002, the fair value of plan assets exceeded the accumulated benefit obligation (ABO) by \$104 million. The ABO excludes future compensation increases.

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The amounts recognized in the consolidated balance sheet at December 31, 2002 and 2001 were as follows:

	2002	2001
	<i>(Millions of Dollars)</i>	
Accrued pension credits	\$ 1,024.2	\$ 697.8
Additional minimum pension liability	(10.5)	(4.7)
Intangible asset	-	0.4
Accumulated other comprehensive income	10.5	4.3
1993 Special retirement program	(11.1)	(13.4)
<b>Net prepaid benefit cost</b>	<b>\$ 1,013.1</b>	<b>\$ 684.4</b>

The actuarial assumptions at December 31, 2002, 2001 and 2000 were as follows:

	2002	2001	2000
Discount Rate	6.75%	7.50%	7.75%
Expected Return on Plan Assets	9.20%	9.20%	8.50%
Rate of Compensation Increase	4.30%	4.30%	4.55%

Con Edison of New York also offers a defined contribution savings plan that covers substantially all of its employees. The Company made contributions to the plan of \$15.8 million, \$15.7 million and \$15.6 million for years 2002, 2001 and 2000, respectively.

#### Note E - Other Postretirement Benefits

Con Edison of New York has a contributory comprehensive hospital, medical and prescription drug program for all retirees, their dependents and surviving spouses. The Company also has a contributory life insurance program for bargaining unit employees. In addition, the Company provides basic life insurance benefits up to a specified maximum at no cost to retired management employees.

Certain employees of other Con Edison subsidiaries are eligible to receive benefits under these programs. Con Edison of New York has reserved the right to amend or terminate these programs.

Investment gains and losses are fully recognized in expense over a 15-year period. Other actuarial gains and losses are fully recognized in expense over a 10-year period.

The components of the Company's net periodic postretirement benefit costs for 2002, 2001 and 2000 were as follows:

	2002	2001	2000
	<i>(Millions of Dollars)</i>		
Service cost	\$ 8.1	\$ 10.6	\$ 9.2
Interest cost on accumulated postretirement benefit obligation	79.7	81.3	72.0
Expected return on plan assets	(75.5)	(70.1)	(59.1)
Amortization of net actuarial loss	21.4	9.0	0.3
Amortization of prior service cost	0.0	1.5	1.4
Amortization of transition obligation	5.0	17.4	17.4
<b>NET PERIODIC POSTRETIREMENT BENEFIT COST</b>	<b>\$ 38.7</b>	<b>\$ 49.7</b>	<b>\$ 41.2</b>
Cost capitalized/deferred	9.3	11.0	8.7
Cost charged to operating expenses	29.4	38.7	32.5

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The funded status of the programs at December 31, 2002, 2001 and 2000 was as follows:

	2002	2001	2000
	<i>(Millions of Dollars)</i>		
<b>CHANGE IN BENEFIT OBLIGATION</b>			
Benefit obligation at beginning of year	\$ 1,249.4	\$ 1,075.8	\$ 924.0
Service cost	8.1	10.6	9.2
Interest cost on accumulated postretirement benefit obligation	79.7	81.3	72.0
Plan amendments	(305.6)	-	0.6
Net actuarial loss	150.7	143.6	124.6
Benefits paid and administrative expenses	(82.2)	(75.7)	(66.4)
Participant contributions	15.4	13.8	11.8
<b>BENEFIT OBLIGATION AT END OF YEAR</b>	<b>\$ 1,115.5</b>	<b>\$ 1,249.4</b>	<b>\$ 1,075.8</b>
<b>CHANGE IN PLAN ASSETS</b>			
Fair value of plan assets at beginning of year	\$ 763.5	\$ 805.0	\$ 834.4
Actual return on plan assets	(61.3)	(29.4)	4.2
Employer contributions	38.6	49.8	21.0
Participant contributions	15.4	13.8	11.8
Benefits paid	(77.7)	(70.8)	(61.3)
Administrative expenses	(4.5)	(4.9)	(5.1)

FAIR VALUE OF PLAN ASSETS AT END OF YEAR	\$	674.0	\$	763.5	\$	805.0
Funded status	\$	(441.5)	\$	(485.9)	\$	(270.8)
Unrecognized net (gain)/loss		454.7		188.6		(45.4)
Unrecognized prior service costs		(147.1)		8.9		10.4
Unrecognized transition obligation at January 1, 1993*		36.7		191.4		208.8
ACCRUED POSTRETIREMENT BENEFIT COST	\$	(97.2)	\$	(97.0)	\$	(97.0)

\* Being amortized over a period of 20 years and reduced by an additional amount in 2002 due to plan amendments.

The actuarial assumptions at December 31, 2002, 2001 and 2000 were as follows:

	2002	2001	2000
	(Millions of Dollars)		
Discount Rate	6.75%	7.50%	7.75%
EXPECTED RETURN ON PLAN ASSETS			
Tax-exempt assets	9.20%	9.20%	8.50%
Taxable assets	8.20%	8.20%	7.50%

The health care cost trend rate assumed for 2003 is 9.0 percent. The rate is assumed to decrease gradually to 4.75 percent for 2009 and remain at that level thereafter.

A one-percentage point change in the assumed health care cost trend rate would have the following effects:

	1-Percentage-Point Increase		1-Percentage-Point Decrease	
	(Millions of Dollars)			
Effect on accumulated postretirement benefit obligation	\$	116.3	\$	(103.8)
Effect on service cost and interest cost components	\$	10.6	\$	(9.3)

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## Note F - Environmental Matters

Hazardous substances, such as asbestos, polychlorinated biphenyls (PCBs) and coal tar have been used or generated in the course of operations of the Company and are present in its facilities and equipment currently or previously owned.

The Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund) and similar state statutes impose joint and several strict liabilities, regardless of fault, upon generators of hazardous substances for resulting removal and remediation costs and environmental damages. Liabilities under these laws can be material and in some instances may be imposed without regard to fault, or may be imposed for past acts, even though such past acts may have been lawful at the time they occurred.

The environmental remediation costs for the sites at which Con Edison of New York has been asserted to have liability for remediation under Superfund or similar state statutes, including its manufactured gas sites, (Superfund Sites) include investigation, demolition, removal, disposal, storage, replacement, containment and monitoring costs. For sites where there are other potentially responsible parties and the Company is not managing the site investigation and remediation, the liability accrued represents the Company's estimate of what it will need to pay to settle its obligations with respect to the site. For other sites, the liability accrued represents the Company's estimate of its investigation and remediation costs for the site. In either case, the Company makes its estimate of its undiscounted liability for each site in light of the applicable remediation standards, experience with similar sites, the information it has available to it at the time about the site and site-specific assumptions about such matters as the extent of contamination and remediation and monitoring methods to be used.

For the cleanup of coal tar and/or other manufactured gas plant-related environmental contaminants at the manufactured gas sites, estimates of the aggregate undiscounted potential liability for the cleanup of coal tar and/or other manufactured gas plant-related environmental contaminants range from approximately \$65 million to \$1.1 billion. To develop these estimates, the assumption was made that there is contamination at the sites where investigation has not yet been started or completed. Additional assumptions were made as to the extent of contamination, the level of cleanup required and the type and extent of remediation that will be required. Actual experience may be materially different from these assumptions.

At December 31, 2002, the Company had accrued \$107.5 million as its estimate of its undiscounted liability for Superfund Sites, including approximately \$76 million relating to manufactured gas sites. Most of the accrued liability relates to Superfund Sites where contamination has been detected and investigated in whole or in part. There will be additional liability relating to the Superfund Sites and other sites, the amount of which is not presently determinable but may be material to Con Edison of New York's financial position, results of operations or liquidity.

In 2002, the Company incurred \$21.6 million for environmental remediation costs, and received no insurance recoveries related to Superfund Sites.



Under the Company's current electric, gas and steam rate agreements site investigation and remediation costs in excess of \$5 million annually incurred with respect to hazardous waste for which it is responsible are to be deferred and subsequently reflected in rates. At December 31, 2002, \$52.3 million of such costs had been deferred as a regulatory asset.

Suits have been brought in New York State and federal courts against Con Edison of New York and many other defendants, wherein a large number of plaintiffs sought large amounts of compensatory and punitive damages for deaths and injuries allegedly caused by exposure to asbestos at various premises of the Company. The suits that have been resolved, which are many, have been resolved without any payment by Con Edison of New York, or for amounts that were not, in the aggregate, material to the Company. The amounts specified in all the remaining thousands of suits total billions of dollars. However, the Company believes that these amounts are greatly exaggerated, as experienced through the disposition of previous claims. Based upon a combination of modeling, historical data analysis and risk factor assessment, the Company's undiscounted potential liability over the next 50 years is estimated to range between \$37.7 million and \$162.1 million for these suits and additional such suits that may be brought (with no amount within the range considered more reasonable than any other). At December 31, 2002, the Company had accrued a \$37.7 million provision for these suits, and a like amount had been deferred as a regulatory asset in accordance with PSC authorization.

Workers' compensation administrative proceedings have been commenced, wherein current and former employees claim benefits based upon alleged disability from exposure to asbestos. Based on the information and relevant circumstances known to Con Edison of New York, at December 31, 2002, a provision of \$125.1 million was accrued as its estimate of its liability for workers' compensation claims, including those related to asbestos exposure. Of this amount, \$54.3 million was deferred as a regulatory asset in accordance with PSC authorization.

#### **Note G - Nuclear Generation**

In September 2001, Con Edison of New York completed the sale of its nuclear generating facilities. See Note I.

The PSC is investigating the February 2000 to January 2001 outage of the nuclear generating unit, its causes and the prudence of the Company's actions regarding the operation and maintenance of the generating unit. The proceeding covers, among other things, Con Edison of New York's inspection practices, the circumstances surrounding prior outages, the basis for postponement of the unit's steam generator replacement and whether, and to what extent, increased replacement power costs and repair and replacement costs should be borne by Con Edison's shareholders.

Con Edison of New York has not billed to customers \$90 million of replacement power costs incurred during the outage. In addition, in 2000, the Company accrued a \$40 million liability for the possible disallowance of replacement power costs that it had previously recovered from customers.

The Company is unable to predict whether or not any proceedings, lawsuits, legislation or other actions relating to the nuclear generating unit will have a material adverse effect on its financial position, results of operations or liquidity.

#### **Note H - Non-Utility Generators**

Con Edison of New York has long-term contracts with non-utility generators (NUGs) for approximately 3,100 MW of electric generating capacity. Assuming performance by the NUGs, the Company is obligated over the terms of the contracts (which extend for various periods, up to 2036) to make capacity and other fixed payments.

For the years 2003 through 2007, the capacity and other fixed payments under the contracts are estimated to be \$526 million, \$530 million, \$513 million, \$520 million and \$531 million. Such payments gradually increase to approximately \$600 million in 2013, and thereafter decline significantly. For energy delivered under most of these contracts, the Company is obligated to pay variable prices that are estimated to be lower than expected market levels.

The NUG contracts include firm contracts for capacity (ends 2005) and energy (ends 2004) from the approximately 1,000 MW nuclear generating unit that the Company sold in 2001. For energy from the unit, the Company is obligated to pay an average annual price of 3.9 cents per kWh. From time to time, certain parties have petitioned governmental authorities to shut down the nuclear generating unit. In the event that government authorities did not permit the unit to operate, the unit's owner would not be obligated to provide the Company with power to replace the power the unit would have provided.

Under the terms of its electric rate agreements, the Company is recovering in rates the charges it incurs under mandated contracts with NUGs. The 2000 Electric Rate Agreement provides that, following March 31, 2005, the Company will be given a reasonable opportunity to recover, through a non-bypassable charge to customers, the amount, if any, by which the actual costs of its purchases under the contracts exceed market value. The PSC specifically approved rate recovery of the nuclear energy purchase.

#### **Note I - Generation Divestiture**

Pursuant to restructuring agreements approved by the PSC (see "Rate and Restructuring Agreements" in Note A). The Company has divested all of its electric generating assets other than approximately 630 MW of electric generating stations located in New York City. The Company sold approximately 6,300 MW of electric generating assets in 1999 and approximately 1,480 MW in 2001.

Pursuant to the 2000 Electric Rate Agreement, the net after-tax gain (including interest accrued thereon) from Con Edison of New York's 1999 generation divestiture was applied in 2000 as follows: \$188.2 million was credited against electric distribution plant balances; \$107.3 million was used to offset a like amount of regulatory assets (including deferred power contract termination costs); \$50 million (after tax) was deferred for recognition in income during the 12 months ended March 31, 2002; and \$12 million was deferred to be used for low-income customer programs. In addition, \$30 million of employee retirement incentive expense related to the generation divestiture was deferred for amortization over 15 years and \$15 million of such expenses was charged to income in 2000.

The 2000 Electric Rate Agreement provides for the Company to amortize to income recovery of a \$74 million regulatory asset representing incremental electric capacity costs incurred prior to May 2000 to purchase capacity from the buyers of the generating assets the Company sold in 1999. Amortization to

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income will take place in years in which the Company would otherwise share excess earnings with customers, in amounts corresponding to the Company's share of the excess earnings. By March 2005, any remaining unrecovered balance will be charged to expense. Of this amount, \$30 million dollars was charged to expense in 2002 and \$15 million was expensed in 2001.

In January 2001, Con Edison of New York completed the sale of its 480 MW interest in the jointly- owned Roseton generating station for \$138 million. The net after-tax gain from the sale, which has been deferred as a regulatory liability, was \$37.1 million. In September 2001, the Company completed the sale of its approximately 1,000 MW nuclear generating plant and related assets for \$504.5 million. The proceeds were net of a \$73.8 million payment to increase the value of the nuclear decommissioning trust funds being transferred to \$430 million (the amount provided for in the sales agreement). The net after-tax loss from the sale, which was been deferred as a regulatory asset, was \$174.8 million at December 31, 2001 and \$127.2 million at December 31, 2002. The Company was authorized, effective September 2001, to continue to recover the cost of the deferred nuclear assets, which is included in rates, and to amortize the regulatory asset, until the loss on divestiture has been recovered. The 2000 Electric Rate Agreement provides that the Company "will be given a reasonable opportunity to recover stranded and strandable costs remaining at March 31, 2005, including a reasonable return on investments."

#### Note J - Income Tax

The components of income tax are as follows:

	<i>For the Year Ended December 31</i>		
	2002	2001	2000
<i>(Thousands of Dollars)</i>			
<b>Charge/(benefit) to operations:</b>			
<b>State</b>			
Current	\$ (2,267)	\$ 72,547	\$ 22,233
Deferred - net	87,187	64,887	-
<b>Federal</b>			
Current	92,090	404,859	111,081
Deferred - net	183,471	(99,929)	160,488
Amortization of investment tax credit	(6,116)	(7,000)	(7,955)
<b>TOTAL CHARGE TO OPERATIONS</b>	<b>354,365</b>	<b>435,364</b>	<b>285,847</b>
<b>Charge/(benefit) to other income:</b>			
<b>State</b>			
Current	\$ (1,697)	\$ 1,342	\$ (864)
Deferred - net	(1,067)	139	-
<b>Federal</b>			
Current	(5,938)	(1,502)	(1,267)
Deferred - net	(125)	(6,348)	6,210
Amortization of investment tax credit	(3,780)	(1,827)	-
<b>TOTAL BENEFIT TO OTHER INCOME</b>	<b>(12,607)</b>	<b>(8,196)</b>	<b>4,079</b>
<b>TOTAL</b>	<b>\$ 341,758</b>	<b>\$ 427,168</b>	<b>\$ 289,926</b>

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The tax effect of temporary differences, which gave rise to deferred tax assets and liabilities, is as follows:

	<i>For the Year Ended December 31,</i>	
	2002	2001
<i>(Thousands of Dollars)</i>		
<b>Liabilities:</b>		
Depreciation	\$ 1,447.3	\$ 1,253.6
Regulatory Liability - Future Federal income tax	627.9	624.6

Other	388.5	264.3
<b>TOTAL LIABILITIES</b>	<b>2,463.7</b>	<b>2,142.5</b>
<b>Assets:</b>		
Other	(141.4)	(119.9)
<b>TOTAL ASSETS</b>	<b>(141.4)</b>	<b>(119.9)</b>
<b>NET LIABILITY</b>	<b>\$ 2,322.3</b>	<b>\$ 2,022.6</b>

Reconciliation of the difference between income tax expense and the amount computed by applying the prevailing statutory income tax rate to income before income taxes is as follows:

	<i>For the Year Ended December 31,</i>		
	<i>2002</i>	<i>2001</i>	<i>2000</i>
	<i>(% of Pre-tax income)</i>		
Statutory tax rate	35%	35%	35%
Federal			
Changes in computed taxes resulting from:			
State Income Tax	6	9	2
Depreciation related differences	5	4	4
Cost of removal	(5)	(4)	(7)
Other	(5)	(4)	(1)
Effective Tax Rate	36%	40%	33%

#### **Note K - Stock-Based Compensation**

Con Edison maintains a stock option plan (the Plan) that covers employees of Con Edison of New York. Options may be granted to officers and key employees of Con Edison and its subsidiaries, for up to a total 10 million shares of Con Edison's common stock. Generally, options become exercisable three years after the grant date and remain exercisable until 10 years from the grant date.

As permitted by SFAS No. 123, the Company elected to follow APB No. 25, "Accounting for Stock Issued to Employees," and related interpretations in accounting for its employee stock options. Under the intrinsic value method of APB No. 25, "Accounting for Stock Issued to Employees," no compensation expense is recognized because the exercise price of Con Edison's employee stock options equals the market price of the underlying stock on the date of grant.

Under the plan, exercise of Con Edison's employee stock options requires payment in full of the exercise price, unless the committee of Con Edison's Board of Directors that administers the Plan determines that options may be settled by paying to the option holder the difference between the fair market value of the common stock subject to the option and the exercise price (cash settlement). In 2002, to ensure that the exercise of currently exercisable options would comply with certain technical requirements of the Sarbanes-Oxley Act of 2002 applicable to certain officers of Con Edison and its subsidiaries, the committee determined that, 1996 and 1997 stock options covering 295,500 shares of common stock held

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by those officers may be settled by the cash settlement method. A \$3.3 million charge to expense was recognized for Con Edison of New York in 2002 for these options. Additional changes to expense will be recognized with respect to these options to the extent the fair market value of the common shares change in future periods.

Disclosure of pro forma information regarding net income and earnings per share is required by SFAS No. 123 and SFAS No. 148, "Accounting for Stock Based Compensation, Transition and Disclosures." See "Stock-Based Compensation" in Note A for an illustration of the effect on net income if the Company had applied the fair value recognition provisions of SFAS No. 123 to its stock-based employee compensation. The fair values of 2002, 2001 and 2000 options are \$6.37, \$5.23 and \$4.42 per share, respectively. These values were estimated at the date of grant using the Black-Scholes option-pricing model with the following weighted-average assumptions:

	<i>2002</i>	<i>2001</i>	<i>2000</i>
Risk-free interest rate	5.08%	5.22%	6.25%
Expected lives—in years	6	8	8
Expected stock volatility	21.43%	21.32%	20.51%
Dividend yield	5.22%	5.83%	6.60%

A summary of changes in the status of stock options awarded to officers and employees of the Company as of December 31, 2002, 2001 and 2000 is as follows:

	<i>Shares</i>	<i>Weighted Average Price</i>
Outstanding at 12/31/99	3,433,410	\$ 39.313
Granted	1,166,500	32.499
Exercised	(68,697)	29.732
Forfeited	(46,100)	39.231
Outstanding at 12/31/00	4,485,113	37.682
Granted	1,287,550	37.760
Exercised	(363,013)	29.740
Forfeited	(63,200)	41.414
Outstanding at 12/31/01	5,346,450	38.215
Granted	1,349,850	42.510
Exercised	(413,199)	30.793
Forfeited	(116,950)	44.491
Outstanding at 12/31/02	6,166,151	\$ 39.532

The following summarizes the Plan's stock options outstanding at December 31, 2002:

<i>Plan Year</i>	<i>Weighted Average Exercise Price</i>	<i>Shares Outstanding At 12/31/02</i>	<i>Remaining Contractual Life</i>
2002	\$ 42.510	1,347,350	9 years
2001	37.760	1,278,050	8 years
2000	32.499	1,143,250	7 years
1999	47.873	1,098,200	6 years
1998	42.610	738,650	5 years
1997	31.500	395,526	4 years
1996	27.875	165,125	3 years

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As of December 31, 2002, 2001 and 2000 there were vested options outstanding to purchase 1,299,301, 939,850 and 1,304,863 shares of common stock, respectively, at an exercise price below the closing market price on that day. The weighted average exercise prices were \$37.33, \$30.11 and \$31.50, respectively.

As of December 31, 2002, 2001 and 2000 the total number of vested options outstanding were 2,397,501, 1,765,200 and 1,304,863 with weighted average exercise prices of \$42.16, \$35.90 and \$31.50, respectively.

Pursuant to employment agreements, effective September 2000, certain senior officers of Con Edison of New York were granted an aggregate of 350,000 restricted stock units, subject to the officers meeting the terms and conditions of the agreements. In June 2002, an additional 130,000 restricted stock units were granted to certain senior officers of Con Edison of New York under similar terms. The units, each of which represents the right to receive one share of Con Edison common stock and related dividends, vest ratably through August 2005 or immediately upon the occurrence of certain events. Pursuant to APB No. 25, Con Edison is recognizing compensation expense and accruing a liability for the units over the vesting period. The expense recognized for restricted stock during 2002, 2001 and 2000 was \$4.2 million, \$3.1 million and \$0.9 million, respectively.

In June 2002, Con Edison terminated its Directors' Retirement Plan applicable to non-officer directors (the termination is not applicable to directors who had previously retired from the board) and adopted a deferred stock compensation plan for these directors. Under the plan, directors were granted stock units for accrued service. Pursuant to APB No. 25, Con Edison recognizes compensation expense and accrues a liability for the units. An expense of \$2.2 million was recorded in 2002.

#### **Note L - Financial Information by Business Segment**

Con Edison of New York's business segments were determined based on similarities in economic characteristics, the regulatory environment and management's reporting requirements. The principal business segments are:

- Regulated Electric - consists of regulated utility activities relating to the generation, transmission, distribution and sale of electricity in New York.
- Regulated Gas - consists of regulated utility activities relating to the transportation, storage, distribution and sale of natural gas in New York.
- Regulated Steam - consists of regulated utility activities relating to the generation, distribution and sale of steam in New York.

All revenues of the business segments are from customers located in the United States of America. Also, all assets of its business segments are located in the United States of America. The accounting policies of the segments are the same as those described in the summary of significant accounting policies. See Note A.

Common services shared by the business segments are assigned directly or allocated based on various cost factors, depending on the nature of the service provided.

The financial data for business segments are as follows:

	<b>Regulated Electric</b>		
	<i>2002</i>	<i>2001</i>	<i>2000</i>
<i>(Thousands of Dollars)</i>			
Operating revenues	\$ 5,775,200	\$ 6,350,360	\$ 6,467,074
Intersegment revenues	9,612	11,716	11,541
Depreciation and amortization	351,581	383,100	456,727
Income tax expense	297,657	359,437	219,598
Operating income	759,227	851,953	761,431
Interest charge	306,312	300,725	292,841
Total assets	12,446,032	11,355,992	11,557,815
Construction expenditures	826,439	766,250	752,460

	<b>Regulated Gas</b>		
	<i>2002</i>	<i>2001</i>	<i>2000</i>
<i>(Thousands of Dollars)</i>			
Operating revenues	\$ 1,044,717	\$ 1,268,095	\$ 1,081,534
Intersegment revenues	2,874	3,181	3,113
Depreciation and amortization	67,985	64,162	60,279
Income tax expense	61,540	70,232	63,842
Operating income	158,810	166,678	165,080
Interest charge	63,520	63,654	58,068
Total assets	2,594,672	2,416,239	2,303,319
Construction expenditures	185,407	152,729	123,174

	<b>Regulated Steam</b>		
	<i>2002</i>	<i>2001</i>	<i>2000</i>
<i>(Thousands of Dollars)</i>			
Operating revenues	\$ 404,044	\$ 503,736	\$ 452,135
Intersegment revenues	1,810	1,903	2,023
Depreciation and amortization	18,330	17,902	18,173
Income tax expense	(4,832)	5,695	2,407
Operating income	36,046	27,893	25,557
Interest charge	21,950	20,768	18,191
Total assets	977,315	746,587	686,807
Construction expenditures	82,887	64,308	32,014

	<b>Total</b>		
	<i>2002</i>	<i>2001</i>	<i>2000</i>
<i>(Thousands of Dollars)</i>			
Operating revenues	\$ 7,223,961	\$ 8,122,191	\$ 8,000,743
Intersegment revenues	14,296	16,800	16,677
Depreciation and amortization	437,896	465,164	535,179
Income tax expense	354,365	435,364	285,847
Operating income	954,083	1,046,524	952,068
Interest charge	391,782	385,147	369,100
Total assets	16,018,019	14,518,818	14,547,941
Construction expenditures	1,094,733	983,287	907,648

	<b>Total</b>		
	<i>2002</i>	<i>2001</i>	<i>2000</i>
<i>(Thousands of Dollars)</i>			
Operating revenues	\$ 7,223,961	\$ 8,122,191	\$ 8,000,743
Intersegment revenues	14,296	16,800	16,677
Depreciation and amortization	437,896	465,164	535,179
Income tax expense	354,365	435,364	285,847
Operating income	954,083	1,046,524	952,068
Interest charge	391,782	385,147	369,100
Total assets	16,018,019	14,518,818	14,547,941
Construction expenditures	1,094,733	983,287	907,648

## Note M - Related Party Transactions

Con Edison of New York and Con Edison and its other subsidiaries provide administrative and other services to each other pursuant to cost allocation procedures approved by the PSC. The cost of the services provided by the Company to Con Edison and its other subsidiaries was \$30.5 million in 2002, \$40.3 million in 2001 and \$21.1 million in 2000. Con Edison and its other subsidiaries, including Orange and Rockland Utilities, Inc. (O&R), also provide services to Con Edison of New York. The cost of the services provided to the Company by Con Edison and its other subsidiaries was \$24.4 million in 2002, \$23.8 million in 2001 and \$18.7 million in 2000. In addition, Con Edison of New York and O&R jointly purchase gas, the cost of which is allocated between the companies based on throughput and other factors. For its share of the gas, O&R paid the Company \$102.0 million in 2002, \$140.9 million in 2001 and \$103.9 million in 2000.

In February 2002 the FERC authorized Con Edison of New York to lend funds to O&R, for periods of not more than 12 months, in amounts not to exceed \$150 million outstanding at any time, at prevailing market rates. Through December 31, 2002, O&R has not borrowed any funds from the Company.

## Note N - Leases

The principal kinds of property leased by the Company include office buildings, transmission and distribution facilities, and equipment. In accordance with SFAS No. 13, "Accounting for Leases," these leases are classified as either capital leases or operating leases. Most of the operating leases provide the option to renew at the fair rental value for future periods. Generally, it is expected that leases will be renewed or replaced in the normal course of business.

Capital leases: For ratemaking purposes capital leases are treated as operating leases; therefore, in accordance with SFAS No. 71, the amortization of the leased asset is based on the rental payments recovered through rates. The following assets and obligations under capital leases are included in the accompanying consolidated balance sheet at December 31, 2002 and 2001:

	2002	2001
<i>(Millions of Dollars)</i>		
<b>UTILITY PLANT</b>		
Production	\$ -	\$ -
Transmission	12.1	13.5
Common	29.0	29.7
<b>TOTAL</b>	<b>\$ 41.1</b>	<b>\$ 43.2</b>
<b>CURRENT LIABILITIES</b>	<b>\$ 2.6</b>	<b>\$ 2.1</b>
<b>NON-CURRENT LIABILITIES</b>	<b>38.5</b>	<b>41.1</b>
<b>TOTAL LIABILITIES</b>	<b>\$ 41.1</b>	<b>\$ 43.2</b>

The accumulated amortization of the capital leases was \$28.8 million and \$26.8 million as of December 31, 2002 and 2001, respectively.

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The future minimum lease commitments for the above assets are as follows:

	<i>(Millions of Dollars)</i>	
2003	\$	7.8
2004		7.5
2005		7.3
2006		7.2
2007		7.1
All years thereafter		35.1
<b>Total</b>	<b>\$</b>	<b>72.0</b>
<b>Less: amount representing interest</b>		<b>30.9</b>
<b>Present value of net minimum lease payments</b>	<b>\$</b>	<b>41.1</b>

Operating leases: In 2002, the Company made payments under non-cancelable operating lease agreements amounting to \$36.9 million, of which \$27.5 million related to transformer vault rentals. The payments applicable to transformer vault rentals are expected to escalate by 5 percent per year until the agreement expires in 2004, at which time a new long-term lease is expected to be signed. The future minimum lease commitments for operating lease agreements are as follows:

*(Millions of Dollars)*

2003	\$	37.8
2004		38.5
2005		8.2
2006		5.8
2007		4.8
All years thereafter		20.8
Total	\$	115.9

#### Note O - Derivative Instruments and Hedging Activities

Effective January 2001, the Company adopted SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended (SFAS No. 133).

##### Energy Price Hedging

The Company uses derivative instruments to hedge market price fluctuations in related underlying transactions for the physical purchase or sale of electricity and gas (hedges). As of December 31, 2002 and December 31, 2001, the fair value of the derivatives for such use was a gain of \$15.8 million and a loss of \$10.3 million, respectively.

Pursuant to SFAS No. 71, the Company defers recognition in income of gains and losses on a hedge until the underlying transaction is completed. In accordance with rate provisions that permit the recovery of the cost of purchased power and gas purchased for resale, the Company credits or charges to its customers gains or losses on hedges and related transaction costs. See "Recoverable Energy Costs" in Note A.

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The Company's 2000 Electric Agreement provides that 10 percent of gains or losses on hedges flow to net income as rewards or penalties. The Company has elected cash flow hedge accounting under SFAS No. 133 for a qualifying portion of its electric hedges.

Pursuant to cash flow hedge accounting, the mark-to-market unrealized gain or loss on each hedge is recorded in other comprehensive income (OCI) and reclassified to income at the time the underlying transaction is completed. However, any gain or loss relating to any portion of a hedge determined to be "ineffective" is recognized in income in the period in which such determination is made.

Unrealized gains and losses on cash flow hedges for energy transactions, net of tax, included in accumulated OCI for the years ended December 31, 2002 and 2001 were as follows:

	2002	2001
	(Millions of Dollars)	
Unrealized gains/(losses) on derivatives qualified as hedges, net of \$2.3 and (\$3.6) taxes	\$ 3.4	\$ (4.9)
Less: Reclassification adjustment for gains/(losses) included in net income, net of \$0.5 and (\$2.1) taxes	0.7	(3.0)
Unrealized gains/(losses) on derivatives qualified as hedges for the period	\$ 2.7	\$ (1.9)

As of December 31, 2002, \$0.6 million of after-tax net gains relating to hedges are expected to be reclassified from accumulated OCI to income within the next 12 months.

##### Interest Rate Hedging

In October 2002, the Company entered into a swap agreement in connection with its \$224.6 million tax-exempt Facilities Revenue Bonds, Series 2001A. Pursuant to the swap agreement provisions, the Company pays interest at a variable rate equal to the three-month LIBOR and is paid interest at a fixed rate of 5.375 percent. The agreement has a term of 10 years and is callable at par after three years. The swap is designated as a fair value hedge and qualifies for "short-cut" hedge accounting under SFAS No. 133. Under this method, changes in the fair value of the swap instrument are recorded directly against the carrying value of the hedged bonds and have no impact on earnings. As of December 31, 2002, the fair value of the interest rate swap was \$7.7 million and recorded as an asset and the fair value of the hedged bond was \$232.3 million.

#### Note P - World Trade Center Attack

The Company estimates that it will incur \$430 million of costs for emergency response, temporary restoration and permanent replacement of electric, gas and steam transmission and distribution facilities damaged as a result of the September 11, 2001 attack on the World Trade Center. Most of the costs are expected to be capital in nature. The Company estimates that \$96 million of the costs will be covered by insurance. In December 2001, Con Edison of New York filed a petition with the PSC for authorization to defer these costs. The Company expects the PSC to permit recovery from customers of the costs, net of any Federal reimbursement, insurance payment and tax savings. In August 2002, President Bush signed into law an appropriations bill that authorizes funds for which the

as utility plant were capitalized and \$62.9 million of such costs were deferred as a regulatory asset. In addition, at December 31, 2001, the Company accrued a regulatory liability to defer recognition in income of an \$81.5 million tax refund claim resulting from a casualty loss deduction taken by the Company relating to the attack.

#### **Note Q - New Financial Accounting Standards**

During 2002 the FASB issued four new accounting standards: SFAS No. 145, "Rescission of FASB Statements No. 4, 44 and 64, Amendment of FASB Statement No. 13, and Technical Corrections," SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities," SFAS No. 147, "Acquisitions of Certain Financial Institutions," and SFAS No. 148, "Accounting for Stock-Based Compensation—Transition and Disclosure." The FASB also issued Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others," in November 2002, and Interpretation No. 46, "Consolidation of Variable Interest Entities," in January 2003. In addition, during 2002, the FASB's Emerging Issues Task Force (EITF) reached a consensus on several issues within EITF Issue No. 02-3 "Issues Involved in Accounting for Derivative Contracts Held for Trading Purposes and Contracts Involved in Energy Trading and Risk Management Activities," one of which was the rescission of EITF Issue No. 98-10, "Accounting for Contracts Involved in Energy Trading and Risk Management Activities."

SFAS No. 145 rescinds SFAS No. 4, "Reporting Gains and Losses from Extinguishment of Debt," and SFAS No. 64, "Extinguishment of Debt Made to Satisfy Sinking-Fund Requirements," effective January 1, 2003. This statement also amends SFAS No. 13 to require sale-leaseback accounting for certain lease modifications that have an economic impact similar to sale-leaseback transactions and amends certain other authoritative pronouncements, effective May 15, 2002. SFAS No. 146, which was effective January 1, 2003, requires companies to recognize costs associated with exit or disposal activities when they are incurred rather than at the date of a commitment to an exit or disposal plan. SFAS No. 147, which was effective October 1, 2002, provides guidance on the accounting for the acquisition of a financial institution. SFAS No. 148, which amends SFAS No. 123, provides alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. In addition, SFAS No. 148 amends the financial statements disclosure requirements of SFAS No. 123 regarding the method of accounting for stock-based employee compensation and the effects of the method used on reported results. Finally, this statement amends APB No. 28, "Interim Financial Reporting," to require disclosure about those effects in interim financial information. The amendment of SFAS No. 123 is effective for fiscal years ended after December 15, 2002. The amendment of Opinion No. 28 is effective for interim periods beginning after December 15, 2002. For information about the Company's stock-based compensation, see Note K.

The adoption of these statements had no impact on the Company's consolidated financial position, results of operations or liquidity.

Interpretation No. 45 (FIN 45) requires a guarantor to recognize a liability at the inception of a guarantee for the fair value of the obligations it assumes under that guarantee. It also requires a guarantor to make significant new disclosures for guarantees even if the likelihood of the guarantor's having to make

payments under the guarantee is remote. The initial recognition and measurement provisions are applicable on a prospective basis to guarantees issued or modified after December 31, 2002. The disclosure requirements are effective December 15, 2002. The adoption of FIN 45 had no impact on the Company's consolidated financial position, results of operation or liquidity.

Interpretation No. 46 (FIN 46) addresses the consolidation by business enterprises of variable interest entities of which the enterprise is the primary beneficiary. The consolidation requirements apply immediately to variable interest entities created after January 31, 2003. The consolidation requirements apply to existing entities in the first fiscal year or interim period beginning after June 15, 2003. Certain disclosure requirements apply in all financial statements issued after January 31, 2003, regardless of when the variable interest entity was established. The adoption of FIN 46 is not expected to have any impact on the Company's consolidated financial position, results of operation or liquidity.

In June 2002, the EITF reached a partial consensus on EITF Issue No. 02-3 that revenue resulting from energy trading contracts, whether realized or unrealized and whether financially or physically settled, should be shown net in the income statement. This ruling became effective for periods ending after July 2002, with reclassification of prior period amounts required.

On October 25, 2002, the EITF reached a consensus to rescind EITF Issue No. 98-10. As a result, new energy trading and energy-related contracts entered into after October 25, 2002 that do not qualify as derivatives under SFAS No. 133 are not marked to market. All derivative contracts will be accounted for in accordance with SFAS No. 133. Therefore, previously recognized mark-to-market gains and losses on non-derivative contracts must be reversed upon adoption of this consensus. The effective date for the full rescission of EITF Issue No. 98-10 is January 1, 2003, with early application permitted.

In October 2002, the EITF reached a consensus that gains and losses, realized and unrealized, on all derivative instruments within the scope of SFAS No. 133 should be shown net in the income statement, whether or not settled physically, if the derivative instruments are held for trading purposes. This consensus is effective January 1, 2003, with early adoption permitted. Additional disclosures regarding energy trading activities required by EITF Issue No. 02-3 in June 2002 were eliminated in October 2002, with the rescission of EITF Issue No. 98-10.

The EITF did not reach consensus on whether or not recognition of unrealized gains and losses at inception of an energy-trading contract is appropriate. However, the FASB staff observed that unrealized gains or losses at inception should not be recognized unless the fair value of the derivative instrument is evidenced by a quoted market price, similar current market transactions or valuations based on observable market information.

The above consensus had no impact on the Company's consolidated financial position, results of operation or liquidity.

The Company also adopted the following accounting standards that were issued in 2001.



acquired) and intangible assets with indefinite useful lives will no longer be amortized, but instead be tested for impairment at least annually. Other intangible assets will continue to be amortized over their finite useful lives. The adoption of SFAS No. 142 had no impact on the Company's consolidated financial position, results of operations or liquidity.

SFAS No. 143, "Accounting for Asset Retirement Obligations," which the Company adopted on January 1, 2003, requires entities to record the fair value of a liability associated with an asset retirement obligation in the period incurred. When the liability is initially recorded, the entity will capitalize the cost by increasing the amount of the related asset. The liability will be increased to its present value each period and the capitalized cost will be depreciated over the useful life of the related asset. Upon retirement of the asset, the entity will settle the obligation for the amount recorded or incur a gain or loss. The Company has not identified any significant asset retirement obligations. The adoption of SFAS No. 143 did not have a material impact on the Company's consolidated financial position, results of operations, or liquidity.

SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," which the Company adopted on January 1, 2002, replaces SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of." SFAS No. 144 requires that all long-lived assets held for sale or meeting other specified criteria be measured at the lower of book value or fair value less cost to sell. SFAS No. 144 also broadens the reporting of discontinued operations. The adoption of SFAS No. 144 had no impact on the Company's consolidated financial position, results of operations or liquidity.

## REPORT OF INDEPENDENT ACCOUNTANTS

### To the Stockholder and Board of Directors of Orange and Rockland Utilities, Inc.:

In our opinion, the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of Orange and Rockland Utilities, Inc. and its subsidiaries (the Company) at December 31, 2002 and 2001, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2002 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the accompanying index present fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. These financial statements and financial statement schedule are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

PricewaterhouseCoopers LLP  
New York, NY  
February 20, 2003

### Orange and Rockland Utilities, Inc.

## CONSOLIDATED BALANCE SHEET

	As At	
	December 31, 2002	December 31, 2001
	(Thousands of Dollars)	
ASSETS		
UTILITY PLANT, AT ORIGINAL COST (Note A)		
Electric	\$ 734,191	\$ 703,621
Gas	300,336	292,066
General	117,509	112,353
Total	1,152,036	1,108,040
Less: accumulated depreciation	405,604	389,234
Net	746,432	718,806
Construction work in progress	23,033	27,271

NET UTILITY PLANT	769,465	746,077
NON-UTILITY PLANT (Note A)		
Non-utility property, less accumulated depreciation of \$2,055 and \$2,339 in 2002 and 2001, respectively	2,541	2,621
NET PLANT	772,006	748,698
CURRENT ASSETS		
Cash and temporary cash investments (Note A)	2,542	1,785
Accounts receivable – customers, less allowance for uncollectible accounts of \$1,725 and \$2,625, respectively	53,715	44,371
Other accounts receivable, less allowance for uncollectible accounts of \$1,070 and \$860, respectively	3,928	5,166
Accrued unbilled revenue (Note A)	20,428	20,655
Gas in storage, at average cost	15,703	21,227
Materials and supplies, at average cost	5,758	5,563
Prepayments	11,889	17,776
Other current assets	9,172	11,532
TOTAL CURRENT ASSETS	123,135	128,075
DEFERRED CHARGES, REGULATORY ASSETS AND NONCURRENT ASSETS		
Regulatory assets		
Recoverable energy costs (Note A)	98,743	87,514
Deferred pension and other postretirement benefits	46,328	39,599
Deferred environmental remediation costs (Note F)	30,762	40,474
Future federal income tax (Note A)	39,368	35,266
Deferred revenue taxes (Note A)	5,871	6,852
Other	26,800	29,810
TOTAL REGULATORY ASSETS	247,872	239,515
Other deferred charges and noncurrent assets	18,248	19,052
TOTAL DEFERRED CHARGES, REGULATORY ASSETS AND NONCURRENT ASSETS	266,120	258,567
TOTAL ASSETS	\$ 1,161,261	\$ 1,135,340

The accompanying notes are an integral part of these financial statements.

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## Orange and Rockland Utilities, Inc.

### CONSOLIDATED BALANCE SHEET

	As At	
	December 31, 2002	December 31, 2001
	(Thousands of Dollars)	
CAPITALIZATION AND LIABILITIES		
CAPITALIZATION (see Statement of Capitalization and Note B)		
Common shareholders' equity	\$ 348,227	\$ 335,391
Long-term debt	300,890	335,771
TOTAL CAPITALIZATION	649,117	671,162
NONCURRENT LIABILITIES		
Pension and benefits reserve	98,373	85,607
Hedges on variable rate long term-debt (Note N)	19,104	14,235
Superfund and other environmental costs (Note F)	35,279	38,417
Other noncurrent liabilities	15,944	18,619

TOTAL NONCURRENT LIABILITIES	168,700	156,878
<b>CURRENT LIABILITIES</b>		
Long-term debt due within one year	35,000	-
Notes payable	1,000	16,600
Accounts payable	60,501	52,818
Accounts payable to affiliated companies	3,492	3,113
Accrued taxes	1,047	3,302
Customer deposits	12,758	9,248
Accrued interest	7,994	6,968
Other current liabilities	8,776	6,878
<b>TOTAL CURRENT LIABILITIES</b>	<b>130,568</b>	<b>98,927</b>
<b>DEFERRED CREDITS AND REGULATORY LIABILITIES</b>		
Accumulated deferred federal income tax (Note K)	133,779	125,108
Accumulated deferred investment tax credits (Note A)	5,950	6,425
Regulatory liabilities		
Pensions and other postretirement benefits (Note D)	2,437	6,173
Refundable energy costs (Note A)	43,651	45,008
Competition enhancement funds	10,084	10,149
Gain on divestiture	4,530	6,246
Other	9,749	8,998
<b>TOTAL REGULATORY LIABILITIES</b>	<b>70,451</b>	<b>76,574</b>
Other deferred credits	2,696	266
<b>TOTAL DEFERRED CREDITS AND REGULATORY LIABILITIES</b>	<b>212,876</b>	<b>208,373</b>
<b>TOTAL CAPITALIZATION AND LIABILITIES</b>	<b>\$ 1,161,261</b>	<b>\$ 1,135,340</b>

The accompanying notes are an integral part of these financial statements.

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## Orange and Rockland Utilities, Inc.

### CONSOLIDATED INCOME STATEMENT

For the Years Ended December 31,

	2002	2001	2000
<i>(Thousands of Dollars)</i>			
<b>OPERATING REVENUES (NOTE A)</b>			
Electric	\$ 475,462	\$ 538,375	\$ 513,016
Gas	158,838	197,862	183,436
Non-utility	-	104	4,521
<b>TOTAL OPERATING REVENUES</b>	<b>634,300</b>	<b>736,341</b>	<b>700,973</b>
<b>OPERATING EXPENSES</b>			
Purchased power	220,094	290,333	274,369
Fuel	-	-	39
Gas purchased for resale	88,797	128,548	115,325
Other operations	115,896	115,164	118,099
Maintenance	26,649	26,133	27,177
Depreciation and amortization (Note A)	34,002	32,780	27,129
Taxes, other than income taxes (Note A)	52,398	53,911	55,569
Income taxes (Notes A and K)	24,804	26,470	22,825
<b>TOTAL OPERATING EXPENSES</b>	<b>562,640</b>	<b>673,339</b>	<b>640,532</b>
<b>OPERATING INCOME</b>	<b>71,660</b>	<b>63,002</b>	<b>60,441</b>

<b>OTHER INCOME (DEDUCTIONS)</b>			
Investment income (Note A)	1,168	1,598	4,846
Allowance for equity funds used during construction (Note A)	438	(13)	212
Other income	144	83	1,822
Other income deductions	(732)	(880)	(1,064)
Income taxes (Notes A and K)	438	533	(1,829)
<b>TOTAL OTHER INCOME (DEDUCTIONS)</b>	<b>1,456</b>	<b>1,321</b>	<b>3,987</b>
<b>INCOME BEFORE INTEREST CHARGES</b>			
Interest on long-term debt	73,116	64,323	64,428
Other interest	21,218	21,855	22,933
Allowance for borrowed funds used during construction (Note A)	7,302	3,213	2,951
	(300)	(927)	(525)
<b>NET INTEREST CHARGES</b>	<b>28,220</b>	<b>24,141</b>	<b>25,359</b>
<b>NET INCOME FOR COMMON STOCK</b>	<b>\$ 44,896</b>	<b>\$ 40,182</b>	<b>\$ 39,069</b>

The accompanying notes are an integral part of these financial statements.

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## Orange and Rockland Utilities, Inc.

### CONSOLIDATED STATEMENT OF RETAINED EARNINGS

For the Years Ended December 31,

	2002	2001	2000
	<i>(Thousands of Dollars)</i>		
BALANCE, JANUARY 1	\$ 151,792	\$ 139,610	\$ 137,535
Net income for common stock	44,896	40,182	39,069
<b>TOTAL</b>	<b>196,688</b>	<b>179,792</b>	<b>176,604</b>
Dividends to parent	(28,000)	(28,000)	(37,000)
Capital stock expense	-	-	6
BALANCE, DECEMBER 31	\$ 168,688	\$ 151,792	\$ 139,610

## Orange and Rockland Utilities, Inc.

### CONSOLIDATED STATEMENT OF COMPREHENSIVE INCOME

For the Years Ended December 31,

	2002	2001	2000
	<i>(Thousands of Dollars)</i>		
NET INCOME FOR COMMON STOCK	\$ 44,896	\$ 40,182	\$ 39,069
<b>OTHER COMPREHENSIVE INCOME/(LOSS), NET OF TAXES</b>			
Investment in marketable securities, net of (\$854), (\$703) and (\$454) taxes in 2002, 2001 and 2000, respectively	(1,218)	(808)	(843)
Minimum pension liability adjustments, net of \$14, (\$278) and (\$340) taxes in 2002, 2001 and 2000, respectively	20	(251)	(631)
Unrealized gains/(losses) on derivatives qualified as hedges due to the cumulative effect of a change in accounting principle, net of (\$5,709) taxes in 2001	-	(8,150)	-
Unrealized gains/(losses) on derivatives qualified as hedges net of (\$3,101) and (\$999) taxes in	(4,428)	(1,427)	-

2002 and 2001, respectively

Less: Reclassification adjustment for gains/(losses) included in net income, net of (\$1,096) and (\$844) taxes in 2002 and 2001, respectively

(1,566)

(1,205)

-

TOTAL OTHER COMPREHENSIVE INCOME/(LOSS), NET OF TAXES

(4,060)

(9,431)

(1,474)

COMPREHENSIVE INCOME

\$ 40,836

\$

30,751

\$

37,595

The accompanying notes are an integral part of these financial statements.

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## Orange and Rockland Utilities, Inc.

### CONSOLIDATED STATEMENT OF CASH FLOWS

For the Years Ended December 31,

2002

2001

2000

(Thousands of Dollars)

#### OPERATING ACTIVITIES

Net income for common stock \$ 44,896 \$ 40,182 \$ 39,069

#### PRINCIPAL NON-CASH CHARGES (CREDITS) TO INCOME

Depreciation and amortization 33,639 32,465 26,862

Deferred income tax 4,094 2,532 27

Common equity component of allowance for funds used during construction (438) 13 (212)

Other comprehensive income (4,061) (9,431) (1,474)

Unrealized hedges on variable rate long term debt and energy trading 5,941 14,235 -

Gain on sale of land (net of tax) - - (2,404)

#### CHANGES IN ASSETS AND LIABILITIES

Accounts receivable – customers, less allowance for uncollectibles (9,343) 37,811 (23,597)

Materials and supplies, including fuel and gas in storage 5,329 (5,407) (2,194)

Prepayments, other receivables and other current assets 9,712 20,141 (6,828)

Recoverable energy costs (12,587) (12,521) (29,859)

Retiree benefit reserve 12,766 9,386 9,272

Accounts payable 8,062 (11,901) 11,251

Accrued taxes (2,255) (1,561) 11,528

Accrued interest 1,026 (119) (1,434)

Deferred debits and regulatory assets 6,966 (8,929) (24,967)

Deferred credits and regulatory liabilities (3,409) (14,864) (6,211)

Other assets 2,823 4,042 4,396

Other liabilities (284) 10,050 36,684

NET CASH FLOWS FROM OPERATING ACTIVITIES 102,877 106,124 39,909

#### INVESTING ACTIVITIES

Construction expenditures (57,122) (58,532) (51,112)

Cost of removal less salvage (1,836) (2,057) (305)

Common equity component of allowance for funds used during construction 438 (13) 212

Proceeds from sale of land (net of tax) - - 2,548

NET CASH FLOWS USED IN INVESTING ACTIVITIES (58,520) (60,602) (48,657)

#### FINANCING ACTIVITIES

Short-term debt (15,600) (24,220) 40,820

Issuance of long-term debt - - 55,000

Retirement of long-term debt - - (120,030)

Dividend to parent (28,000) (28,000) (37,000)

NET CASH FLOWS USED IN FINANCING ACTIVITIES (43,600) (52,220) (61,210)

#### CASH AND TEMPORARY CASH INVESTMENTS:

NET CHANGE FOR THE PERIOD 757 (6,698) (69,958)

BALANCE AT BEGINNING OF PERIOD		1,785		8,483		78,441
BALANCE AT END OF PERIOD	\$	2,542	\$	1,785	\$	8,483
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION</b>						
Cash paid during the period for:						
Interest	\$	27,152	\$	25,209	\$	27,285
Income Taxes		16,766		21,916		30,588

The accompanying notes are an integral part of these financial statements.

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## Orange and Rockland Utilities, Inc. and Subsidiaries

### CONSOLIDATED STATEMENT OF CAPITALIZATION

	Shares outstanding		Years Ended December 31,	
	December 31, 2002	December 31, 2001	2002	2001
<i>(Thousands of Dollars)</i>				
<b>COMMON SHAREHOLDER'S EQUITY (NOTE B)</b>				
Common stock	1,000	1,000	\$ 5	\$ 5
Retained earnings			168,688	151,792
Additional Paid in Capital			194,499	194,499
<b>ACCUMULATED OTHER COMPREHENSIVE INCOME/(LOSS)</b>				
Investment in marketable securities, net of (\$2,011) and (\$1,157) taxes in 2002 and 2001, respectively			(2,869)	(1,651)
Minimum pension liability adjustments, net of (\$604) and (\$618) taxes in 2002 and 2001, respectively			(862)	(882)
Unrealized gains/(losses) on derivatives qualified as hedges due to cumulative effect of a change in accounting principle, net of (\$5,709) taxes in 2001			-	(8,150)
Unrealized gains/(losses) on derivatives qualified as hedges, net of (\$9,809) and (\$999) taxes in 2002 and 2001, respectively			(14,005)	(1,427)
Less: Reclassification adjustment for gains/(losses) included in net income, net of (\$1,940) and (\$844) taxes in 2002 and 2001, respectively			(2,771)	(1,205)
<b>TOTAL ACCUMULATED OTHER COMPREHENSIVE INCOME/(LOSS) INCLUDED IN NET INCOME, NET OF TAXES</b>			<b>(14,965)</b>	<b>(10,905)</b>
<b>TOTAL COMMON SHAREHOLDER'S EQUITY</b>			<b>\$ 348,227</b>	<b>\$ 335,391</b>

Long-term debt (Note B)

Maturity	Interest Rate	Series	At December 31,	
			2002	2001
<i>(Thousands of Dollars)</i>				
<b>Debentures:</b>				
2003	6.560%	1993D	35,000	35,000
2007	7.125%	1997J	20,000	20,000
2010	7.50%	2000A	55,000	55,000
2018	7.07%	1998C	3,200	3,200
2027	6.50%	1997F	80,000	80,000
2029	7.0%	1999G	45,000	45,000
<b>TOTAL DEBENTURES</b>			<b>238,200</b>	<b>238,200</b>
<b>TAX-EXEMPT DEBT - NOTES ISSUED TO NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY FOR POLLUTION CONTROL REVENUE BONDS:</b>				
2014	6.09%	1994	55,000	55,000
2015	1.45	1995*	44,000	44,000
<b>TOTAL TAX-EXEMPT DEBT</b>			<b>99,000</b>	<b>99,000</b>

UNAMORTIZED DEBT DISCOUNT	(1,310)	(1,429)
Total	335,890	335,771
Less: Long-term debt due within one year	35,000	-
TOTAL LONG-TERM DEBT	300,890	335,771
TOTAL CAPITALIZATION	\$ 649,117	\$ 671,162

\* Rate reset weekly or by auction held every 35 days; December 31, 2002 rate shown

The accompanying notes are an integral part of these financial statements.

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## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS— ORANGE AND ROCKLAND UTILITIES, INC.

These notes form an integral part of the accompanying consolidated financial statements of Orange and Rockland Utilities, Inc. (O&R or the Company) and its subsidiaries.

### Con Edison

Consolidated Edison, Inc. (Con Edison) acquired O&R in July 1999. Con Edison owns all the issued and outstanding shares of O&R's common stock, \$5.00 par value per share.

O&R, a regulated utility, along with its utility subsidiaries, Rockland Electric Company (RECO) and Pike County Light & Power Company (Pike), provide electric service to over 285,000 customers in southeastern New York and in adjacent sections of New Jersey and northeastern Pennsylvania. O&R and Pike provide gas service to over 120,000 customers in southeastern New York and northeastern Pennsylvania.

### Note A - Summary of Significant Accounting Policies

#### Principles of Consolidation

The consolidated financial statements include the accounts of O&R and all of its subsidiaries. All intercompany balances and transactions have been eliminated.

#### Accounting Policies

The accounting policies of O&R and its subsidiaries conform to accounting principles generally accepted in the United States of America. For regulated public utilities, like O&R, RECO and Pike, accounting principles generally accepted in the United States of America include the Financial Accounting Standards Board's (FASB) Statement of Financial Accounting Standards (SFAS) No. 71, "Accounting for the Effects of Certain Types of Regulation." In accordance with SFAS No. 71, the accounting requirements of the Federal Energy Regulatory Commission (FERC) and the state public utility regulatory authority having jurisdiction are followed. The Company is subject to regulation by the New York State Public Service Commission (PSC); RECO by the New Jersey Board of Public Utilities (NJBPU) and Pike by the Pennsylvania Public Utility Commission (PPUC).

SFAS No. 71 specifies the economic effects that result from the cause and effect relationship of costs and revenues in the rate-regulated environment and how these effects are to be accounted for by a regulated enterprise. Revenues intended to cover some costs may be recorded either before or after the costs are incurred. If regulation provides assurance that incurred costs will be recovered in the future, these costs would be recorded as deferred charges or "regulatory assets" under SFAS No. 71. If revenues are recorded for costs that are expected to be incurred in the future, these revenues would be recorded as deferred credits or "regulatory liabilities" under SFAS No. 71.

The Company's principal regulatory assets and liabilities are detailed on the consolidated balance sheet. The Company is receiving or being credited with a return on all of its regulatory assets for which a cash outflow has been made, and is paying or being charged with a return on all of its regulatory liabilities for which a cash inflow has been received. Regulatory assets and liabilities will be recovered from customers,

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or applied for customer benefit, in accordance with rate provisions approved by the applicable public utility regulatory commission.

### Rate and Restructuring Agreements

#### Electric

In 1997 the PSC, in its Competitive Opportunities proceeding, approved a four-year Restructuring Plan pursuant to which the Company reduced its electric rates in 1997 and 1998, and in 1999 sold all of its generating assets and made retail access available to all of its electric customers.

The RECO plan approved by the NJBPU in 1999 provided rate reductions of \$6.8 million effective August 1999 and an additional rate reduction of \$2.7 million implemented in January 2001. A final rate reduction of \$6.2 million was implemented in August 2002.

The Pike plan approved by the PPUC in 1998 provided retail access to all customers effective May 1999.

In 1999, the PSC ratified a settlement agreement approving the acquisition of O&R by Con Edison. As part of this settlement, gas rates were reduced by \$1.1 million in August 1999 and electric rates were reduced by \$6.1 million in December 1999. This settlement allowed for a five-year amortization of

transaction costs. The NJBPU and the PPUC also issued orders approving the transaction. The NJBPU's order provided for a <sup>75</sup>/<sub>25</sub> percent customer/shareholder sharing of net synergy savings and a ten-year amortization of transaction costs. The customers' 75 percent share of net synergy savings is being returned to them as part of the rate reduction effective August 1999. The PPUC agreement allows Pike to retain all net synergy savings until its next general rate case and provides for a five-year amortization of transaction costs.

In October 2002, RECO filed a request with the NJBPU seeking an increase in electric rates of \$7.3 million (5.5 percent) annually, to take effect on August 1, 2003, principally to reflect the costs of electric system infrastructure improvements required for service reliability and security. A final ruling by the NJBPU is expected in the third quarter of 2003.

In August 2002, the PPUC approved a settlement agreement covering the rates Pike charges for energy cost recoveries. As part of this settlement, Pike agreed to terminate its Competitive Transition Charge (CTC) and not to file for an increase in delivery rates that would be effective prior to December 31, 2004. The settlement provides for an increase in Pike's Provider of Last Resort (POLR) energy rates of .577 cents per kWh, inclusive of gross receipts tax, retroactive to July 1, 2002. This represents approximately a 6.0 percent increase in Pike's overall rates. A potential further increase of 5.0 percent of the POLR energy rate or an addition of .28 cents per kWh effective January 2005 is contingent on the actual and projected cost of energy at that time. The settlement is estimated to increase revenues by a net \$1.4 million between September 2002 and December 2005.

## Gas

In November 2000, the PSC authorized implementation of an agreement among O&R, the PSC Staff, and the Consumer Protection Board covering the period from November 2000 through April 2002. In October 2001, the PSC approved an extension of this agreement covering the period May 2002 through October 2003. With limited exceptions, the agreement, as extended, provides for no changes to base rates. The Company was permitted to retain, and is amortizing to income, \$18.1 million of deferred

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credits that otherwise would have been returned to customers. Earnings for gas operations above a threshold of 11.1 percent are subject to a <sup>50</sup>/<sub>50</sub> sharing mechanism between customer and shareholder. The 11.1 percent sharing threshold is subject to a positive adjustment of up to 85 basis points for the attainment of competitive awareness and customer migration goals. The Company is subject to a potential earnings penalty of \$450,000 per year for failure to meet minimum levels of performance regarding main replacement, gas leak backlog, customer safety complaints and protection of underground facilities.

In November 2002, O&R filed a request with the PSC for approval of a \$27.2 million rate gas increase effective November 2003. The Company also submitted a multi-year plan that addresses rates for two additional years, with an increase of \$2.5 million to cover infrastructure costs, inflation and property taxes. The Administrative Law Judge is expected to issue a recommended decision in the third quarter 2003.

## Utility Revenues

Utility revenues are recorded on the basis of monthly customer cycle billings. Unbilled revenues are accrued at the end of each month for estimated energy usage since the last meter reading. Accrued unbilled revenue included in the Company's balance sheet at December 31, 2002 and 2001 was \$20.4 million and \$20.7 million, respectively.

The level of revenues from gas sales in New York is subject to a weather normalization clause that requires recovery from or refund to firm customers of the shortfalls or excesses of firm net revenues that result from variations of more than plus or minus four percent in actual degree days from the number of degree days used to project heating season sales.

## Recoverable Energy Costs

O&R generally recovers all of its prudently incurred fuel, purchased power and gas costs, including hedging gains and losses, in accordance with rate provisions approved by the applicable state public utility commissions. If the actual energy costs for a given month are more or less than amounts billed to customers for that month, the difference is recoverable from or refundable to customers. Differences between actual and billed energy costs are generally deferred for charge or refund to customers during the next billing cycle (normally within one or two months). For gas costs, differences between actual and billed gas costs during the 12-month period ending each August are charged or refunded to customers during a subsequent 12-month period.

RECO recovers all of its prudently incurred purchased power costs pursuant to rate provisions approved by the NJBPU. Differences between actual and billed electricity costs (which, for the period August 1, 1999 through December 31, 2002 amounted to \$79.7 million) are deferred for charge or refund to customers in the manner and at such time as is to be determined by the NJBPU. In August 2002, RECO submitted a petition to the NJBPU requesting recovery under New Jersey's 1999 Electric Discount and Energy Competition Act of \$110 million of electric purchased power costs in excess of amounts previously billed to customers, associated interest and other deferred charges. Recovery of these costs from customers is requested over a four-year period or pursuant to a plan to "securitize" the costs (under which RECO would be reimbursed these costs with the proceeds of a financing that would be repaid over

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time by its customers). In January 2003, the initial results of an independent audit, commissioned by the NJBPU to review the prudence of these deferred costs, were issued. The audit recommends that RECO be disallowed recovery of \$26.8 million of such costs and associated interest of \$2.6 million. The Company believes that its actions were prudent and has filed a response to the audit findings. A decision on the recovery of these purchased power costs by the NJBPU is expected in the third quarter of 2003.

Pike's recoveries of its energy costs are limited to a fixed price reflected in its current rates. In August 2002, the PPUC approved a settlement agreement covering the rates Pike charges for energy cost recoveries. See "Rate and Restructuring Agreements" above.

## Plant and Depreciation

Utility Plant



Utility plant is stated at original cost. The capitalized cost of additions to utility plant includes indirect costs such as engineering, supervision, payroll taxes, pensions, other benefits and an allowance for funds used during construction (AFDC). The original cost of property, together with removal cost, less salvage, is charged to accumulated depreciation as property is retired. The cost of repairs and maintenance is charged to expense and the cost of betterments is capitalized.

Rates used for AFDC include the cost of borrowed funds and a reasonable rate on the utility's own funds when so used, determined in accordance with regulations of FERC and the state public utility regulatory authority having jurisdiction. The AFDC rate for O&R was 8.4 percent in 2002, 4.6 percent in 2001 and 7.4 percent in 2000. The AFDC rate for RECO was 9.2 percent in 2002, 9.1 percent in 2001 and 9.1 percent in 2000. The rate was compounded semiannually, and the amounts applicable to borrowed funds were treated as a reduction of interest charges while the amounts applicable to the regulated utilities' own funds is credited to other income (deductions).

For financial reporting purposes, depreciation rates are computed on the straight-line method based on the estimated average service lives and net salvage factors of the various classes of property. The Company's depreciation rates averaged 3.3 percent in 2002 and 2001 and 3.4 percent in 2000. The estimated lives for utility plant range from 5 to 60 years for electric, 7 to 75 years for gas and 5 to 50 years for general plant.

#### Non-utility Plant

Non-utility plant is stated at original cost and consists primarily of land and assets that are currently not utilized within utility operations. Depreciation is computed for financial statement purposes using the straight-line method over the estimated useful lives of the assets (7 - 50 years).

#### Temporary Cash Investments

Temporary cash investments are short-term, highly liquid investments that generally have maturities of three months or less. They are stated at cost, which approximates market. O&R considers temporary cash investments to be cash equivalents.

#### Federal Income Tax

In accordance with SFAS No. 109, "Accounting for Income Taxes," the Company has recorded an accumulated deferred federal income tax liability for temporary differences between the book and tax basis of assets and liabilities at current tax rates. In accordance with rate agreements, the Company has

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recovered amounts from customers for a portion of the tax liability it will pay in the future as a result of the reversal or "turn-around" of these temporary differences. As to the remaining tax liability, in accordance with SFAS No. 71, regulatory assets have been established for the net revenue requirements to be recovered from customers for the related future tax expense (see Note K). In 1993, the PSC issued a Policy Statement approving accounting procedures consistent with SFAS No. 109 and providing assurances that these future increases in taxes will be recoverable in rates.

Accumulated deferred investment tax credits are amortized ratably over the lives of the related properties and applied as a reduction in future federal income tax expense.

O&R and its subsidiaries file a consolidated federal income tax return as part of the consolidated return for Con Edison. The consolidated income tax liability is allocated to each member of the consolidated group using the separate return method. Each member pays tax or receives a benefit based on its own taxable income or loss in accordance with tax sharing agreements between the members of the consolidated group.

#### State Income Tax

The New York State tax laws applicable to utility companies were changed, effective January 1, 2000. Certain revenue-based taxes were repealed or reduced and replaced by a net income-based tax. In June 2001, the PSC issued its final Order relating to the tax law changes. It authorized each utility to use deferral accounting to record the difference between taxes being collected and the tax expense resulting from the tax law changes, until those changes are incorporated in base rates.

O&R and its subsidiaries file a combined New York State Corporation Business Franchise Tax Return on a consolidated basis with Con Edison and its other subsidiaries. Similar to a federal consolidated income tax return, the income of all entities in the combined group is subject to New York State taxation, after adjustments for differences between federal and New York law and apportionment of income among the states in which the Company does business. Each member of the group pays or receives a benefit based on its own New York State taxable income or loss.

#### Taxes Other Than Income Taxes

The PSC requires the Company to record gross receipts tax revenues and expenses on a gross income statement presentation basis (i.e., included in both revenue and expense). The recovery of these taxes is part of the PSC approved revenue requirement within each of the respective regulated rate agreements.

#### Deferred Revenue Taxes

Deferred revenue taxes represent the unamortized balance of an accelerated payment of New Jersey Gross Receipts and Franchise Tax (NJGRFT) required by legislation effective June 1, 1991, as well as New York State Metropolitan Transportation Authority taxes that are deferred and amortized over a 12-month period following payment, in accordance with the requirements of the PSC. The deferred NJGRFT is being recovered in rates, with a carrying charge of 7.5 percent on the unamortized balance, over a five-year period.

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#### Reclassification

Certain prior year amounts have been reclassified to conform with the current year presentation.

#### Stock-Based Compensation

The Company applies the recognition and measurement principles of Accounting Principles Board (APB) Opinion No. 25, "Accounting for Stock Issued to Employees," and related interpretations in accounting for its stock-based compensation plans. See Note L. The following table illustrates the effect on net income if the Company had applied the fair value recognition provisions of SFAS No. 123, "Accounting for Stock-Based Compensation," to stock-based employee compensation.

	2002	2001	2000
	<i>(in millions)</i>		
Net income, as reported	\$ 45	\$ 40	\$ 39
Pro forma net income	\$ 45	\$ 40	\$ 39

These pro forma amounts may not be representative of future disclosures due to changes in future market conditions and additional grants in future years.

### Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

### Note B - Capitalization

#### Common Stock

At December 31, 2002 and 2001, O&R had 1,000 shares of common stock, \$5.00 par value per share, issued and outstanding, all of which was owned by Con Edison. Con Edison acquired O&R in July 1999.

#### Dividends

In accordance with PSC requirements, the dividends that O&R may pay are limited to not more than 100 percent of its income available for dividends, calculated on a two-year rolling average basis. Excluded from the calculation of "income available for dividends" are non-cash charges to income resulting from accounting changes or charges to income resulting from significant unanticipated events. The restriction also does not apply to dividends paid in order to transfer to Con Edison proceeds from major transactions, such as asset sales, or to dividends reducing O&R's equity ratio to a level appropriate to its business risk.

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### Long-Term Debt

Long-term debt maturing in the period 2003-2007 is as follows:

	<i>(Millions of Dollars)</i>
2003	\$ 35
2004	-
2005	-
2006	-
2007	20

Long-term debt includes the notes issued by O&R to the New York State Energy Research and Development Authority (NYSERDA) for the net proceeds of NYSERDA's \$55 million aggregate principal amount of Series 1994A and \$44 million aggregate principal amount of Series 1995A Pollution Control Refunding Revenue Bonds. The interest rate determination method for this debt is subject to change in accordance with the related indenture, and the debt currently bears interest at a weekly rate determined by its remarketing agent. The debt is subject to optional and, in certain circumstances, mandatory tender for purchase by the Company. See Note N.

At December 31, 2002, long term-debt also includes \$23.2 million of mortgage bonds collateralized by substantially all the utility plant and other physical property of O&R's utility subsidiaries, RECO and Pike.

Long-term debt is stated at cost, which, as of December 31, 2002 approximates fair value (estimate based on current rates for debt of the same remaining maturities).

### Significant Debt Covenants

There are no significant debt covenants, other than obligations to pay principal and interest when due and covenants not to consolidate with or merge into any other corporation unless certain conditions are met, and no cross default provisions, under the financing arrangements for the debentures of O&R. The tax-exempt financing arrangements of O&R are subject to these covenants and the covenants discussed below.

The tax-exempt financing arrangements involved the issuance of uncollateralized promissory notes of O&R to NYSERDA in exchange for the net proceeds of a like-amount of tax-exempt bonds with substantially the same terms sold to the public by NYSERDA. The tax-exempt financing arrangements include covenants with respect to the tax-exempt status of the financing, including covenants with respect to a disqualifying change in use of the facilities financed. The arrangements also include provisions for the maintenance of liquidity and credit facilities.

**Note C - Short-term Borrowing**

At December 31, 2002, the Company had a \$100 million commercial paper program under which short-term borrowings are made at prevailing market rates. The program is supported by a revolving credit agreement with banks. At December 31, 2002, \$1.0 million, at a weighted average interest rate of 1.3 percent per annum, was outstanding under the program. The Company may change the amount of its program from time to time, subject to a \$150 million FERC-authorized limit.

Bank commitments under the revolving credit agreement were renewed in November 2002. The commitments may terminate upon a change in control of Con Edison or O&R and borrowings under the agreement are subject to certain conditions, including that the ratio (calculated in accordance with the agreement) of debt to total capital of the borrower does not at any time exceed 0.65 to 1. At December 31, 2002, the ratio was 0.49 to 1 for O&R. Borrowings under the agreement are not subject to maintenance of credit rating levels. The fees charged for the revolving credit agreement and borrowings under the agreement reflect the credit ratings of the Company.

See Note I for information about short-term borrowing from a related party, which the FERC has authorized.

**Note D - Pension Benefits**

Con Edison maintains a tax-qualified, non-contributory pension plan that covers substantially all employees and retirees of O&R, pursuant to the Consolidated Edison Retirement Plan (which resulted from the merger, effective January 1, 2001, of the separate pension plans previously applicable to the employees and retirees of Con Edison of New York and O&R). The plan is designed to comply with the Internal Revenue Code and the Employee Retirement Income Security Act of 1974.

Investment gains and losses are fully recognized in expense over a 15-year period. Other actuarial gains and losses are fully recognized in expense over a 10-year period.

Consistent with the provisions of SFAS No. 71, the Company defers for future recovery any difference between expenses recognized under SFAS No. 87, "Employers' Accounting for Pensions" and the current rate allowance authorized by each regulatory jurisdiction in which it operates.

The components of the Company's net periodic benefit costs for 2002, 2001 and 2000 were as follows:

	2002	2001	2000
	<i>(Thousands of Dollars)</i>		
Service cost - including administrative expenses	\$ 6,355	\$ 6,251	\$ 4,887
Interest cost on projected benefit obligation	27,589	27,016	25,397
Expected return on plan assets	(24,797)	(24,831)	(22,118)
Amortization of net actuarial loss	5,825	4,547	3,557
Amortization of prior service cost	431	416	-
<b>NET PERIODIC BENEFIT COST</b>	<b>15,403</b>	<b>13,399</b>	<b>11,723</b>
Deferred and capitalized	12,965	10,582	7,677
Net expense	\$ 2,438	\$ 2,817	\$ 4,046

The funded status at December 31, 2002, 2001 and 2000 was as follows:

	2002	2001	2000
	<i>(Thousands of Dollars)</i>		
<b>CHANGE IN PROJECTED BENEFIT OBLIGATION</b>			
Projected benefit obligation at beginning of year	\$ 374,424	\$ 358,173	\$ 326,472
Service cost - excluding administrative expenses	5,955	5,852	4,887
Interest cost on projected benefit obligation	27,589	27,016	25,397
Plan amendments	-	273	5,114
Net actuarial loss	16,482	2,763	14,669
Benefits paid	(21,001)	(19,653)	(18,366)
<b>PROJECTED BENEFIT OBLIGATION AT END OF YEAR</b>	<b>\$ 403,449</b>	<b>\$ 374,424</b>	<b>\$ 358,173</b>

CHANGE IN PLAN ASSETS			
Fair value of plan assets at beginning of year	\$	236,213	\$ 270,127 \$ 289,311
Actual return on plan assets		(19,374)	(14,955) (2,192)
Employer contributions		1,855	1,797 3,207
Benefits paid		(21,001)	(19,653) (18,366)
Administrative expenses		(952)	(1,103) (1,833)
<b>FAIR VALUE OF PLAN ASSETS AT END OF YEAR</b>			
	\$	196,741	\$ 236,213 \$ 270,127
<b>Funded status</b>			
	\$	(206,708)	\$ (138,211) \$ (88,046)
Unrecognized net loss		144,639	89,258 50,552
Unrecognized prior service costs		4,540	4,972 5,114
<b>ACCRUED BENEFIT COST</b>			
	\$	(57,529)	\$ (43,981) \$ (32,380)

The amounts recognized in the balance sheet at December 31, 2002 and 2001 were as follows:

	2002		2001	
	<i>(Thousands of Dollars)</i>			
Accrued benefit cost	\$	(57,529)	\$	(43,981)
Additional minimum pension liability		(1,625)		(1,538)
Intangible asset		160		169
Accumulated other comprehensive income		1,465		1,369
<b>Net prepaid benefit cost</b>	<b>\$</b>	<b>(57,529)</b>	<b>\$</b>	<b>(43,981)</b>

The actuarial assumptions at December 31, 2002, 2001 and 2000 were as follows:

	2002	2001	2000
Discount Rate	6.75%	7.50%	7.75%
Expected Return on Plan Assets	9.20%	9.20%	8.50%
Rate of Compensation Increase	4.15%	4.15%	4.40%

O&R also offers a defined contribution savings plan that covers substantially all of its employees and made contributions to the plan of \$1.0 million, \$1.0 million and \$0.8 million for the years 2002, 2001 and 2000, respectively.

#### Note E - Other Postretirement Benefits

O&R has a contributory medical and prescription drug program for all retirees, their dependents and surviving spouses. The Company also has a non-contributory life insurance program for retirees.

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Investment gains and losses are fully recognized in expense over a 15-year period. Other actuarial gains and losses are fully recognized in expense over a 10-year period.

Plan assets are used to pay benefits and expenses for participants who retired on or after January 1, 1995. O&R pays benefits for other participants who retired prior to January 1, 1995. Plan assets include amounts owed by the trust to the Company of \$0.8 million in 2002, \$0.3 million in 2001 and \$2.2 million in 2000.

Consistent with the provisions of SFAS No. 71, the Company defers for future recovery any difference between expenses recognized under SFAS No. 106, "Employers' Accounting for Postretirement Benefits other than Pensions" and the current rate allowance authorized by each regulatory jurisdiction in which it operates.

The components of the net periodic postretirement benefit (health and life insurance) costs for 2002, 2001 and 2000 were as follows:

	2002		2001		2000	
	<i>(Thousands of Dollars)</i>					
Service cost	\$	1,884	\$	1,577	\$	1,478
Interest cost on accumulated postretirement benefit obligation		7,996		7,069		6,856
Expected return on plan assets		(4,245)		(3,721)		(3,188)
Amortization of net actuarial loss		2,797		1,260		901
Amortization of prior service cost		(97)		(97)		-

NET PERIODIC POSTRETIREMENT BENEFIT COST	\$	8,335	\$	6,088	\$	6,047
Amortized/(deferred and capitalized)		(4,447)		(2,193)		(1,602)
Net expense	\$	3,888	\$	3,895	\$	4,445

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The funded status of the programs at December 31, 2002, 2001 and 2000 was as follows:

	2002		2001		2000	
	<i>(Thousands of Dollars)</i>					
<b>CHANGE IN BENEFIT OBLIGATION</b>						
Benefit obligation at beginning of year	\$	101,726	\$	94,048	\$	88,536
Service cost		1,884		1,577		1,478
Interest cost on accumulated postretirement benefit obligation		7,996		7,069		6,856
Plan amendments		-		-		(979)
Net actuarial loss		26,926		5,096		2,992
Benefits paid and administrative expenses		(6,876)		(6,310)		(5,041)
Participant contributions		260		246		206
<b>BENEFIT OBLIGATION AT END OF YEAR</b>	\$	131,916	\$	101,726	\$	94,048
<b>CHANGE IN PLAN ASSETS</b>						
Fair value of plan assets at beginning of year	\$	40,646	\$	39,069	\$	37,890
Actual return on plan assets		54		106		162
Employer contributions		6,267		6,088		2,500
Participant contributions		155		126		113
Benefits paid and administrative expenses		(4,170)		(4,743)		(1,596)
<b>FAIR VALUE OF PLAN ASSETS AT END OF YEAR</b>	\$	42,952	\$	40,646	\$	39,069
Funded status	\$	(88,964)	\$	(61,080)	\$	(54,979)
Unrecognized net loss		50,817		22,393		13,312
Unrecognized prior service costs		(785)		(882)		(979)
<b>ACCRUED POSTRETIREMENT BENEFIT COST</b>	\$	(38,932)	\$	(39,569)	\$	(42,646)

The actuarial assumptions at December 31, 2002, 2001 and 2000 were as follows:

	2002	2001	2000
Discount rate	6.75%	7.50%	7.75%
<b>EXPECTED RETURN ON PLAN ASSETS</b>			
Tax-exempt assets	9.20%	9.20%	8.50%
Taxable assets	8.70%	8.70%	8.00%

The health care cost trend rate assumed for 2003 is 9.0 percent. The rate is assumed to decrease gradually to 4.75 percent by 2009 and remain at that level thereafter.

A one-percentage point change in the assumed health care cost trend rate would have the following effects:

	<i>1-Percentage-Point Increase</i>		<i>1-Percentage-Point Decrease</i>	
	<i>(Thousands of Dollars)</i>			
Effect on accumulated postretirement benefit obligation	\$	12,698	\$	(10,918)
Effect on service cost and interest cost components	\$	1,192	\$	(998)

#### Note F - Environmental Matters

Hazardous substances such as asbestos, polychlorinated biphenyls (PCBs) and coal tar have been used or generated in the course of operations of O&R and are present in its facilities and equipment currently or previously owned.

The Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund) and similar state statutes impose joint and several strict liabilities, regardless of fault, upon generators of hazardous substances for resulting removal and remediation costs and environmental damages. Liabilities under these laws can be material and in some instances may be imposed without regard to fault, or may be imposed for past acts, even though such past acts may have been lawful at the time they occurred.

The environmental remediation costs for the sites at which O&R has been asserted to have liability for remediation under Superfund or similar state statutes, including its manufactured gas sites, (Superfund Sites) include investigation, demolition, removal, disposal, storage, replacement, containment and monitoring costs.

For the cleanup of coal tar and/or other manufactured gas plant-related environmental contaminants at the manufactured gas sites, estimates of the aggregate undiscounted potential liability for the cleanup of coal tar and/or other manufactured gas plant-related environmental contaminants range from approximately \$25 million to \$95 million. To develop these estimates, the assumption was made that there is contamination at the sites where investigation has not yet been started or completed. Additional assumptions were made as to the extent of contamination, the level of cleanup required and the type and extent of remediation that will be required. Actual experience may be materially different from these assumptions.

For sites where there are other potentially responsible parties and the Company is not managing the site investigation and remediation, the liability accrued represents the Company's estimate of what it will need to pay to settle its obligations with respect to the site. For other sites, the liability accrued represents the Company's estimate of its investigation and remediation costs for the site. In either case, the Company makes its estimate of its undiscounted liability for each site in light of the applicable remediation standards, experience with similar sites, the information it has available to it at the time about the site and site-specific assumptions about such matters as the extent of contamination and remediation and monitoring methods to be used. The liability accrued for Superfund Sites is reviewed at least quarterly and adjusted as determined to be necessary.

At December 31, 2002, O&R had accrued \$35.3 million as its estimate of its liability for Superfund Sites, including approximately \$34 million relating to manufactured gas sites. Most of the accrued liability relates to Superfund Sites where contamination has been detected and investigated in whole or in part. There will be additional liability relating to the Superfund Sites and other sites. The amount of the additional liability is not presently determinable but may be material to O&R's financial position, results of operations or liquidity. O&R is permitted under current rate agreements to defer for subsequent recovery through rates certain site investigation and remediation costs with respect to hazardous waste. At December 31, 2002, \$30.8 million of such costs had been deferred as a regulatory asset.

In 2002, O&R incurred \$1.5 million for environmental remediation costs and received an insurance recovery of \$7.2 million related to Superfund Sites.

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Suits have been brought in New York State and federal courts against O&R and many other defendants, wherein a large number of plaintiffs sought large amounts of compensatory and punitive damages for deaths and injuries allegedly caused by exposure to asbestos at various premises of O&R. The suits that have been resolved, which are many, have been resolved without any payment by O&R, or for amounts that were not, in the aggregate, material to the Company. The amounts specified in all the remaining suits total billions of dollars. However, O&R believes that these amounts are greatly exaggerated, as experienced through the disposition of previous claims. Based on the information and relevant circumstances known to O&R at this time, these suits are not expected to have a material adverse effect on O&R's financial position, results of operations or liquidity.

Workers' compensation administrative proceedings have been commenced, wherein current and former employees claim benefits upon alleged disability from exposure to asbestos. Based on the information and relevant circumstances known to O&R at this time, these claims are not expected to have a material adverse effect on O&R's financial position, results of operations or liquidity. At December 31, 2002, a \$5.4 million provision was accrued as the Company's estimate of its liability for these workers' compensation claims, including those related to asbestos, and \$1.6 million of this provision was deferred as a regulatory asset related to claims of the former employees of the divested plants.

In May 2000, the New York State Department of Environmental Conservation issued notices of violation to O&R and four other companies that have operated coal-fired electric generating facilities in New York State. The notices allege violations of the Federal Clean Air Act and the New York State Environmental Conservation Law resulting from the alleged failure to install pollution control equipment that would have reduced emissions of certain chemicals deemed potentially hazardous. The notice of violations received by O&R relates to the Lovett Generating Station, which it sold in June 1999. The Company is unable to predict whether or not alleged violations will have a material adverse effect on its financial position, results of operations or liquidity.

#### **Note G - Non-Utility Generators**

O&R has contracts with Non-Utility Generators (NUGs) for 27 MW of electric generating capacity. The contracts extend for various periods, up to 2008. Assuming performance by the NUGs, O&R is obligated to purchase capacity and energy under the contracts. For the years 2003 through 2007, fixed payments under the contracts are estimated to be \$17.2 million, \$16.7 million, \$16.4 million, \$5.6 million and \$3.6 million. In addition, for energy delivered under one of the contracts (for 19 MW), O&R is obligated to pay variable prices that are currently estimated to be above market levels. O&R recovers its costs under the contracts pursuant to rate provisions approved by the state public utility regulatory authority having jurisdiction.

#### **Note H - Regulatory Assets and Liabilities**

O&R has established various regulatory assets and liabilities to defer specific costs and gains that the applicable regulatory agencies have permitted or are expected to permit to be recovered in rates or refunded to customers over time. For RECO, current recovery of purchased power costs is subject to certain limitations imposed by the NJBPU and costs that are not currently recovered are deferred for

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future recovery. At December 31, 2002 and December 31, 2001, net recoverable purchased power costs of \$79.7 million and \$76.7 million, respectively, were deferred by RECO for future recovery.

**Note I - Related Party Transactions**

Each month O&R is invoiced by Con Edison and its affiliates for the cost of any services rendered to O&R by Con Edison and its affiliates. These services, provided primarily by Con Edison's other regulated subsidiary, Consolidated Edison Company of New York, Inc., include substantially all administrative support operations, such as corporate directorship and associated ministerial duties, accounting, treasury, investor relations, information resources, legal, human resources, fuel supply and energy management services. The cost of these services was \$15.2 million for 2002, \$14.4 million for 2001 and \$10.7 million for 2000. In addition, O&R purchased from Con Edison of New York \$102.0 million, \$140.9 million and \$103.9 million of natural gas for 2002, 2001 and 2000, respectively, and \$24.6 million of electricity in 2002.

O&R provides certain recurring services to Con Edison of New York on a monthly basis, including cash receipts processing and certain administrative services. The cost of these services, which are invoiced to Con Edison of New York, totaled \$11.6 million, \$10.9 million and \$8.3 million in 2002, 2001 and 2000, respectively.

In February 2002, the FERC authorized Con Edison of New York to lend funds to O&R, for periods of not more than 12 months, in amounts not to exceed \$150 million outstanding at any time at prevailing market rates. Through December 31, 2002, O&R has not borrowed any funds from Con Edison of New York.

**Note J - Leases**

The future minimum rental commitments under O&R's non-cancelable operating leases are as follows:

	<i>(Millions of Dollars)</i>	
2003	\$	2.6
2004		2.5
2005		2.3
2006		2.0
2007		1.9
All years thereafter		18.2
<b>Total</b>	<b>\$</b>	<b>29.5</b>

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**Note K - Income Tax**

The components of income tax are as follows:

	<i>For the Years Ended December 31,</i>		
	<i>2002</i>	<i>2001</i>	<i>2000</i>
	<i>(Thousands of Dollars)</i>		
Charge/(benefit) to operations:			
State			
Current	\$ 845	\$ 2,157	\$ 6,040
Deferred - net	3,048	4,625	-
Federal			
Current	16,280	6,798	15,563
Deferred - net	4,759	13,026	1,345
Amortization of investment tax credit	(128)	(136)	(123)
<b>TOTAL CHARGE TO OPERATIONS</b>	<b>24,804</b>	<b>26,470</b>	<b>22,825</b>
Charge/(benefit) to other income:			
State			
Current	\$ (245)	\$ 28	-
Deferred - net	62	135	-
Federal			
Current	99	(297)	2,151
Deferred - net	(7)	(63)	9
Amortization of investment tax credit	(347)	(336)	(331)
<b>TOTAL BENEFIT TO OTHER INCOME</b>	<b>(438)</b>	<b>(533)</b>	<b>1,829</b>
<b>TOTAL</b>	<b>\$ 24,366</b>	<b>\$ 25,937</b>	<b>\$ 24,654</b>

The tax effect of temporary differences which gave rise to deferred tax assets and liabilities is as follows:

As of December 31,

2002      2001

(Millions of Dollars)

Liabilities:			
Depreciation	\$	97	\$ 92
Regulatory Liability - Future Federal Income Tax		39	35
Other		42	52
<b>TOTAL LIABILITIES</b>		<b>178</b>	<b>179</b>
Assets:			
Other		(44)	(54)
<b>TOTAL ASSETS</b>		<b>(44)</b>	<b>(54)</b>
<b>NET LIABILITY</b>	<b>\$</b>	<b>134</b>	<b>\$ 125</b>

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Reconciliation of the difference between income tax expense and the amount computed by applying the prevailing statutory income tax rate to income before income taxes is as follows:

For the Years Ended December 31,

2002      2001      2000

(% of Pre-tax income)

Statutory tax rate			
Federal	35%	35%	35%
Changes in computed taxes resulting from:			
State Income Tax	4	8	6
Depreciation related differences	1	0	1
Cost of removal	(2)	(1)	(1)
Amortization of taxes associated with divested assets	(1)	(1)	(1)
Other	(2)	(1)	(1)
<b>Effective Tax Rate</b>	<b>35%</b>	<b>40%</b>	<b>39%</b>

#### Note L - Stock-Based Compensation

Con Edison maintains a stock option plan (the Plan) that covers employees of O&R. Options may be granted to officers and key employees of Con Edison and its subsidiaries for up to a total of 10 million shares of Con Edison's common stock. Generally, options become exercisable three years after the grant date and remain exercisable until 10 years from the grant date.

As permitted by SFAS No. 123, O&R elected to follow APB No. 25, "Accounting for Stock Issued to Employees" and related interpretations in accounting for its employee stock options. Under the intrinsic value method of APB No. 25, no compensation expense is recognized because the exercise price of Con Edison's employee stock options equals the market price of the underlying stock on the date of grant.

Under the plan, exercise of Con Edison's employee stock options requires payment in full of the exercise price, unless the committee of Con Edison's Board of Directors that administers the Plan determines that options may be settled by paying to the option holder the difference between the fair market value of the common stock subject to the option and the exercise price (cash settlement). In 2002, to ensure that the exercise of currently exercisable options would comply with certain technical requirements of the Sarbanes-Oxley Act of 2002 applicable to certain officers of Con Edison and its subsidiaries, the committee determined that 1996 and 1997 stock options covering 295,500 shares of common stock held by those officers may be settled by the cash settlement method. A \$0.4 million charge to expense was recognized for O&R in 2002 for these options. Additional changes to expense will be recognized with respect to these options to the extent the fair market value of the common shares changes in future periods.

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Disclosure of pro forma information regarding net income and earnings per share is required by SFAS No. 123 and SFAS No. 148, "Accounting for Stock Based Compensation, Transition and Disclosures." See "Stock-based Compensation" in Note A for an illustration of the effect on net income if O&R had applied the fair value recognition provisions of SFAS No. 123 to its stock-based employee compensation. The fair values of 2002, 2001 and 2000 options are \$6.37, \$5.23 and



\$4.42 per share, respectively. These values were estimated at the date of grant using the Black- Scholes option pricing model with the following weighted-average assumptions:

	2002	2001	2000
Risk-free interest rate	5.08%	5.22%	6.25%
Expected lives - in years	6	8	8
Expected stock volatility	21.43%	21.32%	20.51%
Dividend yield	5.22%	5.83%	6.60%

A summary of the changes in the status of stock options awarded to officers and employees of O&R under the Plan as of December 31, 2002, 2001 and 2000 is as follows:

	<i>Shares</i>	<i>Weighted Average Price</i>
Outstanding at 12/31/99	-	
Granted	73,000	\$ 32.500
Exercised	-	-
Forfeited	-	-
Outstanding at 12/31/00	73,000	32.500
Granted	101,000	37.750
Exercised	-	-
Forfeited	-	-
Outstanding at 12/31/01	174,000	35.547
Granted	113,000	42.510
Exercised	-	-
Forfeited	(2,000)	35.125
Outstanding at 12/31/02	285,000	\$ 38.311

The following summarizes the Plan's stock options outstanding at December 31, 2002:

<i>Plan Year</i>	<i>Weighted Average Exercise Price</i>	<i>Shares Outstanding At 12/31/02</i>	<i>Remaining Contractual Life</i>
2002	\$ 42.510	113,000	9 years
2001	37.750	100,000	8 years
2000	32.500	72,000	7 years

As of December 31, 2002, 2001 and 2000, no options were exercisable.

In June 2002, 20,000 restricted stock units were granted to a senior officer of O&R, subject to the officer meeting the terms and conditions of the agreements. The units, each of which represents the right to receive one share of Con Edison common stock and related dividends, vest ratably through August 2005 or immediately upon the occurrence of certain events. Pursuant to APB No. 25, O&R recognizes

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compensation expense and accrues a liability for the units over the vesting period. The expense recognized for restricted stock during 2002 was \$0.2 million.

In June 2002, Con Edison terminated its Directors' Retirement Plan applicable to non-officer directors (the termination is not applicable to directors who had previously retired from the board) and adopted a deferred stock compensation plan for these directors. Under the plan, directors were granted stock units for accrued service. Pursuant to APB No. 25, O&R recognizes compensation expense as incurred. An expense of \$0.1 million was recorded in 2002.

#### Note M - Financial Information by Business Segment

O&R's business segments were determined based on similarities in economic characteristics, the regulatory environment and management's reporting requirements. O&R's business segments are:

- Regulated Electric - consists of regulated utility activities relating to the transmission and distribution and sale of electricity in New York, New Jersey and Pennsylvania.
- Regulated Gas - consists of regulated utility activities relating to the transportation, distribution and sale of natural gas in New York and Pennsylvania.

- Unregulated Subsidiary - represents the operations of O&R's unregulated subsidiary in a land development business. The Company is pursuing the closure of its real estate operations and is in the process of selling off remaining land holdings.

All revenues of O&R's business segments are from customers located in the United States of America. Also, all assets are located in the United States of America. The accounting policies of the segments are the same as those described in the summary of significant accounting policies. See Note A.

Common services shared by the business segments are assigned directly or allocated based on various cost factors, depending on the nature of the service provided.

The financial data for business segments are as follows:

	<b>Regulated Electric</b>		
	<b>2002</b>	<b>2001</b>	<b>2000</b>
<i>(Thousands of Dollars)</i>			
Operating revenues	\$ 475,462	\$ 538,375	\$ 513,016
Intersegment revenues	-	-	11
Depreciation and amortization	25,881	24,892	20,625
Income tax expense	20,303	22,716	20,174
Operating income	57,506	50,223	47,529
Interest charge	20,478	15,724	16,912
Total assets	862,770	837,535	828,489
Construction expenditures	44,151	44,571	33,751

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	<b>Regulated Gas</b>		
	<b>2002</b>	<b>2001</b>	<b>2000</b>
<i>(Thousands of Dollars)</i>			
Operating revenues	\$ 158,838	\$ 197,862	\$ 183,436
Intersegment revenues	-	-	-
Depreciation and amortization	8,121	7,888	6,501
Income tax expense	4,406	3,536	1,100
Operating income	14,507	13,145	11,091
Interest charge	7,742	8,414	8,430
Total assets	308,141	294,769	304,305
Construction expenditures	15,574	17,010	17,528

	<b>Unregulated Subsidiaries</b>		
	<b>2002</b>	<b>2001</b>	<b>2000</b>
<i>(Thousands of Dollars)</i>			
Operating revenues	-	\$ 104	\$ 4,521
Intersegment revenues	-	-	-
Depreciation and amortization	-	-	3
Income tax expense	95	218	1,551
Operating income	(353)	(366)	1,821
Interest charge	—	3	17
Total assets	2,774	3,036	5,863
Construction expenditures	-	-	-
<b>Total</b>			
	<b>2002</b>	<b>2001</b>	<b>2000</b>

	<b>Total</b>		
	<b>2002</b>	<b>2001</b>	<b>2000</b>
<i>(Thousands of Dollars)</i>			
Operating revenues	\$ 634,300	\$ 736,341	\$ 700,973
Intersegment revenues	-	-	11
Depreciation and amortization	34,002	32,780	27,129
Income tax expense	24,804	26,470	22,825
Operating income	71,660	63,002	60,441
Interest charge	28,220	24,141	25,359
Total assets	1,161,261	1,135,340	1,138,657

**Note N - Derivative Instruments and Hedging Activities**

Effective January 2001, O&R adopted SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended (SFAS No. 133).

**Energy Price Hedging**

O&R uses derivative instruments to hedge market price fluctuations in related underlying transactions for the physical purchase or sale of electricity (hedges). As of December 31, 2002 and December 31, 2001, the fair value of the derivatives for such use was a gain of \$1.1 million and a loss of \$1.0 million, respectively.

Pursuant to SFAS No. 71, the Company defers recognition in income of gains and losses on a hedge until the underlying transaction is completed. In accordance with rate provisions that permit the recovery of the cost of purchased power, O&R credits or charges to its customers gains and losses on hedges and related transaction costs. See "Recoverable Energy Costs" in Note A.

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**Interest Rate Hedging**

O&R uses interest rate swap agreements to convert portions of its variable-rate debt into fixed-rate debt. In connection with its \$55 million promissory note issued to NYSEDA for the net proceeds of NYSEDA's variable rate Pollution Control Refunding Revenue Bonds, Series 1994A (the 1994 Bonds), O&R has a swap agreement pursuant to which it pays interest at a fixed rate of 6.09 percent and is paid interest at the same variable rate as is paid on the 1994 Bonds. The swap is designated as a cash flow hedge under SFAS No. 133. Any gain or loss on the hedge is recorded in other comprehensive income (OCI) and reclassified to interest expense and included in earnings during the periods in which the hedged interest payments occur. As of December 31, 2002 and December 31, 2001, the fair value of the O&R interest rate swap was a loss of \$19.1 million and \$14.2 million, respectively.

Unrealized gains and losses on cash flow hedges for interest rate hedging, net of tax, included in accumulated OCI for the years ended December 31, 2002 and 2001 were as follows:

	2002	2001
	<i>(Millions of Dollars)</i>	
Unrealized gains/(losses) on derivatives qualified as hedges due to cumulative effect of a change in accounting principle, net of (\$5.7) taxes	\$ -	\$ (8.1)
Unrealized gains/(losses) on derivatives qualified as hedges, net of (\$3.1) and (\$1.0) taxes	(4.4)	(1.4)
Less: Reclassification adjustment for gains/(losses) included in net income, net of (\$1.1) and (\$0.8) taxes	(1.5)	(1.2)
Unrealized gains/(losses) on derivatives qualified as hedges for the period	\$ (2.9)	\$ (8.3)

As of December 31, 2002, \$1.2 million of the existing after-tax losses relating to the swap agreement are expected to be reclassified from accumulated OCI to income within the next 12 months.

**Note O - New Financial Accounting Standards**

During 2002 the FASB issued four new accounting standards: SFAS No. 145, "Rescission of FASB Statements No. 4, 44 and 64, Amendment of FASB Statement No. 13, and Technical Corrections," SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities," SFAS No. 147, "Acquisitions of Certain Financial Institutions," and SFAS No. 148, "Accounting for Stock-Based Compensation—Transition and Disclosure." The FASB also issued Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others," in November 2002 and Interpretation No. 46, "Consolidation of Variable Interest Entities," in January 2003. In addition, during 2002, the FASB's Emerging Issues Task Force (EITF) reached a consensus on several issues within EITF Issue No. 02-3, "Issues Involved in Accounting for Derivative Contracts Held for Trading Purposes and Contracts Involved in Energy Trading and Risk Management Activities," one of which was the rescission of EITF Issue No. 98-10, "Accounting for Contracts Involved in Energy Trading and Risk Management Activities."

SFAS No. 145 rescinds SFAS No. 4, "Reporting Gains and Losses from Extinguishment of Debt," and SFAS No. 64, "Extinguishments of Debt Made to Satisfy Sinking-Fund Requirements," effective January 1, 2003. This statement also amends SFAS No. 13, "Accounting for Leases," to require sale-leaseback accounting for certain lease modifications that have an economic impact similar to sale-leaseback transactions and amends certain other authoritative accounting pronouncement, effective May 15, 2002. SFAS No. 146, which was effective January 1, 2003, requires companies to recognize costs

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associated with exit or disposal activities when they are incurred rather than at the date of a commitment to an exit or disposal plan. SFAS No. 147, which was effective October 1, 2002, provides guidance on the accounting for the acquisition of a financial institution. SFAS No. 148, which amends SFAS No. 123, provides alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. In addition, SFAS No. 148 amends the financial statement disclosure requirements of SFAS No. 123 regarding the method of accounting for stock-based employee compensation and the effects of the method used on reported results. Finally, this statement amends APB Opinion No. 28, "Interim Financial Reporting" to

require disclosure about those effects in interim financial information. The amendment of SFAS No. 123 is effective for fiscal years ending after December 15, 2002. The amendment of Opinion No. 28 is effective for interim periods beginning after December 15, 2002. For information about the Company's stock-based compensation, see Note L.

The adoption of these statements had no impact on O&R's consolidated financial position, results of operations or liquidity.

Interpretation No. 45 (FIN 45) requires a guarantor to recognize a liability at the inception of a guarantee for the fair value of the obligations it assumes under that guarantee. It also requires a guarantor to make significant new disclosures for guarantees even if the likelihood of the guarantor's having to make payments under the guarantee is remote. The initial recognition and measurement provisions are applicable on a prospective basis to guarantees issued or modified after December 31, 2002. The disclosure requirements are effective December 15, 2002. The adoption of FIN 45 had no impact on O&R's consolidated financial position, results of operation or liquidity.

Interpretation No. 46 (FIN 46) addresses the consolidation by business enterprises of variable interest entities of which the enterprise is the primary beneficiary. The consolidation requirements apply immediately to variable interest entities created after January 31, 2003. The consolidation requirements apply to existing entities in the first fiscal year or interim period beginning after June 15, 2003. Certain disclosure requirements apply in all financial statements issued after January 31, 2003, regardless of when the variable interest entity was established. The adoption of FIN 46 is not expected to have any impact on O&R's consolidated financial position, results of operation or liquidity.

In June 2002, the EITF reached a partial consensus on EITF Issue No. 02-3, "Issues Involved in Accounting for Derivative Contracts Held for Trading Purposes and Contracts Involved in Energy Trading and Risk Management Activities," that revenue resulting from energy trading contracts, whether realized or unrealized and whether financially or physically settled, should be shown net in the income statement. The new ruling became effective for periods ending after July 2002 with reclassification of prior period amounts required.

On October 25, 2002, the EITF reached a consensus to rescind EITF Issue No. 98-10, "Accounting for Contracts Involved in Energy Trading and Risk Management Activities." As a result, new energy trading and energy-related contracts entered into after October 25, 2002, that do not qualify as derivatives under SFAS No. 133 are not marked-to-market. All derivative contracts will be accounted for in accordance with SFAS No. 133. Therefore, previously recognized mark-to-market gains and losses on

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non-derivative contracts must be reversed upon adoption of this consensus. The effective date for the full rescission of EITF Issue No. 98-10 was January 1, 2003, with early application permitted.

In October 2002, the EITF reached a consensus that gains and losses, realized and unrealized, on all derivative instruments within the scope of SFAS No. 133 should be shown net in the income statement, whether or not settled physically, if the derivative instruments are held for trading purposes. This consensus was effective January 1, 2003, with early adoption permitted. Additional disclosures regarding energy trading activities required by EITF Issue No. 02-3 in June 2002 were eliminated in October 2002, with the rescission of EITF Issue No. 98-10.

The EITF did not reach consensus on whether or not recognition of unrealized gains and losses at inception of an energy-trading contract is appropriate. However, the FASB staff observed that unrealized gains or losses at inception should not be recognized unless the fair value of the derivative instrument is evidenced by a quoted market price, similar current market transactions or valuations based on observable market information.

The above EITF consensus had no impact on O&R's consolidated financial position, results of operation or liquidity.

O&R also adopted the following accounting standards that were issued in 2001.

On January 1, 2002, the Company adopted SFAS No. 142, "Goodwill and Other Intangible Assets." SFAS No. 142 provides that goodwill (i.e., the excess of cost over fair value of the net assets of a business acquired) and intangible assets with indefinite useful lives will no longer be amortized, but instead be tested for impairment at least annually. Other intangible assets will continue to be amortized over their finite useful lives. The adoption of SFAS No. 142 had no impact on O&R's consolidated financial position, results of operations or liquidity.

SFAS No. 143, "Accounting for Asset Retirement Obligations," which O&R adopted on January 1, 2003, requires entities to record the fair value of a liability associated with an asset retirement obligation in the period incurred. When the liability is initially recorded, the entity will capitalize the cost by increasing the amount of the related asset. The liability will be increased to its present value each period and the capitalized cost will be depreciated over the useful life of the related asset. Upon retirement of the asset, the entity will settle the obligation for the amount recorded or incur a gain or loss. O&R has not identified any asset retirement obligations. The adoption of SFAS No. 143 had no impact on O&R's consolidated financial position, results of operations or liquidity.

SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," which O&R adopted on January 1, 2002, replaces SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of." SFAS No. 144 requires that all long-lived assets held for sale or meeting other specified criteria be measured at the lower of book value or fair value less cost to sell. SFAS No. 144 also broadens the reporting of discontinued operations. The adoption of SFAS No. 144 had no impact on O&R's consolidated financial position, results of operations or liquidity.

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SCHEDULE I

## CONDENSED BALANCE SHEET

At December 31,

2002

2001

(Thousands of Dollars)

ASSETS		
CURRENT ASSETS		
Cash and temporary cash investments	\$ 244	\$ 414
Restricted cash	-	69,823
Other current assets	(1,601)	3,074
<b>TOTAL CURRENT ASSETS</b>	<b>(1,357)</b>	<b>73,311</b>
INVESTMENTS IN SUBSIDIARIES	7,000,878	6,434,480
GOODWILL	409,404	409,404
OTHER ASSETS	10,237	-
<b>TOTAL ASSETS</b>	<b>\$ 7,419,162</b>	<b>\$ 6,917,195</b>
<b>CAPITALIZATION AND LIABILITIES</b>		
<b>COMMON SHAREHOLDERS' EQUITY</b>		
Common stock	\$ 1,505,162	\$ 1,436,643
Retained earnings	5,370,625	5,187,048
<b>TOTAL COMMON SHAREHOLDERS' EQUITY</b>	<b>6,875,787</b>	<b>6,623,691</b>
Long-term debt	325,000	-
<b>TOTAL CAPITALIZATION</b>	<b>7,200,787</b>	<b>6,623,691</b>
<b>CURRENT LIABILITIES</b>		
Notes payable	160,580	207,860
Accounts payable	49,195	86,160
Other current liabilities	12,211	2,065
<b>TOTAL CURRENT LIABILITIES</b>	<b>221,986</b>	<b>296,085</b>
NONCURRENT LIABILITIES	(3,611)	(2,581)
<b>TOTAL LIABILITIES</b>	<b>218,375</b>	<b>293,504</b>
<b>TOTAL CAPITALIZATION AND LIABILITIES</b>	<b>\$ 7,419,162</b>	<b>\$ 6,917,195</b>

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### Condensed Financial Information of Consolidated Edison, Inc.

## CONDENSED INCOME STATEMENT

2002

2001

2000

(Thousands of Dollars, except per share amounts)

Equity in earnings of subsidiaries	\$ 670,823	\$ 701,139	\$ 616,930
Other income (deductions), net of taxes	4,629	212	(16,305)
Operating expenses			
Amortization of O&R goodwill	-	(10,917)	(10,917)
Other	-	-	-

Interest expense	(7,355)	(8,192)	(6,873)
Income before cumulative effect of changes in accounting principles	668,097	682,242	582,835
Cumulative effect of changes in accounting principles	(22,061)	-	-
<b>NET INCOME</b>	<b>\$ 646,036</b>	<b>\$ 682,242</b>	<b>\$ 582,835</b>
Average number of shares outstanding (in thousands)	212,990	212,146	212,186
Basic earnings per common share	\$ 3.03	\$ 3.22	\$ 2.75
Diluted earnings per share	\$ 3.02	\$ 3.21	\$ 2.74

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## Condensed Financial Information of Consolidated Edison, Inc.

### CONDENSED STATEMENT OF CASH FLOWS

	<u>2002</u>	<u>2001</u>	<u>2000</u>
	<i>(Thousands of Dollars)</i>		
INCOME BEFORE CUMULATIVE EFFECT OF CHANGES IN ACCOUNTING PRINCIPLES	\$ 668,097	\$ 682,242	\$ 582,835
Cumulative effect of changes in accounting principles	(22,061)	-	-
<b>NET INCOME</b>	<b>646,036</b>	<b>682,242</b>	<b>582,835</b>
Dividends received from:			
Consolidated Edison Company of New York, Inc.	379,855	459,719	462,503
Orange and Rockland Utilities, Inc.	28,000	28,000	37,000
Other—net	(638,259)	(570,100)	(471,504)
<b>NET CASH FLOWS FROM OPERATING ACTIVITIES</b>	<b>415,632</b>	<b>599,861</b>	<b>610,834</b>
INVESTING ACTIVITIES			
Contributions to subsidiaries	(335,200)	(65,400)	(113,821)
FINANCING ACTIVITIES			
Issuance of Long-term debt	325,000	-	-
Repurchase of common stock	-	-	(39,078)
Common shares issued	25,098	-	-
Common stock dividends	(430,700)	(469,755)	(460,177)
<b>NET CASH FLOWS FROM FINANCING ACTIVITIES</b>	<b>(80,602)</b>	<b>(469,755)</b>	<b>(499,255)</b>
<b>NET CHANGE FOR THE PERIOD</b>	<b>(170)</b>	<b>64,706</b>	<b>(2,242)</b>
BALANCE AT BEGINNING OF THE PERIOD	\$ 414	\$ 5,531	\$ 7,773
BALANCE AT END OF PERIOD	\$ 244	\$ 70,237	\$ 5,531
LESS: RESTRICTED CASH	-	69,823	-
<b>BALANCE: UNRESTRICTED CASH AND TEMPORARY CASH INVESTMENTS</b>	<b>\$ 244</b>	<b>\$ 414</b>	<b>\$ 5,531</b>

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SCHEDULE II

### VALUATION AND QUALIFYING ACCOUNTS

For the Years Ended December 31, 2002, 2001 and 2000

COLUMN C

*Additions*

Company	COLUMN A Description	COLUMN B Balance at Beginning of Period	Additions		COLUMN D Deductions**	COLUMN E Balance At End Of Period
			(1) Charged to Costs and Expenses	(2) Charged To Other Accounts		
(Thousands of Dollars)						
Con Edison	Allowance for uncollectible accounts*:					
	2002	\$ 34,775	\$ 38,982	-	\$ 39,065	\$ 34,692
	2001	\$ 33,714	\$ 43,299	-	\$ 42,238	\$ 34,775
	2000	\$ 34,821	\$ 38,292	-	\$ 39,399	\$ 33,714
Con Edison of New York	Allowance for uncollectible accounts*:					
	2002	\$ 29,400	\$ 35,215	-	\$ 35,415	\$ 29,200
	2001	\$ 25,800	\$ 40,097	-	\$ 36,497	\$ 29,400
	2000	\$ 22,600	\$ 31,808	-	\$ 28,608	\$ 25,800
O&R	Allowance for uncollectible accounts*:					
	2002	\$ 2,625	\$ 1,643	-	\$ 2,543	\$ 1,725
	2001	\$ 3,845	\$ 3,870	-	\$ 5,090	\$ 2,625
	2000	\$ 5,395	\$ 3,029	-	\$ 4,579	\$ 3,845

\* This is a valuation account deducted in the balance sheet from the assets (Accounts receivable-customer) to which they apply.

\*\* Accounts written off less cash collections, miscellaneous adjustments and amounts reinstated as receivables previously written off.

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

**CON EDISON**

None.

**CON EDISON OF NEW YORK**

None.

**O&R**

None.

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**FORWARD-LOOKING STATEMENTS**

This Annual Report on Form 10-K includes forward-looking statements intended to qualify for the safe-harbor provisions of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements are statements of future expectation and not facts. Words such as "expects," "estimates," "anticipates," "intends," "plans," "will" and similar expressions identify forward-looking statements.

Actual results or developments might differ materially from those included in the forward-looking statements because of various factors such as:

- continued restructuring of the regulated public utility, and unregulated energy and telecommunications industries;
- competition, including competition in the energy supply, trading and services businesses;
- operating performance and condition of the company's energy delivery systems, generating assets and fiber optic communications network;
- success of completion of ongoing construction projects;
- legal proceedings relating to hazardous substances, the nuclear generating plant that the company sold in 2001 and Northeast Utilities (see Notes F, G and P to the Con Edison financial statements in Item 8 of this report);
- wholesale energy markets, including availability, sufficiency and cost of energy and capacity and the effectiveness of the company's efforts to manage its risks in these markets;
- capital markets, including availability, sufficiency and cost of liquidity and credit facilities and the effectiveness of the company's efforts to manage its risks in these markets;

- availability, sufficiency and cost of other services and goods used in Con Edison's business, including insurance coverage;
- investment returns on the assets of the company's pension and other post-employment benefit plans and actual experience regarding the plans' other actuarial assumptions (see Notes D and E to the Con Edison financial statements in Item 8 of this report);
- employee matters, including changes in key executives and collective bargaining with union employees;
- economic conditions, including recession, inflation or deflation;
- technological developments;
- weather, including its effects on the company's sales and facilities;
- laws, regulations or regulatory policies, including those relating to taxes or fees, the environment and any that would adversely effect the ability of the company's regulated utility subsidiaries to operate or recover costs from their customers;
- public policy doctrines;
- accounting matters, including changes in policies, principles and interpretations generally accepted in the United States of America;
- acts of war or terrorism; and
- other presently unknown or unforeseen factors.

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**PART III**
**ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT**
**ITEM 11. EXECUTIVE COMPENSATION**
**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**
**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**
**CON EDISON**

Information required by Part III, other than the information required by Item 201(d) of Regulation S-K in Item 12, is incorporated by reference from Con Edison's definitive proxy statement for its Annual Meeting of Stockholders to be held on May 19, 2003. The proxy statement is to be filed pursuant to Regulation 14A not later than 120 days after December 31, 2002, the close of the fiscal year covered by this report. The information required pursuant to Item 201(d) of Regulation S-K is as follows:

**Equity Compensation Plan Information (as of December 31, 2002)**

<i>Plan category</i>	<i>Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)</i>	<i>Weighted-average exercise price of outstanding options, warrants and rights (b)</i>	<i>Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c)</i>
Equity compensation plans approved by security holders	6,797,651	\$39.506	2,243,300
Equity compensation plans not approved by security holders	* 556,921	N/A	N/A
<b>TOTAL</b>	<b>7,354,572</b>	<b>\$39.506</b>	<b>2,243,300</b>

\* These securities are stock units, each of which represents the right to receive one share of Con Edison common stock and related dividends. There is no exercise price for these stock units.



In accordance with General Instruction G(3) to Form 10-K, other information regarding Con Edison's Executive Officers may be found in Part I of this report under the caption "Executive Officers of the Registrant."

## CON EDISON OF NEW YORK

Information required by Part III as to Con Edison of New York is incorporated by reference from Con Edison of New York's definitive information statement for its Annual Meeting of Stockholders to be held on May 19, 2003. The proxy statement is to be filed pursuant to Regulation 14C not later than 120 days after December 31, 2002, the close of the fiscal year covered by this report.

In accordance with General Instruction G(3) to Form 10-K, other information regarding Con Edison of New York's Executive Officers may be found in Part I of this report under the caption "Executive Officers of the Registrant."

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## ITEM 14. CONTROLS AND PROCEDURES

### Con Edison

Based upon their evaluation of Con Edison's disclosure controls and procedures (as defined in Rule 13a-14(c) under the Securities Exchange Act of 1934, as amended) within 90 days prior to the filing date of this report, Con Edison's principal executive officer and principal financial officer have concluded that these controls and other procedures are effective to provide reasonable assurance that the information required to be disclosed by the company in the reports that it files or submits under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission. There have been no significant changes in Con Edison's internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

### Con Edison of New York

Based upon their evaluation of Con Edison of New York's disclosure controls and procedures (as defined in Rule 13a-14(c) under the Securities Exchange Act of 1934, as amended) within 90 days prior to the filing date of this report, Con Edison of New York's principal executive officer and principal financial officer have concluded that these controls and other procedures are effective to provide reasonable assurance that the information required to be disclosed by the company in the reports that it files or submits under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission. There have been no significant changes in Con Edison of New York's internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

### O&R

Based upon their evaluation of O&R's disclosure controls and procedures (as defined in Rule 13a-14(c) under the Securities Exchange Act of 1934, as amended) within 90 days prior to the filing date of this report, O&R's principal executive officer and principal financial officer have concluded that these controls and other procedures are effective to provide reasonable assurance that the information required to be disclosed by the company in the reports that it files or submits under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission. There have been no significant changes in O&R's internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

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## PART IV

### ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

#### (a) Documents filed as part of this report:

1. **List of Financial Statements**—See financial statements listed in Item 8.
2. **List of Financial Statement Schedules**—See schedules listed in Item 8.
3. **List of Exhibits**

Exhibits listed below which have been filed previously with the Securities and Exchange Commission pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934, and which were designated as noted below, are hereby incorporated by reference and made a part of this report with the same effect as if filed with the report. Exhibits listed below that were not previously filed are filed herewith.

### CON EDISON

- 2.1 Amended and Restated Agreement and Plan of Merger, dated as of October 13, 1999, as amended and restated as of January 11, 2000, among Con Edison, Northeast Utilities, Consolidated Edison, Inc. (a Delaware corporation, originally incorporated as CWB Holdings, Inc.) and N Acquisition LLC. (Designated in Con Edison's Current Report on Form 8-K, dated January 11, 2000 (File No. 1-14514) as Exhibit 2.)
- 3.1.1 Restated Certificate of Incorporation of Consolidated Edison, Inc. ("Con Edison") (Designated in the Registration Statement on Form S-4 of Con Edison (No. 333-39164) as Exhibit 3.1.)
- 3.1.2 By-laws of Con Edison, effective as of June 23, 1998. (Designated in Con Edison's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 1998 (File No. 1-14514) as Exhibit 3.2.1)

- 4.2.1 Indenture, dated as of April 1, 2002, between Con Edison and JP Morgan Chase Bank (formerly known as The Chase Manhattan Bank), as Trustee. (Designated in the Registration Statement on Form S-3 of Con Edison (No. 333-102005) as Exhibit 4.1.)
- 4.2.1 The form of Con Edison's 7.25% Debentures, Series 2002 A. (Designated in Con Edison's Current Report on Form 8-K, dated April 3, 2002, (File No. 1-14514) as Exhibit 4.)
- 10.1.1 Con Edison 1996 Stock Option Plan, as amended and restated effective February 24, 1998. (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1997 (File No. 1-1217) as Exhibit 10.20.)
- 10.1.2 The following employment agreements, and amendments thereto, between Con Edison and the executive officer listed below, dated as of the effective dates listed below, which are designated as follows:

Executive Officer	Effective Date	Securities Exchange Act File No. 1-14514		
		Form	Date	Exhibit
Eugene R. McGrath	Agreement: 9/1/00	10-Q	9/30/00	10.1.1
	Amendment: 5/31/02	10-Q	6/30/02	10.1.1
Joan S. Freilich	Agreement: 9/1/00	10-Q	9/30/00	10.1.2
	Amendment: 5/31/02	10-Q	6/30/02	10.1.1
Kevin Burke	Agreement: 9/1/00	10-K	12/31/00	10.1.6
	Amendment: 5/31/02	10-Q	6/30/02	10.1.3
John D. McMahon	Agreement: 9/1/00	10-K	12/31/00	10.1.5
	Amendment: 5/31/02	10-Q	6/30/02	10.1.4

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- 10.1.3 Restricted Stock Unit Award Agreement, dated as of May 31, 2002, between Con Edison and Stephen B. Bram. (Designated in Con Edison's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2002 (File No. 1-14514) as Exhibit 10.1.5.)
- 10.1.4 Severance Program for Officers of Consolidated Edison, Inc. and its Subsidiaries, effective as of September 1, 2000. (Designated in Con Edison's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2000 (File No. 1-14514) as Exhibit 10.1.3)
- 10.1.5.1 The Consolidated Edison, Inc. Stock Purchase Plan. (Designated in Con Edison's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2000 (File No. 1-14514) as Exhibit 10)
- 10.1.5.2 Amendment, dated April 8, 2002, to Consolidated Edison, Inc. Stock Purchase Plan. (Designated in Con Edison's Registration Statement on Form S-8 (No. 333-86820) as Exhibit 10.2.)
- 10.1.6 Consolidated Edison, Inc. Deferred Stock Compensation Plan for Non-Officer Directors, effective July 1, 2002. (Designated in Con Edison's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2002 (File No. 1-14514) as Exhibit 10.1.1.)
- 10.1.7.1 The Con Edison Retirement Plan, effective January 1, 2001. (Designated in Con Edison's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2002 (File No. 1-14514 as Exhibit 10.1.2.1.)
- 10.1.7.2 Amendment No. 1 to the Consolidated Edison Retirement Plan. (Designated in Con Edison's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2002 (File No. 1-14514 as Exhibit 10.1.2.2.)
- 10.1.8 The Consolidated Edison Thrift Plan, as amended effective May 8, 2002. (Designated in Con Edison's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2002 (File No. 1-14514 as Exhibit 10.1.3.)
- 10.1.9.1 Guaranty, dated as of November 14, 2000, from Consolidated Edison, Inc. in favor of Hawkeye Funding, Limited Partnership.
- 10.1.9.2 Lease Agreement, dated as of November 14, 2000, between Hawkeye Funding, Limited Partnership, as Lessor, and Newington Energy, L.L.C., as Lessee (the Newington Project Lease).
- 10.1.9.3 Amendment No. 1, dated as of April 1, 2002, to the Newington Project Lease.
- 12.1.1 Statement of computation of ratio of earnings to fixed charges for the years 1998-2002.
- 12.1.2 Statement of computation of ratio of earnings to fixed charges and preferred stock dividend requirements for the years 1998-2002.
- 21.1 Subsidiaries of Con Edison.
- 23.1 Consent of PricewaterhouseCoopers LLP
- 24.1 Powers of Attorney of each of the persons signing this report by attorney-in-fact.
- 99.1.1 Certification of chief executive officer required under Section 906 of the Sarbanes-Oxley Act of 2002.
- 99.1.2 Certification of chief financial officer required under Section 906 of the Sarbanes-Oxley Act of 2002.

## CON EDISON OF NEW YORK

- 3.2.1.1 Restated Certificate of Incorporation of Con Edison filed with the Department of State of the State of New York on December 31, 1984. (Designated in the Annual Report on Form 10-K of Con Edison of New York for the year ended December 31, 1989 (File No. 1-1217) as Exhibit 3(a).)

- 3.2.1.2 The following certificates of amendment of Restated Certificate of Incorporation of Con Edison of New York filed with the Department of State of the State of New York, which are designated as follows:

Date Filed With Department of State	Securities Exchange Act File No. 1-1217		
	Form	Date	Exhibit
5/16/88	10-K	12/31/89	3(b)
6/2/89	10-K	12/31/89	3(c)
4/28/92	8-K	4/24/92	4(d)
8/21/92	8-K	8/20/92	4(e)
2/18/98	10-K	12/31/97	3.1.2.3

- 3.2.2 By-laws of Con Edison of New York, effective June 20, 2002. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2002 (File 1-1217 as Exhibit 3.2.)

- 4.2.1 Participation Agreement, dated as of December 1, 1992, between New York State Energy Research and Development Authority ("NYSERDA") and Con Edison of New York (designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1992 (File No. 1-1217) as Exhibit 4(f)), and the following amendments thereto, which are designated as follows:

Supplemental Participation Agreement		Securities Exchange Act File No. 1-1217		
Number	Date	Form	Date	Exhibit
First	3/15/93	10-Q	6/30/93	4.1
Second	10/1/93	10-Q	9/30/93	4.3
Third	12/1/94	10-K	12/31/94	4.7.3
Fourth	7/1/95	10-Q	6/30/95	4.2

- 4.2.2 Participation Agreement, dated as of July 1, 1999, between NYSERDA and Con Edison of New York.

(Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 1999 (File No. 1-1217) as Exhibit 4.1.)

- 4.2.3 Participation Agreement, dated as of June 1, 2001, between NYSERDA and Con Edison of New York.

(Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2001 (File No. 1-1217) as Exhibit 10.2.1)

- 4.2.4 Supplemental Participation Agreement, dated as of October 1, 2002, to Participation Agreement, dated as of June 1, 2001 between NYSERDA and Con Edison of New York. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2002 (File 1-1217) as Exhibit 4.2.2.)

- 4.2.5 Participation Agreement, dated as of November 1, 2001, between NYSERDA and Con Edison of New York. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2001 (File No. 1-1217) as Exhibit 10.2.1)

- 4.2.6 Indenture of Trust, dated as of December 1, 1992, between NYSERDA and Morgan Guaranty Trust Company of New York, as Trustee (Morgan Guaranty) (designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1992 (File No. 1-1217) as Exhibit 4(i)), and the following amendments thereto, which are designated as follows:

Supplemental Indenture of Trust		Securities Exchange Act File No. 1-1217		
Number	Date	Form	Date	Exhibit
First	3/15/93	10-Q	6/30/93	4.2
Second	10/1/93	10-Q	9/30/93	4.4
Third	12/1/94	10-K	12/31/94	4.11.3
Fourth	7/1/95	10-Q	6/30/95	4.3

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- 4.2.7.1 Indenture of Trust, dated as of July 1, 1999 between NYSERDA and HSBC Bank USA, as trustee. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 1999 (File No. 1-1217) as Exhibit 4.2.)

- 4.2.7.2 Supplemental Indenture of Trust, dated as of July 1, 2001, to Indenture of Trust, dated July 1, 1999 between NYSERDA and HSBC Bank USA, as trustee. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2001 (File No. 1-1217) as Exhibit 10.2.2.)

- 4.2.8.1 Indenture of Trust, dated as of June 1, 2001 between NYSERDA and The Bank of New York, as trustee. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2001 (File No. 1-1217) as Exhibit 10.2.3.)

- 4.2.8.2 Supplemental Indenture of Trust, dated as of October 1, 2002, to Indenture of Trust, dated as of June 1, 2002, between NYSERDA and The Bank of New York, as trustee. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2002 (File 1-1217) as Exhibit 4.2.1.)

4.2.9 Indenture of Trust, dated as of November 1, 2001 between NYSERDA and The Bank of New York, as trustee. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2001 (File No. 1-1217) as Exhibit 10.2.2.)

4.2.10.1 Indenture, dated as of December 1, 1990, between Con Edison of New York and The Chase Manhattan Bank (National Association), as Trustee (the "Debenture Indenture"). (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1990 (File No. 1-1217) as Exhibit 4(h).)

4.2.10.2 First Supplemental Indenture (to the Debenture Indenture), dated as of March 6, 1996, between Con Edison of New York and The Chase Manhattan Bank (National Association), as Trustee. (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1995 (File No. 1-1217) as Exhibit 4.13.)

4.2.10.3 The following forms of Con Edison of New York's Debentures:

Debenture	Securities Exchange Act File No. 1-1217			Debenture	Securities Exchange Act File No. 1-1217		
	Form	Date	Exhibit		Form	Date	Exhibit
7 <sup>5</sup> / <sub>8</sub> %, Series 1992 B	8-K	2/5/92	4(b)	6.15%, Series 1998 C	8-K	6/22/98	4
6 <sup>3</sup> / <sub>8</sub> %, Series 1993 D	8-K	4/7/93	4	6.90%, Series 1998 D	8-K	9/24/98	4
7 <sup>1</sup> / <sub>2</sub> %, Series 1993 G	8-K	6/7/93	4	7.35%, Series 1999 A	8-K	6/25/99	4
7 <sup>1</sup> / <sub>8</sub> %, Series 1994 A	8-K	2/8/94	4	7.15%, Series 1999 B	8-K	12/1/99	4
6 <sup>5</sup> / <sub>8</sub> %, Series 1995 A	8-K	6/21/95	4	8 <sup>1</sup> / <sub>8</sub> %, Series 2000 A	8-K	5/3/00	4
7 <sup>3</sup> / <sub>4</sub> %, Series 1996 A	8-K	4/24/96	4	7 <sup>1</sup> / <sub>2</sub> %, Series 2000 B	8-K	8/23/00	4
6.45%, Series 1997 B	8-K	11/24/97	4	6 <sup>5</sup> / <sub>8</sub> %, Series 2000 C	8-K	12/12/00	4
6 <sup>1</sup> / <sub>4</sub> %, Series 1998 A	8-K	1/29/98	4.1	7 <sup>1</sup> / <sub>2</sub> %, Series 2001 A	8-K	6/14/01	4
7.10%, Series 1998 B	8-K	1/29/98	4.2	5.625%, Series 2002 A	8-K	6/19/02	4
				4.875%, Series 2002 B	8-K	12/19/02	4

10.2.1 Amended and Restated Agreement and Settlement, dated September 19, 1997, between Con Edison of New York and the Staff of the New York State Public Service Commission (without Appendices). (Designated in Con Edison of New York's Current Report on Form 8-K, dated September 23, 1997, (File No. 1-1217) as Exhibit 10.)

10.2.2 Settlement Agreement, dated October 2, 2000, by and among Con Edison of New York, the Staff of the New York State Public Service Commission and certain other parties. (Designated in Con Edison of New York's Current Report on Form 8-K, dated September 22, 2000, (File No. 1-1217) as Exhibit 10.)

10.2.3.1 Planning and Supply Agreement, dated March 10, 1989, between Con Edison of New York and the Power Authority of the State of New York. (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1992 (File No. 1-1217) as Exhibit 10(gg).)

10.2.3.2 Delivery Service Agreement, dated March 10, 1989, between Con Edison of New York and the Power Authority of the State of New York. (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1992 (File No. 1-1217) as Exhibit 10(hh).)

10.2.4 Employment Contract, dated May 22, 1990, between Con Edison of New York and Eugene R. McGrath (designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 1990 (File No. 1-1217) as Exhibit 10) and the following amendments thereto, which are designated as follows:

Amendment Date	Securities Exchange Act File No. 1-1217		
	Form	Date	Exhibit
8/27/91	10-Q	9/30/91	19
8/25/92	10-Q	9/30/92	19
2/18/93	10-K	12/31/92	10(o)
8/24/93	10-Q	9/30/93	10.1
8/24/94	10-Q	9/30/94	10.1
8/22/95	10-Q	9/30/95	10.3
7/23/96	10-Q	6/30/96	10.2
7/22/97	10-Q	6/30/97	10
7/28/98	8-K	9/24/98	10
7/27/99	10-Q	9/30/99	10.2
7/20/00	10-Q	9/30/00	10.2.1

10.2.5 Agreement and Plan of Exchange, entered into on October 28, 1997, between Con Edison and Con Edison of New York. (Designated in the Registration Statement on Form S-4 of Con Edison (No. 333-39164) as Exhibit 2.)

- 10.2.6 The Consolidated Edison Company of New York, Inc. Executive Incentive Plan, as amended and restated as of August 1, 2000. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2001 (File No. 1-1217) as Exhibit 10.2.1.)
- 10.2.7 Consolidated Edison Company of New York, Inc Supplemental Retirement Income Plan, as amended and restated as of April 1, 1999. (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1998 (File No. 1-1217) as Exhibit 10.10.)
- 10.2.8 Deferred Compensation Plan for the Benefit of Trustees of Con Edison of New York, dated February 27, 1979, and amendments thereto, dated September 19, 1979 (effective February 27, 1979), February 26, 1980, and November 24, 1992 (effective January 1, 1993). (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1991 (File No. 1-1217) as Exhibit 10(i).)
- 10.2.9 Supplemental Medical Plan for the Benefit of Con Edison of New York's officers. (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1991 (File No. 1-1217) as Exhibit 10(aa).)

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- 10.2.10 The Consolidated Edison Retiree Health Program for Management Employees, effective as of January 1, 1993 (designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1992 (File No. 1-1217) as Exhibit 10(II)) and the following amendments thereto, which are designated as follows:

Amendment Date	Securities Exchange Act File No. 1-1217		
	Form	Date	Exhibit
10/31/94	10-Q	9/30/94	10.3
12/28/94	10-K	12/31/95	10.44
12/29/95	10-K	12/31/95	10.45
7/1/96	10-K	12/31/96	10.39
11/14/97	10-K	12/31/97	10.18.3
12/30/98	10-K	12/31/98	10.16.3

- 10.2.11 The Con Edison of New York Severance Pay Plan for Management Employees. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 1997 (File No. 1-1217) as Exhibit 10.)

- 10.2.12.1 The Consolidated Edison Company of New York, Inc. Deferred Income Plan, as amended and restated as of April 1, 1999. (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1998 (File No. 1-1217) as Exhibit 10.19.)

- 10.2.12.2 Amendment No. 1 to The Consolidated Edison Company of New York, Inc. Deferred Income Plan, effective as of September 1, 2000. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2001 (File No. 1-1217) as Exhibit 10.2.2.)

12.2 Statement of computation of ratio of earnings to fixed charges for the years 1998 - 2002.

23.2 Consent of PricewaterhouseCoopers LLP.

24.2 Powers of Attorney of each of the persons signing this report by attorney-in-fact. (Included as part of Exhibit 24.1.)

99.2.1 Certification of chief executive officer required under Section 906 of the Sarbanes-Oxley Act of 2002.

99.2.2 Certification of chief financial officer required under Section 906 of the Sarbanes-Oxley Act of 2002.

## O&R

3.3.1.1 Restated Certificate of Incorporation of O&R, dated May 7, 1996. (Designated in O&R's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 1996 (File No. 1-4315) as Exhibit 3.4.)

3.3.1.2 Certificate of Amendment of the Restated Certificate of Incorporation of O&R, dated July 14, 1999. (Designated in O&R's Form 10-Q for the period ended June 30, 1999 (File No. 1-4315) as Exhibit 3.1.)

3.3.2 By-laws of O&R, as Adopted on July 8, 1999. (Designated in O&R's Form 10-Q for the period ended June 30, 1999 (File No. 1-4315) as Exhibit 3.2.)

4.3.1.1 Indenture, dated as of June 15, 2000, between O&R and JPMorgan Chase Bank (formerly known as The Chase Manhattan Bank), as Trustee.

4.3.1.2 The form of O&R's 7.50% Debentures, Series 2000 A. (Designated in O&R's Current Report on Form 8-K, dated June 13, 2000 (File No. 1-4315 as Exhibit 4.)

4.3.2 Mortgage Trust Indenture of Rockland Electric Company, dated as of July 1, 1954. (Designated in O&R's Registration Statement No. 2-14159 as Exhibit 2.16.)

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4.3.3 Mortgage Trust Indenture of Pike County Light & Power Company, dated as of July 15, 1971. (Designated in O&R's Registration Statement No. 2-45632 as Exhibit 4.31.)

12.3 Statement of computation of ratio of earnings to fixed charges for the years ended 1998 - 2002.

21.3 Subsidiaries of O&R. (Included as part of Exhibit 21.1 hereto.)

24.3 Powers of Attorney of each of the persons signing this report by attorney-in-fact. (Included as part of Exhibit 24.1 hereto.)

99.3.1 Certification of chief executive officer required under Section 906 of the Sarbanes-Oxley Act of 2002.

99.3.2 Certification of chief financial officer required under Section 906 of the Sarbanes-Oxley Act of 2002.

**(b) Reports on Form 8-K**

**CON EDISON**

Con Edison filed no Current Reports on Form 8-K during the quarter ended December 31, 2002. Con Edison filed a Current Report on Form 8-K, dated January 16, 2003, reporting (under Item 5) its unaudited net income for common stock for the year ended December 31, 2002 and certain information about its pension plan and furnishing (under Item 9) a copy of its press release, dated January 16, 2003, and certain additional information. Con Edison also filed a Current Report on Form 8-K, dated February 11, 2003, furnishing (under Item 9) a presentation dated February 11, 2003.

**CON EDISON OF NEW YORK**

Con Edison of New York filed a Current Report on Form 8-K, dated December 19, 2002, reporting (under Item 5) the completion the sale of \$500 million aggregate principal amount of its 4.875% Debentures, Series 2002 B. No other Con Edison of New York Current Report on Form 8-K was filed during the quarter ended December 31, 2002.

**O&R**

O&R filed no Current Reports on Form 8-K during the quarter ended December 31, 2002.

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**Signatures**

Pursuant to the requirements of Section 13 or 15(d) of the Securities and Exchange Act of 1934, each Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on February 27, 2003.

**Consolidated Edison, Inc.**

**Consolidated Edison Company  
of New York, Inc.**

By /s/ JOAN S. FREILICH

Joan S. Freilich  
Executive Vice President and Chief Financial  
Officer

**Orange and Rockland Utilities, Inc.**

By /s/ EDWARD J. RASMUSSEN

Edward J. Rasmussen  
Vice President, Controller and Chief Financial  
Officer

Pursuant to the requirements of the Securities and Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant, and in the capacities, indicated on February 27, 2003.

<i>Signature</i>	<i>Registrant</i>	<i>Title</i>
Eugene R. McGrath*	Con Edison	Chairman of the Board, President, Chief Executive Officer and Director (Principal Executive Officer)
	Con Edison of New York	Chairman of the Board, Chief Executive Officer and Trustee (Principal Executive Officer)
	O&R	Chairman of the Board and Director
Joan S. Freilich*	Con Edison	Executive Vice President, Chief Financial Officer and Director (Principal Financial Officer)

	Con Edison of New York	Executive Vice President, Chief Financial Officer and Trustee (Principal Financial Officer)
Edward J. Rasmussen*	Con Edison	Vice President, Controller and Chief Accounting Officer (Principal Accounting Officer)
	Con Edison of New York	Vice President, Controller and Chief Accounting Officer (Principal Accounting Officer)
	O&R	Vice President, Controller, and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)
John D. McMahon*	O&R	President, Chief Executive Officer and Director (Principal Executive Officer)
Vincent A. Calarco*	Con Edison	Director
	Con Edison of New York	Trustee
George Campbell Jr.*	Con Edison	Director
	Con Edison of New York	Trustee
Gordon J. Davis*	Con Edison	Director
	Con Edison of New York	Trustee
Michael J. Del Guidice*	Con Edison	Director
	Con Edison of New York	Trustee
Ellen V. Futter*	Con Edison	Director
	Con Edison of New York	Trustee
Sally Hernandez-Pinero*	Con Edison	Director
	Con Edison of New York	Trustee
Peter W. Likins*	Con Edison	Director
	Con Edison of New York	Trustee
Frederic V. Salerno*	Con Edison	Director
	Con Edison of New York	Trustee
Richard A. Voell*	Con Edison	Director
	Con Edison of New York	Trustee
Stephen R. Volk*	Con Edison	Director
George Strayton*	O&R	Director

\*By JOAN S. FREILICH, Attorney-in-fact

## CERTIFICATIONS

CON EDISON—Principal Executive Officer

I, Eugene R. McGrath, the principal executive officer of Consolidated Edison, Inc., certify that:

1. I have reviewed this annual report on Form 10-K of Consolidated Edison, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
  - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
  - c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: February 27, 2003

/s/ EUGENE R. MCGRATH

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CON EDISON—Principal Financial Officer

I, Joan S. Freilich, the principal financial officer of Consolidated Edison, Inc., certify that:

1. I have reviewed this annual report on Form 10-K of Consolidated Edison, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
  - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
  - c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: February 27, 2003

/s/ JOAN S. FREILICH

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Joan S. Freilich  
Executive Vice President and Chief Financial Officer

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CON EDISON OF NEW YORK—Principal Executive Officer

I, Eugene R. McGrath, the principal executive officer of Consolidated Edison Company of New York, Inc., certify that:

1. I have reviewed this annual report on Form 10-K of Consolidated Edison Company of New York, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
  - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
  - c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and



- b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: February 27, 2003

/s/ EUGENE R. MCGRATH

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Eugene R. McGrath  
Chairman and Chief Executive Officer

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CON EDISON OF NEW YORK—Principal Financial Officer

I, Joan S. Freilich, the principal financial officer of Consolidated Edison Company of New York, Inc., certify that:

1. I have reviewed this annual report on Form 10-K of Consolidated Edison Company of New York, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
  - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
  - c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: February 27, 2003

/s/ JOAN S. FREILICH

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Joan S. Freilich  
Executive Vice President and Chief Financial Officer

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O&R—Principal Executive Officer

I, John D. McMahon, the principal executive officer of Orange and Rockland Utilities, Inc., certify that:

1. I have reviewed this annual report on Form 10-K of Orange and Rockland Utilities, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
  - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
  - c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
  
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
  
6. The registrant's other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: February 27, 2003

/s/ JOHN D. MCMAHON

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John D. McMahon  
President and Chief Executive Officer

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O&R—Principal Financial Officer

I, Edward J. Rasmussen, the principal financial officer of Orange and Rockland Utilities, Inc., certify that:

1. I have reviewed this annual report on Form 10-K of Orange and Rockland Utilities, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
  - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
  - c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
  
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
  
6. The registrant's other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

/s/ EDWARD J. RASMUSSEN

Edward J. Rasmussen  
Vice President and Chief Financial Officer

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## GUARANTY

GUARANTY, dated as of November 14, 2000 (this "GUARANTY"), from CONSOLIDATED EDISON, INC., a New York corporation (the "GUARANTOR"), in favor of HAWKEYE FUNDING, LIMITED PARTNERSHIP, a Delaware limited partnership (the "LESSOR"), and its successors and assigns.

WHEREAS, the Guarantor wishes to induce the Lessor to enter into a certain Agreement for Lease (as defined below) and Lease (as defined below) with a Subsidiary (as defined below) of the Guarantor; and

WHEREAS, the Lessor is unwilling to enter into the Agreement for Lease or the Lease unless the Guarantor enters into this Guaranty;

NOW, THEREFORE, in order to induce the Lessor to enter into the Agreement for Lease and the Lease, the Guarantor hereby agrees as follows:

## SECTION 1

DEFINED TERMS;  
RULES OF CONSTRUCTION

1.1 DEFINITIONS. As used in this Guaranty, capitalized terms defined in the preamble and other Sections of this Guaranty shall have the meanings set forth therein, terms defined in EXHIBIT A shall have the meanings set forth therein, and capitalized terms used herein or in EXHIBIT A but not otherwise defined herein or in EXHIBIT A shall, except as otherwise provided in the Agreement for Lease or the Lease, have the meanings set forth in the Lease, for any period on or after the Effective Date (as defined in the Lease) or the Agreement for Lease, for any period prior thereto.

1.2 ACCOUNTING TERMS. All accounting terms not specifically defined herein shall be construed in accordance with GAAP.

1.3 USE OF CERTAIN TERMS. Unless the context of this Guaranty requires otherwise, the plural includes the singular, the singular includes the plural, and "including" has the inclusive meaning of "including without limitation." The words "hereof," "herein," "hereby," "hereunder" and other similar terms of this Guaranty refer to this Guaranty as a whole and not exclusively to any particular provision of this Guaranty. All pronouns and any variations thereof shall be deemed to refer to masculine, feminine or neuter, singular or plural, as the identity of the Person or Persons may require.

1.4 HEADINGS AND REFERENCES. Section and other headings are for reference only, and shall not affect the interpretation or meaning of any provision of this Guaranty. Unless otherwise provided, references to Articles, Sections, Schedules and Exhibits shall be deemed references to Articles, Sections, Schedules and Exhibits of this Guaranty. References to this Guaranty and any

other Operative Document include this Guaranty and the other Operative Documents as the same may be modified, amended, restated or supplemented from time to time pursuant to the provisions hereof or thereof. A reference to any law shall mean that law as it may be amended, modified or supplemented from time to time, and any successor law. A reference to a Person includes the successors and assigns of such Person, but such reference shall not increase, decrease or otherwise modify in any way the provisions in this Guaranty governing the assignment of rights and obligations under or the binding effect of any provision of this Guaranty.

## SECTION 2

## GUARANTY

2.1 GUARANTY. Subject to the terms and conditions in this Guaranty, the Guarantor absolutely, unconditionally and irrevocably guarantees to the Lessor and each Assignee that (a) all Payment Obligations will be promptly paid in full as and when due in accordance with the terms thereof whether at the stated due date, by acceleration or otherwise, and (b) the Lessee will duly and punctually perform, comply with and observe all Covenant Obligations as and when required in accordance with the terms thereof, in each case, without regard to whether such Obligation is direct or indirect, absolute or contingent, now or hereafter existing or owing, voluntary or involuntary, created or arising by

contract, operation of law or otherwise or incurred or payable before or after commencement of any proceedings by or against the Lessee under any Bankruptcy law.

If an event permitting the exercise of remedies under the Operative Documents shall at any time have occurred and be continuing and such exercise, or any consequences thereof provided in the Operative Documents, shall at such time be prevented by reason of the pendency against the Lessee of a case or proceeding under any Bankruptcy law, the Guarantor agrees that, solely for purposes of this Guaranty and its obligations hereunder, the Obligations and all other amounts as to which such remedies would have been exercisable under the Operative Documents in the absence of such case or proceeding shall be deemed to have been declared in default, with all attendant consequences as provided in the Operative Documents as if such declaration of default and the consequences thereof had been accomplished in accordance with the terms of the Operative Documents, and the Guarantor shall forthwith pay any such amounts guaranteed hereunder, without further notice or demand.

2.2 GUARANTY ABSOLUTE. This Guaranty is an absolute, unlimited and continuing guaranty of performance and payment (and not of collection) of the Obligations. This Guaranty is in no way conditioned upon any attempt to collect from the Lessee or upon any other event or contingency, and shall be binding upon and enforceable against the Guarantor without regard to the validity or enforceability of any Operative Document, or of any term thereof.

The obligations of the Guarantor set forth herein constitute the full recourse obligations of the Guarantor enforceable against it to the full extent of all its assets and properties, notwithstanding any provision in the Agreement for Lease or the Lease limiting the liability of any Person, or any agreement by Assignee to look for payment with respect thereto, solely to certain property and other collateral as described in the Operative Documents. Without limiting

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the foregoing, it is agreed and understood that (a) repeated and successive demands may be made and recoveries may be had hereunder as and when, from time to time, the Lessee shall be in default with respect to the Obligations under the terms of any Operative Document, and (b) notwithstanding the recovery hereunder for or in respect of any given default with respect to the Obligations by the Lessee under the Agreement for Lease or the Lease, this Guaranty shall remain in full force and effect and shall apply to each and every subsequent default with respect to the Obligations.

2.3 REINSTATEMENT. In case any Operative Document shall be terminated as a result of the rejection thereof by any trustee, receiver or liquidating agent of the Lessee or any of its properties in any Bankruptcy or similar proceeding, the Guarantor's obligations hereunder shall continue to the same extent as if such agreement had not been so rejected. The Guarantor agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment to the Lessor of the Obligations or any part thereof is rescinded or must otherwise be returned by the Lessor upon the Bankruptcy of the Lessee, or otherwise, as though such payment to the Lessor had not been made.

2.4 ENFORCEMENT. The Guarantor shall pay all costs, expenses and damages incurred (including reasonable attorneys' fees and disbursements) in connection with the enforcement of the Obligations to the extent that such costs, expenses and damages are not paid by the Lessee, and in connection with the enforcement of the obligations of the Guarantor under this Guaranty.

2.5 GUARANTY NOT SUBJECT TO SETOFF, ETC. The obligations of the Guarantor hereunder shall not be subject to any counterclaim, setoff, deduction or defense based upon any claim the Guarantor or the Lessee may have against the Lessor or any claim the Guarantor may have against the Lessee or any other Person and shall remain in full force and effect without regard to, and shall not be released, discharged, reduced or in any way affected by any circumstance or condition whatsoever (whether or not the Guarantor shall have any knowledge or notice thereof) which might constitute a legal or equitable discharge or defense including, but not limited to, (a) the amending, modifying, supplementing or terminating (by operation of law or otherwise), expressly or impliedly, of any Operative Document, or any other instrument applicable to the Lessee or to its Obligations, or any part thereof; (b) any failure on the part of the Lessee to perform or comply with any term of any Operative Document or any failure of any other Person to perform or comply with any term of any Operative Document; (c) any waiver, consent, change, extension, indulgence or other action or any action or inaction under or in respect of any Operative Document or this Guaranty, whether or not the Lessor, the Lessee or the Guarantor has notice or knowledge of any of the foregoing; (d) any Bankruptcy or similar proceeding with respect to the Lessor, the Guarantor or the Lessee, or their respective properties or their creditors, or any action taken by any

trustee or receiver or by any court in any such proceeding; (e) any furnishing or acceptance of additional security or any release of any security (and the Guarantor authorizes the Lessor to furnish, accept or release said security); (f) any limitation on the liability or Obligations of the Lessee under any Operative Document (except as expressly set forth therein) or any termination (by operation of law or otherwise), cancellation (by operation of law or otherwise), frustration or unenforceability, in whole or in part, of any Operative Document, or any term thereof; (g) any lien, charge or encumbrance on or affecting the Guarantor's, the Lessor's or the Lessee's respective assets and properties; (h) any act, omission or breach on the part of the Lessor or Assignee under any Operative Document, or any other agreement at any

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time existing between the Lessor and the Lessee or any other law, governmental regulation or other agreement applicable to the Lessor or any Obligation; (i) any claim as a result of any other dealings among the Lessor, any Assignee, the Guarantor or any of them; (j) the assignment or transfer of this Guaranty, any Operative Document (whether or not in accordance with and subject to the terms thereof) or any other agreement or instrument referred to in any Operative Document or applicable to the Lessee or the Obligations by the Lessor to any other Person; (k) any change in the name of the Lessor, Assignee, the Lessee or any other Person; (l) any subleasing or further subleasing of the Project or any part thereof, or any redelivery, repossession, sale, transfer or other disposition, surrender or destruction of the Project or any part thereof; (m) the transfer, assignment, mortgaging or purported transfer, assignment or mortgaging of all or any part of the interest of the Lessor, its successors or assigns, or the Lessee in the Project; (n) any failure of title with respect to the interest of the Lessor or the Lessee, or their respective successors and assigns, in the Project; (o) any defect in the compliance with specifications, condition, design, operation or fitness for use of, or any damage to or loss or destruction of, or any interruption or cessation in the use of or failure to complete, the Project or any portion thereof by the Lessee or any other Person for any reason whatsoever (including, without limitation, any governmental prohibition or restriction, condemnation, requisition, seizure or any other act on the part of any governmental or military authority, or any act of God or of the public enemy, or any Event of Loss), and regardless of the duration thereof (even though such duration would otherwise constitute a frustration of the Lease), whether or not without fault on the part of the Lessee or any other Person; (p) any merger or consolidation of the Lessee or the Guarantor into or with any other Person or any direct or indirect sale, lease or transfer of any other assets of the Lessee or the Guarantor to any other Person; (q) any change in the ownership of any shares of capital stock or other equity interests of the Guarantor or the Lessee (including any such change which results in the Guarantor no longer owning (directly or indirectly) capital stock of the Lessee); or (r) any other event or circumstance whatsoever (other than payment and performance in full of the Obligations).

2.6 WAIVER. The Guarantor unconditionally waives: (a) notice of any of the matters referred to in Section 2 hereof; (b) all notices which may be required by statute, rule of law or otherwise to preserve any rights against the Guarantor hereunder, including notice of the acceptance of this Guaranty by the Lessor or Assignee, or the creation, renewal, extension, modification or accrual of the Obligations or notice of any other matters relating thereto, any presentment, demand, notice of dishonor, protest or nonpayment of any damages or other amounts payable under any Operative Document; (c) any requirement for the enforcement, assertion or exercise of any right, remedy, power or privilege under or in respect of any Operative Document, including diligence in collection or protection of or realization upon the Obligations or any part thereof or any collateral therefor; (d) any requirement of diligence; (e) any requirement to mitigate the damages resulting from a default or other termination under any Operative Document, except that this shall not relieve the Lessor or such Assignee of any such obligation; (f) the occurrence of every other condition precedent to which the Guarantor or the Lessee may otherwise be entitled, except as provided in any Operative Document; and (g) the right to require the Lessor or such Assignee to proceed against the Lessee or any other Person liable on the Obligations, to proceed against or exhaust security held from the Lessee or any other Person, or to pursue any other remedy in the Lessor's power whatsoever, and the Guarantor waives the right to have the property of the Lessee first applied to the discharge of the Obligations.

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The Lessor or Assignee may, at its election, exercise any right or remedy it might have against the Lessee or any security held by the Lessor or such Assignee, including the right to foreclose upon any such security by judicial or nonjudicial sale, without affecting or impairing in any way the liability of the Guarantor hereunder, except to the extent the Obligations have been paid or satisfied, and the Guarantor waives any defense arising out of the

absence, impairment or loss of any right of reimbursement, contribution or subrogation or any other right or remedy of the Guarantor against the Lessee or any such security, whether resulting from such election by the Lessor or such Assignee or otherwise. The Guarantor waives any defense arising by reason of any disability or other defense of the Lessee, or by reason of the cessation from any cause whatsoever of the liability, either in whole or in part, of the Lessee to the Lessor or Assignee for the Obligations.

The Guarantor understands that the Lessor's or Assignee's exercise of certain rights and remedies contained in the Operative Documents may affect or eliminate the Guarantor's rights of subrogation against the Lessee and that the Guarantor may therefore incur partially or totally nonreimbursable liability hereunder; nevertheless, the Guarantor hereby authorizes and empowers the Lessor and each Assignee, to exercise in its or their sole discretion, any rights and remedies, or any combination thereof, which may then be available, it being the purpose and intent of the Guarantor that its obligations hereunder shall be absolute, irrevocable, independent and unconditional under any and all circumstances.

The Guarantor assumes the responsibility for being and keeping informed of the financial condition of the Lessee and of all other circumstances bearing upon the risk of nonpayment of the Obligations and agrees that neither the Lessor nor Assignee shall have any duty to advise the Guarantor of information regarding any condition or circumstance or any change in such condition or circumstance. The Guarantor acknowledges that neither the Lessor nor Assignee has made any representation to the Guarantor concerning the financial condition of the Lessee.

### SECTION 3

#### COVENANTS OF THE GUARANTOR

3.1 AFFIRMATIVE COVENANTS. So long as any of the Obligations shall remain outstanding, the Guarantor covenants to the Lessor and Assignee as follows:

3.1.1 OWNERSHIP OF CORE ELECTRICITY DISTRIBUTION BUSINESS. The Guarantor shall at all times continue to beneficially own and operate, directly or indirectly, at least fifty-one percent (51%) of the Core Electricity Distribution Business.

3.1.2 OWNERSHIP OF LESSEE. The Guarantor shall own (directly or indirectly) beneficially and of record a majority of the membership interests of the Lessee.

3.1.3 FINANCIAL AND BUSINESS INFORMATION. The Guarantor will deliver or otherwise make available to the Lessor and Assignee:

(a) QUARTERLY STATEMENTS -- within 60 days after the end of each quarterly fiscal period in each fiscal year of the Guarantor (other than the last quarterly fiscal period of each such fiscal year), copies of:

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(i) a consolidated balance sheet of the Guarantor and its Consolidated Subsidiaries as at the end of such quarter, and

(ii) consolidated statements of income and cash flows of the Guarantor and its Consolidated Subsidiaries, for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by a Senior Financial Officer as fairly presenting, in all material respects, the financial position of the companies being reported on and their results of operations and cash flows, subject to changes resulting from year-end adjustments, PROVIDED that filing with the SEC of the Guarantor's Quarterly Report on Form 10-Q prepared in compliance with the requirements therefor shall be deemed to satisfy the requirements of this Section 3.1.3(a);

(b) ANNUAL STATEMENTS -- as soon as available and in any event within 120 days after the end of each fiscal year of the Guarantor, copies of

(i) a consolidated balance sheet of the Guarantor and

its Consolidated Subsidiaries as at the end of such year, and

(ii) consolidated statements of income, changes in shareholders' equity and cash flows of the Guarantor and its Consolidated Subsidiaries for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon of independent public accountants of recognized national standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances, PROVIDED that filing with the SEC of the Guarantor's Annual Report on Form 10-K for such fiscal year (together with the Guarantor's annual report to shareholders, if any, prepared pursuant to Rule 14a-3 under the Exchange Act) prepared in accordance with the requirements therefor shall be deemed to satisfy the requirements of this Section 3.1.3(b);

(c) NOTICE OF POTENTIAL DEFAULT OR EVENT OF DEFAULT -- promptly, and in any event within five days after a Responsible Officer's becoming aware of the existence of any Potential Default or Event of Default, a written notice specifying the nature and period of existence thereof and what action the Guarantor is taking or proposes to take with respect thereto;

(d) NO DEFAULT CERTIFICATES -- simultaneously with the delivery or earliest availability of each set of quarterly and annual financial statements referred to in paragraphs (a) and (b) of this Section 3.1.3, a certificate of a Responsible Officer stating,

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to the best knowledge of such Responsible Officer after reasonable inquiry, whether there exists on the date of such certificate any Potential Default or Event of Default, and if any Potential Default or Event of Default exists, specifying the nature and period of existence thereof and what action, if any, the Guarantor has taken, is taking, or proposes to take with respect thereto;

(e) ERISA MATTERS -- promptly, and in any event within thirty (30) days after a Responsible Officer's becoming aware of any of the following, a written notice setting forth the nature thereof and the action, if any, that the Guarantor or a member of the ERISA Group proposes to take with respect thereto:

(i) with respect to any Plan, any reportable event, as defined in section 4043(b) of ERISA and the regulations thereunder, for which notice thereof has not been waived pursuant to such regulations as in effect on the date hereof, or any successor regulations; or

(ii) the taking by the PBGC of steps to institute, or the threatening by the PBGC of the institution of, proceedings under section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by the Guarantor or any member of the ERISA Group of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan; or

(iii) any event, transaction or condition that could result in the incurrence of any liability by the Guarantor or any member of the ERISA Group pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, or in the imposition of any Lien on any of the rights, properties or assets of the Guarantor or any member of the ERISA Group pursuant to Title I or IV of ERISA or such penalty or excise tax provisions, if such liability or Lien, taken together with any other such liabilities or Liens then existing, will result, directly or indirectly, in a Material Adverse Effect; and

(f) REQUESTED INFORMATION -- with reasonable promptness, and in any event within sixty (60) days after such request, such other data and information relating to the business, operations, affairs,



financial condition, assets or properties of the Guarantor, any of its Material Subsidiaries or the Lessee as from time to time may be requested by the Lessor or Assignee, to the extent that such data and information relates to the ability of the Guarantor to perform its obligations under this Guaranty or the Consent and Agreement (as defined in the Note Purchase Agreement) of Guarantor or the ability of the Lessee to perform its obligations under the Agreement for Lease and the Lease.

3.1.4 INTENTIONALLY OMITTED.

3.1.5 INSPECTION. The Guarantor shall permit the Lessor, each Qualifying Noteholder or their respective representatives: (a) at the expense of the Lessor or such Qualifying Noteholder, as the case may be, if the Guarantor is no longer required to make public filings with the SEC under the Securities Exchange Act of 1934, as amended, or (b) at the expense of the

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Guarantor, if an Event of Default under the Lease or the Agreement for Lease then exists, to visit and inspect any of the offices or properties of the Guarantor, any Material Subsidiary or the Lessee, to discuss their respective affairs, finances and accounts with their respective officers and independent public accountants (and by this provision the Guarantor authorizes said accountants to discuss the affairs, finances and accounts of the Guarantor, its Material Subsidiaries and the Lessee), all at such times and as often as may be requested (and subject to the requirement that each such representative sign the Guarantor's customary confidentiality agreement with respect to any proprietary information sought to be examined or discussed and compliance with the Guarantor's or any Material Subsidiary's safety procedures), to the extent that such examinations and discussions relate to the ability of the Guarantor to perform its obligations under this Guaranty or the Consent and Agreement (as defined in the Note Purchase Agreement) of the Guarantor or the ability of the Lessee to perform its obligations under the Agreement for Lease and the Lease.

3.1.6 COMPLIANCE WITH LAW. Without limiting the requirements of Section 2 of the Lease, the Guarantor will and will cause each of its Material Subsidiaries to comply with all laws, ordinances or governmental rules or regulations to which each of them is subject, including, without limitation, Environmental Requirements, except where the necessity of compliance therewith is contested in good faith by appropriate proceedings or except where the failure to comply will not result, directly or indirectly, in a Material Adverse Effect.

3.1.7 INTENTIONALLY OMITTED.

3.1.8 MAINTENANCE OF PROPERTIES. Without limiting the requirements of Section 9 of the Lease, the Guarantor will and will cause each of its Material Subsidiaries to maintain and keep, or cause to be maintained and kept, their respective properties in good repair, working order and condition (other than ordinary wear and tear), so that the business carried on in connection therewith may be properly conducted at all times, provided that subject to the provisions of Section 3.1.1 hereof, this Section 3.1.8 shall not prevent the Guarantor or any Material Subsidiary from disposing of or discontinuing the operation and maintenance of any of its properties if such disposition or discontinuance is desirable in the conduct of its business and the Guarantor has concluded that such disposition or discontinuance will not, directly or indirectly and individually or in the aggregate, result in a Material Adverse Effect.

3.1.9 PAYMENT OF TAXES AND CLAIMS. The Guarantor will and will cause each of its Material Subsidiaries to file all tax returns required to be filed in any jurisdiction and to pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges or levies imposed on them or any of their properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent and all claims for which sums have become due and payable that have or might become a Lien on properties or assets of the Guarantor or any Material Subsidiary, provided that neither the Guarantor nor any Material Subsidiary need pay any such tax, assessment, charge, levy or claim if (a) the amount, applicability or validity thereof is contested by the Guarantor or such Material Subsidiary on a timely basis in good faith and in appropriate proceedings, and the Guarantor or a Material Subsidiary has established adequate reserves therefor in accordance with GAAP on the books of the Guarantor or such Material

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Subsidiary or (b) the nonpayment of all such taxes, assessments, charges, levies

or claims in the aggregate will not, directly or indirectly, result in a Material Adverse Effect.

3.1.10 CORPORATE EXISTENCE, ETC. Subject to Section 3.2.1, the Guarantor will at all times preserve and keep in full force and effect its corporate existence. Subject to Section 3.2.1, the Guarantor will at all times preserve and keep in full force and effect the corporate existence of each of its Material Subsidiaries and all rights and franchises of the Guarantor and its Material Subsidiaries unless, in the good faith judgment of the Guarantor, the termination of or failure to preserve and keep in full force and effect such corporate existence, right or franchise will not, directly or indirectly and individually or in the aggregate, result in a Material Adverse Effect.

3.2 NEGATIVE COVENANTS. So long as any of the Obligations shall remain outstanding, the Guarantor will not, and will not permit any Material Subsidiary to:

3.2.1 MERGERS AND CONSOLIDATIONS. Directly or indirectly merge into or consolidate with any Person, except that:

(a) any Material Subsidiary may merge into or consolidate with any other Material Subsidiary (including any Subsidiary that becomes a Material Subsidiary in connection with such merger or consolidation); and

(b) any Material Subsidiary may merge into or consolidate with the Guarantor, and the Guarantor or any Material Subsidiary may merge into or consolidate with any other Person;

PROVIDED that in each case, immediately after giving effect thereto, (i) no Event of Default shall occur and be continuing, (ii) in the case of any merger or consolidation to which the Guarantor is not a party, either (A) a Subsidiary of the Guarantor shall be the continuing or surviving Person or (B) such merger or consolidation will not impair the ability of the Guarantor to perform its obligations under this Guaranty, and (iii) in the case of any such merger or consolidation to which the Guarantor is a party, either (A) the Guarantor is the continuing or surviving Person or (B) if the Guarantor is not the continuing or surviving Person: (I) the continuing or surviving Person shall be a corporation, partnership or limited liability company that is duly formed and validly existing under the laws of the United States, a State thereof or the District of Columbia, (II) the continuing or surviving Person shall assume, by execution and delivery of instruments reasonably satisfactory to the Lessor and Assignee, the obligations of the Guarantor under this Guaranty and the CEI Note and shall become successor to the Guarantor for purposes of this Guaranty and the CEI Note and (III) the continuing or surviving Person shall deliver to the Lessor and Assignee an opinion of counsel of such continuing or surviving Person, in form and substance reasonably satisfactory to the Lessor and Assignee, with respect to the enforceability of the assumption of this Guaranty and the CEI Note by such continuing or surviving Person.

3.2.2 CONSOLIDATED DEBT TO CONSOLIDATED CAPITAL. Permit Consolidated Debt to exceed sixty-seven and one-half percent (67.5%) of Consolidated Capital.

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#### SECTION 4

##### REPRESENTATIONS AND WARRANTIES

The Guarantor represents and warrants to the Lessor and Assignee that:

4.1 ORGANIZATION; POWER AND AUTHORITY. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which such qualification is required by law, except where the failure to so qualify would not materially impair the ability of the Guarantor to perform its obligations under this Guaranty.

4.2 CORPORATE POWER. The Guarantor has full corporate power and authority to execute, deliver and perform its obligations under this Guaranty and has taken all necessary corporate action to authorize the execution, delivery and performance of this Guaranty.

4.3 AUTHORIZATION, ETC. This Guaranty has been duly authorized by all necessary corporate and shareholder action on the part of the Guarantor, and this Guaranty constitutes a legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, except as such enforceability may be limited by (a) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of

creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4.4 DISCLOSURE. The Private Placement Memorandum dated September 2000 (such Private Placement Memorandum (as supplemented by a Supplementary Update on or about September 21, 2000), together with any documents incorporated therein by reference, collectively the "MEMORANDUM"), relating to the transactions contemplated hereby fairly describes, in all material respects, the business and properties of the Guarantor and its Material Subsidiaries. The Memorandum taken as a whole does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made. Since December 31, 1999, there has been no change in the financial condition, operations, business or properties of the Guarantor or any Material Subsidiary except (a) changes that have been disclosed in the Memorandum or in public filings made by the Guarantor with the SEC after the date of the Memorandum and prior to the date hereof, copies of which are attached as Schedule 4.4, and (b) changes that individually or in the aggregate could not reasonably be expected to have a material adverse effect on (i) the ability of the Guarantor to perform its obligations under this Guaranty in a timely manner, (ii) the business, assets, properties, financial condition, operations or prospects of the Guarantor, or (iii) the rights or interests of the Lessor or Assignee under this Guaranty.

4.5 ORGANIZATION AND OWNERSHIP OF SHARES OF MATERIAL SUBSIDIARIES. (a) Schedule 4.5 to this Guaranty contains on the date hereof complete and correct lists of (i) the Material Subsidiaries, showing, as to each such Material Subsidiary, the correct name thereof, the jurisdiction of its organization, and the percentage of shares of each class of its capital stock or similar equity interests outstanding owned by the Guarantor and each other Subsidiary of the Guarantor and (ii) the Guarantor's directors and senior officers.

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(b) All of the outstanding shares of capital stock or similar equity interests of each Material Subsidiary shown in Schedule 4.5 as being owned by the Guarantor and its Subsidiaries have been validly issued, are fully paid and nonassessable and are owned by the Guarantor or another Subsidiary free and clear of any Lien (except as otherwise disclosed in Schedule 4.5).

(c) Each Material Subsidiary is a corporation or other legal entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and is duly qualified as a foreign corporation or other legal entity and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on (i) the ability of the Guarantor to perform its obligations under this Guaranty in a timely manner, (ii) the business, assets, properties, financial condition, operations or prospects of the Guarantor, or (iii) the rights or interests of the Lessor or Assignee under this Guaranty. Each such Material Subsidiary has the corporate or other power and authority to own or hold under lease the properties it purports to own or hold under lease and to transact the business it transacts and proposes to transact.

(d) As of the date hereof, no Material Subsidiary is a party to or otherwise subject to any legal restriction or any agreement (other than this Guaranty, the agreements listed on Schedule 4.5 and customary limitations imposed by corporate law statutes and applicable regulatory requirements, including without limitation the Public Utility Holding Company Act of 1935 and similar provisions of state and local law) restricting the ability of such Material Subsidiary to pay dividends out of profits or make any other similar distributions of profits to the Guarantor or any of its Subsidiaries that owns outstanding shares of capital stock of such Material Subsidiary.

4.6 FINANCIAL STATEMENTS. The consolidated financial statements of the Guarantor incorporated by reference in the Memorandum (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of the Guarantor and its Consolidated Subsidiaries as of the respective dates of such financial statements and the consolidated results of their operations and cash flows for the respective periods of such financial statements and have been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments).

4.7 CHANGES. Except as disclosed in the Memorandum or in public filings made by the Guarantor with the SEC after the date of the Memorandum and prior to the date hereof, copies of which are attached as Schedule 4.4, since December 31, 1999, there has been no material adverse change in the business,

assets, properties, revenues, financial condition, operations or prospects of the Guarantor, nor any change which could reasonably be expected to have a material adverse effect on (a) the ability of the Guarantor to perform its obligations under this Guaranty in a timely manner, (b) the business, assets, properties, financial condition, operations or prospects of the Guarantor, or (c) the rights or interests of the Lessor or Assignee under this Guaranty.

4.8 COMPLIANCE WITH LAWS, OTHER INSTRUMENTS, ETC. The execution, delivery and performance by the Guarantor of this Guaranty will not (a) contravene, result in any breach of, or

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constitute a default under, or result in the creation of any Lien in respect of any property of the Guarantor or any of its Subsidiaries under, any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter or by-laws, or any other Material agreement or instrument to which the Guarantor or any of its Subsidiaries is bound or by which the Guarantor or any of its Subsidiaries or any of their respective properties may be bound or affected, (b) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority applicable to the Guarantor or any of its Subsidiaries or (c) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to the Guarantor or any of its Subsidiaries.

4.9 GOVERNMENTAL AUTHORIZATIONS, ETC. No consent, approval or authorization of any Governmental Authority is required in connection with the execution, delivery or performance by the Guarantor of this Guaranty.

4.10 LITIGATION; OBSERVANCE OF AGREEMENTS, STATUTES AND ORDERS.

(a) Except as disclosed in public filings made by the Guarantor with the SEC prior to the date hereof and in the Memorandum (including the Guarantor's consolidated financial statements incorporated therein by reference), there are no actions, suits or proceedings pending or, to the knowledge of the Guarantor, threatened against or affecting the Guarantor or any of its Subsidiaries or any property of the Guarantor or any of its Subsidiaries in any court or before any arbitrator of any kind or before or by any Governmental Authority, which, if adversely determined, could reasonably be expected to have a material adverse effect on (i) the ability of the Guarantor to perform its obligations under this Guaranty in a timely manner, (ii) the business, assets, properties, financial condition, operations or prospects of the Guarantor, or (iii) the rights or interests of the Lessor or Assignee under this Guaranty.

(b) Neither the Guarantor nor any of its Subsidiaries is in default under any term of any agreement or instrument to which it is a party or by which it is bound, or any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority applicable to it, or is in violation of any applicable law, ordinance, rule or regulation (including without limitation Environmental Requirements) of any Governmental Authority, which default or violation, individually or in the aggregate, could reasonably be expected to have a material adverse effect on (i) the ability of the Guarantor to perform its obligations under this Guaranty in a timely manner, (ii) the business, assets, properties, financial condition, operations or prospects of the Guarantor, or (iii) the rights or interests of the Lessor or Assignee under this Guaranty.

4.11 TAXES. The Guarantor and its Subsidiaries have filed all tax returns that are required to have been filed in any jurisdiction, and have paid all taxes shown to be due and payable on such returns and all other taxes and assessments levied upon them or their properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (a) the nonpayment of which could not, individually or in the aggregate, be expected to have a material adverse effect on (i) the ability of the Guarantor to perform its obligations under this Guaranty in a timely manner, (ii) the business, assets, properties, financial condition, operations or prospects of the Guarantor, or (iii) the rights or interests of the Lessor or Assignee under this Guaranty; or (b) the amount, applicability or validity of which is currently being contested in good faith by

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appropriate proceedings and with respect to which the Guarantor or any of its Subsidiaries, as the case may be, has established adequate reserves in accordance with GAAP.

#### 4.12 TITLE TO PROPERTY; LEASES.

The Guarantor and its Material Subsidiaries have good and sufficient title to their respective properties that individually or in the aggregate are Material to their respective businesses, including all such properties reflected in the most recent audited balance sheet included in the Memorandum or purported to have been acquired by the Guarantor or any Material Subsidiary after the date of such balance sheet (except as sold or otherwise disposed of in the ordinary course of business). The Lease and all other leases of Guarantor and its Material Subsidiaries that individually or in the aggregate are Material to their respective businesses are valid and subsisting and are in full force and effect in all material respects.

#### 4.13 LICENSES, PERMITS, ETC.

(a) The Guarantor and its Material Subsidiaries own or possess all licenses, permits, franchises, authorizations, patents, proprietary software, copyrights, service marks, trademarks and trade names, or rights thereto, that individually or in the aggregate are Material, without known conflict with the rights of others.

(b) No product of the Guarantor or any Material Subsidiary infringes in any Material respect on any license, permit, franchise, authorization, patent, proprietary software, copyright, service mark, trademark, trade name or other right owned by any other Person.

(c) There is no Material violation by any Person of any right of the Guarantor or any of its Material Subsidiaries with respect to any patent, proprietary software, copyright, service mark, trademark, trade name or other right owned or used by the Guarantor or any of its Material Subsidiaries.

#### 4.14 COMPLIANCE WITH ERISA.

(a) The Guarantor and each member of the ERISA Group have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and could not reasonably be expected to result in a material adverse effect on (i) the ability of the Guarantor to perform its obligations under this Guaranty in a timely manner, (ii) the business, assets, properties, financial condition, operations or prospects of the Guarantor, or (iii) the rights or interests of the Lessor or Assignee under this Guaranty. Neither the Guarantor nor any member of the ERISA Group has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in section 3 of ERISA), other than such liabilities as would not, individually or in the aggregate, be Material, and no event, transaction or condition has occurred or exists that could reasonably be expected to result in the incurrence of any such liability by the Guarantor or any member of the ERISA Group, or in the imposition of any Lien on any of the rights, properties or assets of the Guarantor or any member of the ERISA Group, in either case pursuant to Title I or IV of ERISA or to such penalty or excise tax provisions or to Section 401(a)(29) or 412 of the Code, other than such liabilities or Liens as would not, individually or in the aggregate, be Material.

(b) The present value of the aggregate benefit liabilities under each of the Plans (other than Multiemployer Plans), determined on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities.

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The term "benefit liabilities" has the meaning specified in section 4001 of ERISA and the terms "current value" and "present value" have the meaning specified in section 3 of ERISA.

(c) The Guarantor and the ERISA Group have not incurred withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate are Material.

(d) The expected postretirement benefit obligation (determined as of the last day of the Guarantor's most recently ended fiscal year in accordance with Financial Accounting Standards Board Statement No. 106, without regard to liabilities attributable to continuation coverage mandated by section 4980B of the Code) of the Guarantor and its Subsidiaries is reflected in the financial statements included in the Memorandum as of the respective dates thereof.

(e) The execution and delivery of this Guaranty will not involve any transaction that is subject to the prohibitions of section 406 of ERISA or in connection with which a tax could be imposed pursuant to Section 4975(c)(1)(A)-(D) of the Code. The representation by the Guarantor in the first

sentence of this Section 4.14(e) is made in reliance upon and subject to the accuracy of the representations of the Note Purchasers in Section 2.2 of the Note Purchase Agreement as to the sources of the funds used to pay the purchase price of the Notes to be purchased by them thereunder.

4.15 OFFERING OF THE NOTES AND THIS GUARANTY, ETC. Neither the Guarantor nor anyone authorized to act on its behalf has offered this Guaranty or the Notes or any similar securities for sale to, or solicited any offer to buy any of the same from, or otherwise approached or negotiated in respect thereof with, any Person other than the Note Purchasers and not more than 125 other institutional investors (all such investors being "accredited investors" as defined under Section 501(a) of the Securities Act). Neither the Guarantor nor anyone authorized to act on its behalf has taken, or will take, any action that would subject the execution and delivery of this Guaranty or the issuance or sale of the Notes to the registration requirements of Section 5 of the Securities Act.

4.16 EXISTING INDEBTEDNESS. Neither the Guarantor nor any Subsidiary is in default, and no waiver of default is currently in effect, in the payment of any principal or interest on any Indebtedness of the Guarantor or such Subsidiary and no event or condition exists with respect to any such Indebtedness of the Guarantor or any Subsidiary that would permit one or more Persons to cause such Indebtedness to become due and payable before its stated maturity, except in each case for any default, event or condition which, individually or in the aggregate, could not reasonably be expected to have a material adverse effect on (i) the ability of the Guarantor to perform its obligations under this Guaranty in a timely manner, (ii) the business, assets, properties, financial condition, operations or prospects of the Guarantor, or (iii) the rights or interests of the Lessor or Assignee under this Guaranty.

## SECTION 5

### MISCELLANEOUS

5.1 PAYMENTS. Each payment by the Guarantor under this Guaranty shall be made in immediately available funds to or on the order of the Lessor or Assignee, as the case may be, in

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each case without setoff or counterclaim; PROVIDED that, no such payment shall be deemed a waiver of any rights the Guarantor may have against the Lessor or the Lessee.

5.2 PARTIES. This Guaranty shall inure to the benefit of the Lessor and each Assignee and its and their respective successors, assigns or transferees, and shall be binding upon the Guarantor and its successors and assigns. Subject to the provisions of Section 3.2.1(b) hereof, the Guarantor may not delegate any of its duties under this Guaranty without the prior written consent of the Lessor and each Assignee. Upon notice to the Guarantor, the Lessor and its successors, assigns and transferees may assign its or their rights and benefits under this Guaranty to (a) any financial institutions providing financing to the Lessor in connection with the Agreement for Lease and the Lease or any trustee for such financial institutions, and (b) any purchaser or transferee of all or a substantial portion of the rights and interests of the Lessor and its successors, assigns or transferees in and to the Project.

5.3 NOTICES. All notices, offers, acceptances, approvals, waivers, requests, demands and other communications hereunder shall be in writing, shall be addressed as provided below and shall be considered as properly given (a) if delivered in person, (b) if sent by express courier service (including Federal Express, DHL, Airborne Express, and other similar express delivery services), (c) in the event overnight delivery services are not readily available, if mailed through the United States Postal Service, postage prepaid, registered or certified with return receipt requested, or (d) if sent by telecopy and confirmed; PROVIDED, that in the case of a notice by telecopy, the sender shall in addition confirm such notice by writing sent in the manner specified in clauses (a), (b) or (c) of this Section 5.3. All notices shall be effective upon receipt by the addressee; PROVIDED, HOWEVER, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. For the purposes of notice, the addresses of the parties shall be as set forth below; PROVIDED, HOWEVER, that any party shall have the right to change its address for notice hereunder to any other location by giving written notice to the other party in the manner set forth herein. The initial addresses of the parties hereto are as follows:

If to the Lessor:

Hawkeye Funding, Limited Partnership  
c/o Hawkeye Funding, Inc.,

as General Partner  
c/o ML Leasing Equipment Corp.  
Four World Financial Center  
New York, New York 10080

Attention: Jean M. Tomaselli  
Telecopier: (212) 449-2854  
Telephone: (212) 449-7925

With a copy to:

ML Leasing Equipment Corp.  
Controller's Office

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Two World Financial Center  
14th Floor  
New York, New York 10281

Attention: Kira Toone  
Telecopier: (212) 236-7584  
Telephone: (212) 236-7203

If to the Guarantor:

Consolidated Edison, Inc.  
4 Irving Place  
New York, New York 10003

Attention: Treasurer  
Telecopier: (212) 460-2786  
Telephone: (212) 228-5713

With a copy to:

Consolidated Edison, Inc.  
4 Irving Place  
New York, New York 10003

Attention: General Counsel  
Telecopier: (212) 674-7329  
Telephone: (212) 460-6330

and to:

Consolidated Edison Development, Inc.  
111 Broadway  
16th Floor  
New York, New York 10006

Attention: President  
Telecopier: (212) 393-9282  
Telephone: (212) 393-9242

5.4 REMEDIES. The Guarantor stipulates that the remedies at law in respect of any default or threatened default by the Guarantor in the performance of or compliance with any of the terms of this Guaranty may not be adequate, and that any of such terms may be specifically enforced by a decree for specific performance or by an injunction against violation of any such terms or otherwise.

5.5 RIGHT TO DEAL WITH THE LESSEE. At any time and from time to time, without terminating, affecting or impairing the validity of this Guaranty or the obligations of the

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Guarantor hereunder, the Lessor or Assignee may deal with the Lessee in the same manner and as fully and as if this Guaranty did not exist and shall be entitled, among other things, to grant the Lessee, without notice or demand and without affecting the Guarantor's liability hereunder, such extension or extensions of time to perform, renew, compromise, accelerate or otherwise change the time for payment of or otherwise change the terms of payment or any part thereof contained in or arising under any Operative Document, or to waive any Obligation of the Lessee to perform any act or acts as the Lessor or Assignee may deem advisable.

5.6 SUBROGATION. The Guarantor will not exercise any rights which it

may acquire by way of subrogation hereunder, by any payment made hereunder or otherwise, until all of the Obligations have been paid in full in cash and performed in full. If any amount shall be paid to the Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid in full in cash, such amount shall be held in trust for the benefit of the Lessor and Assignee and shall forthwith be paid as provided in Section 5.1 hereof to be credited and applied upon the Obligations, whether matured or unmatured, in accordance with the terms of the Operative Documents. If (a) the Guarantor shall make payment to the Lessor, Assignee or any successor, assignee or transferee of the Lessor or Assignee of all or any part of the Obligations and (b) all the Obligations shall be indefeasibly paid in full in cash, the Lessor or any such successor, assignee or transferee of the Lessor will, at the Guarantor's request and expense, execute and deliver to the Guarantor appropriate documents, without recourse as set forth in Section 30 of the Lease, and without representation or warranty, necessary to evidence the transfer by subrogation to the Guarantor of an interest in the Obligations resulting from such payment by the Guarantor.

5.7 SURVIVAL OF REPRESENTATIONS, WARRANTIES, ETC. All representations, warranties, covenants and agreements made herein and in statements or certificates delivered pursuant hereto shall survive any investigation or inspection made by or on behalf of the Lessor or Assignee and shall continue in full force and effect until all of the obligations of the Guarantor under this Guaranty shall be fully performed in accordance with the terms hereof including, without limitation, the payment and performance in full of all Obligations.

5.8 GOVERNING LAW AND CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL. THIS GUARANTY HAS BEEN EXECUTED AND DELIVERED IN THE STATE OF NEW YORK. THE GUARANTOR AND LESSOR AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY THE LAWS OF THE STATE OF NEW YORK, THIS GUARANTY, AND THE RIGHTS AND DUTIES OF THE GUARANTOR AND LESSOR HEREUNDER, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK IN ALL RESPECTS, INCLUDING, WITHOUT LIMITATION, IN RESPECT OF ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THE GUARANTOR AND LESSOR EXPRESSLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM RELATED TO THIS GUARANTY. THE GUARANTOR AND LESSOR ACKNOWLEDGE THAT THE PROVISIONS OF THIS SECTION 5.8 HAVE BEEN BARGAINED FOR AND THAT THEY HAVE BEEN REPRESENTED BY COUNSEL IN CONNECTION THEREWITH.

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5.9 SEVERABILITY. If any term of this Guaranty or any application thereof shall be invalid or unenforceable, the remainder of this Guaranty and any other application of such term shall not be affected thereby. Any term of this Guaranty may be amended, modified, waived, discharged or terminated only by an instrument in writing signed by the Guarantor and Lessor, and consented to by each Assignee.

5.10 COUNTERPARTS. This Guaranty may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

5.11 NO MERGER. There shall be no merger of this Guaranty and the Lease by reason of the fact that the same person, firm or entity is, directly or indirectly, the Guarantor and a lessee under the Lease or acquires or holds the leasehold estate created by the Lease or any part of such leasehold estate.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the undersigned have caused this Guaranty to be executed and delivered as of the day and year first above written.

CONSOLIDATED EDISON, INC.,  
as Guarantor

By:

-----  
Name:  
Title:

Acknowledged and Agreed:

HAWKEYE FUNDING, LIMITED PARTNERSHIP



By: Hawkeye Funding, Inc.,  
its General Partner

By:

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Name:  
Title:

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EXHIBIT A

DEFINED TERMS

"AFFILIATE" of any Person means any other Person controlling, controlled by or under direct or indirect common control with such Person. For the purposes of this definition, "CONTROL," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "CONTROLLING" and "CONTROLLED" have meanings correlative to the foregoing.

"AGREEMENT FOR LEASE" means the Agreement for Lease, dated as of November 14, 2000, between the Lessor, as owner, and the Lessee, as agent, as the same may be amended or supplemented from time to time in accordance with its terms.

"ASSIGNEE" means the Collateral Trustee and any successor to the Collateral Trustee.

"BANKRUPTCY" means, with respect to any Person, a Voluntary Bankruptcy or an Involuntary Bankruptcy. A "VOLUNTARY BANKRUPTCY" means, with respect to any Person, (a) the insolvency (however evidenced) of such Person, (b) an admission of insolvency or bankruptcy by such Person, (c) the commencement by such Person of a voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, (d) the consent by such Person to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of such Person or of any substantial part of such Person's property, (e) the making by such Person of an assignment for the benefit of creditors, (f) the failure of such Person generally to pay its debts as such debts become due, or (g) the taking of corporate action by such Person in furtherance of any such actions set forth above. An "INVOLUNTARY BANKRUPTCY" means, with respect to any Person, without the consent or acquiescence of such Person, the entry of a decree or order for relief in respect of such Person by a court having jurisdiction in the premises or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or of any substantial part of such Person's property, or ordering the winding up or liquidation of such Person's affairs, in an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, and such decree or order remains unstayed and in effect for sixty (60) consecutive days; or the commencement against such Person of an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, and the continuance of any such case unstayed and in effect for a period of sixty (60) consecutive days.

"CEI NOTE" means the Promissory Note, dated November 16, 2000, from the Guarantor, as borrower, in favor of the Lessor, as lender, evidencing the advances made by the Lessor to the Guarantor thereunder, and any promissory note or notes of the Guarantor issued in substitution thereof.

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"COLLATERAL TRUSTEE" means The Bank of New York, in its capacity as collateral trustee under the Indenture of Trust, Security Agreement and Collateral Assignment of Contracts, dated as of November 14, 2000, entered into by the Lessor and the Collateral Trustee, pursuant to which the Lessor has granted a security interest in certain collateral to the Collateral Trustee, as the same may be amended, restated, modified or supplemented from time to time in accordance with the terms thereof.

"CONSOLIDATED CAPITAL" means, at any date, the sum of (i) Consolidated Debt at such date and (ii) consolidated shareholder equity of the Guarantor and its Consolidated Subsidiaries determined at such date in accordance with GAAP.

"CONSOLIDATED DEBT" means all Indebtedness of the Guarantor and its

Consolidated Subsidiaries determined (without duplication) on a consolidated basis.

"CONSOLIDATED SUBSIDIARIES" means, at any date, all Subsidiaries of the Guarantor the accounts of which would be consolidated with those of the Guarantor in its consolidated financial statements in accordance with GAAP if such statements were prepared as of such date.

"CORE ELECTRICITY DISTRIBUTION BUSINESS" means the electricity distribution business of Consolidated Edison Company of New York, Inc. in New York City, viewed as a whole as of the date hereof.

"COVENANT OBLIGATIONS" means all obligations (other than Payment Obligations), covenants and undertakings of the Lessee contained in the Operative Documents, after taking into account all applicable grace periods in such Operative Documents.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

"ERISA GROUP" means the Guarantor, any Subsidiary and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the Guarantor or any Subsidiary, are treated as a single employer under Section 414 of the Code.

"EVENT OF DEFAULT" means any of the following events shall occur and be continuing:

(a) The Guarantor shall fail to pay any amount due under this Guaranty when the same becomes due and payable (including, without limitation, any Payment Obligations); or

(b) The Guarantor shall fail to perform or observe (i) any term, covenant or agreement contained in Section 3 hereof, and in the case of a default arising under Section 3.1.3(a), 3.1.3(b) or 3.1.5(a) hereof, such default shall continue for thirty (30) days after written notice thereof shall have been given to the Guarantor by the Lessor or Assignee, or (ii) any other term, covenant or agreement contained in this Guaranty on its part to be performed or observed if the failure to perform or observe such other term,

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covenant or agreement shall remain unremedied for thirty (30) days after written notice thereof shall have been given to the Guarantor by the Lessor or Assignee; or

(c) A default or event of default by the Guarantor or any of its Material Subsidiaries shall occur, the effect of which is that the holder or holders of any Indebtedness of the Guarantor or any such Material Subsidiary having a then outstanding principal balance in excess of \$100,000,000, causes or declares such Indebtedness of the Guarantor or any such Material Subsidiary to become due prior to its stated maturity under the provisions of any agreement or agreements pursuant to which such Indebtedness was created; or

(d) The Guarantor or any of its Material Subsidiaries shall default in any payment of principal of or interest on any Indebtedness of the Guarantor or any such Material Subsidiary having a then outstanding principal balance in excess of \$100,000,000, beyond the period of grace, if any, under the provisions of any instrument or instruments or agreement or agreements pursuant to which such Indebtedness was created; or

(e) Any final judgment or judgments for the payment of money in excess of \$100,000,000 in the aggregate shall be rendered against the Guarantor or any of its Material Subsidiaries by any court of competent jurisdiction and the same shall remain undischarged for a period of thirty (30) days from the date such payment is due, during which execution of such judgment or judgments shall not be effectively stayed; or

(f) The entry of a decree or order for relief in respect of the Guarantor by a court having jurisdiction in the premises or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Guarantor or of any substantial part of the Guarantor's property, or ordering the winding up or liquidation of the Guarantor's affairs, in an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or

any other applicable Federal or state bankruptcy, insolvency or other similar law, and such decree or order remains unstayed and in effect for sixty (60) consecutive days; or the commencement against the Guarantor of an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, and the continuance of any such case unstayed and in effect for a period of sixty (60) consecutive days; or

(g) The Guarantor's insolvency (however evidenced), or the Guarantor's admission of insolvency or bankruptcy, or the commencement by the Guarantor of a voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, or the consent by the Guarantor to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Guarantor or of any substantial part of the Guarantor's property, or the making by the Guarantor of an assignment for the benefit of creditors, or the failure of the Guarantor generally to pay its debts as such debts become due, or the taking of corporate action by the Guarantor in furtherance of any such action.

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"FINANCIAL STATEMENTS" means the financial statements accompanying the Guarantor's Annual Report on Form 10-K or the Guarantor's Quarterly Reports on Form 10-Q filed from time to time with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States, applied on a consistent basis.

"INDEBTEDNESS" means, for any Person, without duplication, (i) all obligations of such Person for borrowed money or under any lease which, in either case, is recognized as debt on the balance sheet of such Person in accordance with GAAP, (ii) all obligations of such Person to pay the deferred purchase price of property or services, including any such obligations created under or arising out of any conditional sale or other title retention agreement (other than property and services obtained in the ordinary course of business or operations), (iii) all non-contingent obligations of such Person under reimbursement or similar agreements with respect to the issuance of letters of credit and (iv) all obligations of any other Person of the type specified in clause (i), (ii) or (iii) above, (A) the payment or collection of which such Person has guaranteed (except by reason of endorsement for collection in the ordinary course of business), (B) in respect of which such Person is liable, contingently or otherwise, including, without limitation, liable by way of agreement to purchase products or securities, to provide funds for payment, to maintain working capital or other balance sheet conditions or otherwise to assure a creditor against loss, or (C) secured by any Lien upon or in property (including, without limitation, accounts and contract rights) owned by such Person; PROVIDED, HOWEVER, that Indebtedness shall not include Non-Recourse Debt (including, without limitation, Securitized Debt).

"INDEMNIFICATION OBLIGATIONS" means any amount or amounts due to any Indemnified Person from the Lessee pursuant to Section 11 of the Lease and Section 12 of the Agreement for Lease.

"LEASE" means the Lease Agreement, dated as of November 14, 2000, between the Lessor and the Lessee, as the same may be amended or supplemented from time to time in accordance with its terms.

"LESSEE" means Newington Energy, L.L.C., a Delaware limited liability company.

"MATERIAL" means material in relation to the business, operations, affairs, financial condition, assets or properties of the Guarantor and its Subsidiaries taken as a whole.

"MATERIAL ADVERSE EFFECT" means (a) the total common shareholders equity of the Guarantor and its subsidiaries as determined on a consolidated basis and as reflected in accordance with GAAP on the Guarantor's then most recent Financial Statements shall fall below \$4,610,510,000, (b) the fair market sales value of the Project shall decrease by an amount equal to or greater than 7.5% of the Adjusted Acquisition Cost (as defined in the Lease) of the Project, or (c) the Lessor or Assignee shall become, by virtue of the transactions or activities contemplated by the Operative Documents, subject to financial, rate or other similar regulation as, a public utility, or an electric utility or a public utility holding company under a Legal Requirement (including any Legal Requirement (i) under the 1935 Act, (ii) imposed by any state

or local public utility commission or other similar regulatory body, authority or group having jurisdiction over the Lessor or the Lessee or any such transactions or activities or (iii) under the Federal Power Act, as amended).

"MATERIAL SUBSIDIARY" means any Subsidiary with shareholders' equity for financial reporting purposes in excess of \$500,000,000.

"MULTIEMPLOYER PLAN" means any Plan that is a "multiemployer plan" (as such term is defined in section 4001(a)(3) of ERISA).

"NON-RECOURSE DEBT" means, for any Person, obligations of such Person of the type specified in clauses (i)-(iv) of the definition of "Indebtedness" (not exceeding the cost of the acquisition, construction or creation of the relevant asset, project or property) incurred or existing in connection with the financing or refinancing of any asset, project or property, the repayment of which obligations is to be made from the revenues arising out of, or other proceeds of realization from, the acquired or created asset, project or property, with recourse to those revenues and proceeds and assets forming the subject matter of such asset, project or property (including, without limitation, insurance contracts and shares or other rights of ownership in the entity(ies) which own the relevant assets, projects or properties) and other assets and properties ancillary thereto but without recourse to any other asset or property or otherwise to such Person; PROVIDED that recourse liability shall not be deemed to exist by reason of normal and customary sponsor support arrangements.

"NOTE PURCHASE AGREEMENT" means, collectively, the several Note Purchase Agreements, each dated as of November 14, 2000, between the Lessor and the purchasers of the Lessor's Senior Secured Notes due 2022, as the same may be amended, restated, modified or supplemented from time to time.

"OBLIGATIONS" means Payment Obligations and Covenant Obligations, individually and collectively.

"OPERATIVE DOCUMENTS" means the Agreement for Lease, the Lease, the Pledge Agreement, the Consent and Agreement (as defined in the Note Purchase Agreement), and the Reimbursement Agreement, dated as of the date hereof, among the Lessee, the Lessor and ML Leasing Equipment Corp.

"PAYMENT OBLIGATIONS" means all amounts stated in the Operative Documents to be payable by the Lessee, after the expiration of all applicable grace periods in such Operative Documents, including, without limitation, amounts in respect of (a)(i) an Event of Loss, Event of Default or Event of Project Termination (as each such term is defined in the Agreement for Lease), (ii) an Event of Loss, Termination Event or Event of Default (as each such term is defined in the Lease) and (iii) any other termination or expiration of the Agreement for Lease and the Lease, including, without limitation, a termination of the Agreement for Lease pursuant to the terms of Section 15 and subsection 18.11 of the Agreement for Lease, and a termination of the Lease or purchase of the Project, as the case may be, pursuant to the terms of Section 12, Section 13, Section 14, Section 15, Section 16 and Section 19 of the Lease; (b) Basic Rent, Additional Rent, Acquisition Cost, Debt Yield-Maintenance Premium and Modified Call

Premium; and (c) all amounts of Indemnification Obligations, in each case, notwithstanding any rejection of the Agreement for Lease or Lease by the Lessee or a trustee in any Federal or state Bankruptcy or other similar proceeding and any limit imposed in any such proceeding or by statute or other applicable law on the amounts payable under the Agreement for Lease or Lease by the Lessee.

"PERSON" means an individual, partnership, corporation (including a business trust), joint stock company, trust, limited liability company, unincorporated association, joint venture or other entity, or a government or any political subdivision or agency thereof.

"PLAN" means, at any time, an employee pension benefit plan (other than a Multiemployer Plan) which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 4123 of the Internal Revenue Code and either (i) is maintained, or contributed to, by any member of the ERISA Group for employees of the ERISA group or (ii) has at any time within the preceding five years been maintained, or contributed, to by any Person which was at such time a member of the ERISA Group for employees of any Person which was at such time a member of the ERISA Group.

"POTENTIAL DEFAULT" means any event that, with the giving of notice, lapse of time or both would constitute an Event of Default.

"QUALIFYING NOTEHOLDER" has the meaning assigned to such term in the Note Purchase Agreement.

"RESPONSIBLE OFFICER" means the General Counsel or a Senior Financial Officer of the Guarantor.

"SEC" means the Securities and Exchange Commission.

"SECURITIZED DEBT" means, for any Person, obligations of such Person of the type specified in clauses (i)-(iv) of the definition of "Indebtedness" secured by a Lien on one or more assets or rights to receive revenues, in each case in respect of Stranded Costs (or related items) of such Person where the holders of such obligations do not have recourse to any other assets, properties or rights of such Person to receive revenue, in each case in respect of Stranded Costs (or related items) of such Person.

"SENIOR FINANCIAL OFFICER" means the Chief Financial Officer, Treasurer or Controller of the Guarantor.

"STRANDED COSTS" means (i) charges in respect of prior utility investments or commitments in fossil-fueled and nuclear generating plants or operations, (ii) commitments for decommissioning fossil-fueled and nuclear generating plants or operations, (iii) charges with respect to contracts with non-utility generators for electric power and energy, (iv) charges in respect of prior utility investments or commitments in steam systems or operations and (v) charges with respect to contracts with non-utility steam suppliers.

"SUBSIDIARY" means, with respect to any Person, any corporation, partnership, joint venture, or other entity of which more than 50% of the outstanding capital stock or other

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ownership interest (irrespective of whether or not at the time capital stock or other equity interest of any other class or classes of such corporation, partnership, joint venture, or other entity shall or might have voting power upon the happening of any contingency) is at the time owned directly or indirectly by such Person; unless otherwise specified, "Subsidiary" means a Subsidiary of the Guarantor.

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#### SCHEDULE 4.4

#### SEC PUBLIC FILINGS

#### SCHEDULE 4.5

#### LIST OF MATERIAL SUBSIDIARIES, GUARANTOR'S DIRECTORS AND SENIOR OFFICERS

##### MATERIAL SUBSIDIARIES OF GUARANTOR:

Name of Material Subsidiary: Consolidated Edison Company of New York, Inc.

Jurisdiction of Incorporation:  
New York

Percentage of Capital Stock Owned by Guarantor/Subsidiaries:  
Common Stock: 100% owned by Guarantor

##### DIRECTORS AND SENIOR OFFICERS OF GUARANTOR:

###### Directors:

George Campbell, Jr.	Director
E. Virgil Conway	Director
Gordon J. Davis	Director
Ruth M. Davis	Director
Michael J. Del Giudice	Director
Joan S. Freilich	Director
Ellen V. Futter	Director
Sally Hernandez-Pinero	Director

Peter W. Likins	Director
Eugene R. McGrath	Director
Richard A. Voell	Director
Stephen R. Volk	Director

Senior Officers:

Eugene R. McGrath	Chairman of the Board, President and Chief Executive Officer
Joan S. Freilich	Executive Vice President and Chief Financial Officer
John D. McMahon	Senior Vice President and General Counsel
Hyman Schoenblum	Vice President, Controller and Chief Accounting Officer
Robert P. Stelben	Vice President and Treasurer
Archie M. Bankston	Secretary

SCHEDULE 4.5 (CONT'D.)

LIST OF MATERIAL SUBSIDIARIES, GUARANTOR'S DIRECTORS AND SENIOR OFFICERS

LIST OF AGREEMENTS RESTRICTING DIVIDENDS:

O&R Merger approval from NY PSC : "Joint petition of Con Edison and O&R for approval of a certificate of merger and stock acquisition" Case 98-M-0961

Pending approval of NU Merger by NY PSC "Joint petition of Con Edison Inc. and NU regarding merger and stock acquisition" Case 00-M-0095

Pending approval by Connecticut DPUC "Joint application of Con Edison, Inc and NU for approval for a change of control" Docket No. 00-01-11

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EXECUTION COPY

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LEASE AGREEMENT

Dated as of November 14, 2000

BETWEEN

HAWKEYE FUNDING, LIMITED PARTNERSHIP

as Lessor

and

NEWINGTON ENERGY, L.L.C.

as Lessee

THIS LEASE HAS BEEN ASSIGNED AS SECURITY  
FOR INDEBTEDNESS OF THE LESSOR. SEE SECTION 20.

This Lease has been manually executed in 40 counterparts, numbered consecutively from 1 through 40, of which this is No. \_\_\_\_\_. To the extent, if any, that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction) no security interest in this Lease may be created or perfected through the transfer or possession of any counterpart other than the original executed counterpart which shall be the counterpart identified as counterpart No. 1.

10.1.9.2.DOC

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- Exhibit A - Legal Description of Premises and Easements
- Exhibit B - List of Project Contracts
- Exhibit C - List of Project Authorizations
- Exhibit D - Semi-Annual Rent Component
- Exhibit E - Pledge Agreement
- Exhibit F - Easements
- Exhibit G - CEI Note
- Exhibit H - Section 12(c) Percentages

Schedule 2(f) - Public Filings of the Guarantor

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LEASE AGREEMENT

Lease Agreement, dated as of November 14, 2000 (as the same may be amended, restated, modified or supplemented from time to time, "THIS LEASE"), between HAWKEYE FUNDING, LIMITED PARTNERSHIP (the "LESSOR"), a Delaware limited partnership formed by Hawkeye Funding, Inc., its general partner, as lessor, and NEWINGTON ENERGY, L.L.C., a Delaware limited liability company, as lessee (the "LESSEE").

SECTION 1. DEFINED TERMS.

Unless the context otherwise requires, each term defined in this Section 1 shall, when used in this Lease, have the meaning indicated:

"ACCRUED DEFAULT OBLIGATIONS" has the meaning set forth in Section 19 hereof.



"ACQUISITION COST" means, on the Effective Date, the Acquisition Cost (as defined in the Agreement for Lease) under the Agreement for Lease after making the Final Advance plus the Completion Amount.

"ADDITIONAL RENT" has the meaning set forth in paragraph (d) of Section 7 hereof.

"ADJUSTED ACQUISITION COST" means, at the time of determination, the Acquisition Cost of the Project less (i) the aggregate amount of all Semi-Annual Rent Components theretofore included as portions of Basic Rent for any periods for which Basic Rent has been paid, and less (ii) any reduction in Adjusted Acquisition Cost provided for under subsection 2.3(b) of the Agreement for Lease (as adjusted pursuant to Section 3 of this Lease) or paragraph (b) of Section 16 of this Lease.

"AFFILIATE" of any Person means any other Person controlling, controlled by or under direct or indirect common control with such Person. For the purposes of this definition, "CONTROL," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "CONTROLLING" and "CONTROLLED" have meanings correlative to the foregoing.

"AGREEMENT FOR LEASE" means the Agreement for Lease, dated as of the date hereof, between the Lessor, as owner, and the Lessee, as agent, providing for the acquisition, construction and equipping of the Project, as the same may be amended, restated, modified or supplemented from time to time.

"APPRAISAL PROCEDURE" means the following procedure whereby an independent appraiser shall be appointed by the Lessor and the Lessee, with the consent of Assignee, to determine (A) the amount of wear and tear in excess of that attributable to normal use of the Project to which the provisions of paragraph (b)(iii) or paragraph (c)(iii) or paragraph (d) of

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Section 12 apply or (B) the fair market value of the Project, if such determination is required under paragraph (d) of Section 13 of this Lease. If no such appraiser is appointed by the mutual agreement of the Lessor and the Lessee within thirty (30) days of the written request of either the Lessor or the Lessee that an appraiser be appointed, the Lessor and the Lessee shall each appoint an independent appraiser within thirty (30) days thereafter, and the two appraisers so appointed shall appoint a third independent appraiser. Each appraiser appointed pursuant to the foregoing procedure shall, within thirty (30) days after appointment of the last appraiser, independently determine the amount of wear and tear in excess of that attributable to normal use or the fair market value of the Project, as the case may be. If the Lessor or the Lessee shall fail to appoint an independent appraiser within the above-mentioned thirty (30) day period, the appraiser appointed by the other party shall determine such amount or value. If a single appraiser is appointed, such appraiser's determination shall be final. If three appraisers are appointed, the amounts or values determined by the three appraisers shall be averaged, the amount or value which differs the most from such average shall be excluded, the remaining two amounts or values shall be averaged and such average shall be final. The expenses of all appraisers shall be paid by the Lessee. Each appraiser appointed pursuant to an "Appraisal Procedure" shall have experience in appraising generation facilities similar to the Project.

"ASSETS" means the Lessee's interest in any and all assets or property of any kind, real or personal, tangible or intangible, now owned or hereafter acquired by the Lessee.

"ASSIGNEE" means the Collateral Trustee and any successor to the Collateral Trustee. For purposes of the definition of "Material Adverse Effect", paragraphs (i)(d), (i)(j), (i)(p), (i)(cc) and (ii)(i) of Section 2, paragraphs (a) and (b) of Section 5, paragraph (h) of Section 8, paragraph (b) of Section 9, clauses (iii) and (iv) of paragraph (b) of Section 10, the last sentence of clause (ii) of paragraph (d) of Section 10, clause (iv) (other than the last reference to Assignee therein) of paragraph (d) of Section 10, paragraph (h) of Section 10, Section 11, Section 12, paragraph (a) of Section 14, the last sentence of paragraph (b) of Section 20, Section 26, and clause (iii) of paragraph (a) and paragraph (b) of Section 27, the term "Assignee" shall include each of the purchasers and holders from time to time of the Lessor's Senior Secured Notes issued under the Note Purchase Agreement and each lender or other Person providing credit support to Owner under a Financing Arrangement entered into after the date hereof, and for purposes of paragraph (d) of Section 8, the term "Assignee" shall include each of the Qualifying Noteholders (as defined in

the Note Purchase Agreement).

"ASSIGNMENT" means each assignment agreement referred to in Section 20 hereof, between the Lessor and a third party, pursuant to which the Lessor assigns certain of its rights under this Lease to such third party, as the same may be amended, restated, modified or supplemented from time to time.

"ASSUMED INDEBTEDNESS AMOUNT" has the meaning set forth in paragraph (d) of Section 12 hereof.

"BASIC RENT" means:

(a) At each Basic Rent Payment Date during the Initial Term and any Extended Term, and in respect of the semi-annual period ending on June 30 or December 30 in

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which such Basic Rent Payment Date occurs, the sum of the Semi-Annual Rent Component plus an amount (the "VARIABLE COMPONENT OF BASIC RENT") equal to the sum of (X) plus (Y) plus (Z), where (X), (Y) and (Z) have the following meanings:

- (X) (i) the Equity Capital before payment of Basic Rent for such semi-annual period, multiplied by
  - (ii) a fraction having a numerator equal to 180 and a denominator of 360, multiplied by
  - (iii) the decimal equivalent of a percentage equal to the LIBOR Rate plus 2%.
- (Y) (i) the Debt Capital before payment of Basic Rent for such semi-annual period, multiplied by
  - (ii) a fraction having a numerator equal to 180 and a denominator of 360, multiplied by
  - (iii) the decimal equivalent of a percentage equal to the Semi-Annual Cost of Project Debt.
- (Z) (i) the Adjusted Acquisition Cost before payment of Basic Rent for such semi-annual period, multiplied by
  - (ii) a fraction having a numerator equal to the number of days in such semiannual period and a denominator of 365, or in a leap year, 366, multiplied by
  - (iii) 0.00147.

(b) For any partial semi-annual period during the Initial Term and any Extended Term, an amount equal to the sum of (X) plus (Y) plus (Z), where (X), (Y) and (Z) have the following meanings:

- (X) (i) the Equity Capital, multiplied by
  - (ii) a fraction having a numerator equal to the number of days the Project is under lease during such partial semi-annual period (provided that, each full calendar month during such partial semi-annual period shall be deemed to be a 30-day month) and a denominator of 360, multiplied by
  - (iii) the applicable decimal referred to in paragraph (a)(X)(iii) above; PROVIDED that, if the Effective Date falls on or after the Lease Rate Date during such partial semi-annual period such decimal shall be the decimal determined as of the next succeeding Lease Rate Date.
- (Y) (i) the Debt Capital multiplied by

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- (ii) a fraction having a numerator equal to the number of days the

Project is under lease during such partial semi-annual period (provided that, each full calendar month during such partial semi-annual period shall be deemed to be a 30-day month) and a denominator of 360, multiplied by

(iii) the decimal equivalent of a percentage equal to the Semi-Annual Cost of Project Debt; PROVIDED that, if the Effective Date falls on or after the Lease Rate Date during such partial semi-annual period, the Semi-Annual Cost of Project Debt shall be determined as of the next succeeding Lease Rate Date.

(Z) (i) the Adjusted Acquisition Cost, multiplied by

(ii) a fraction having a numerator equal to the number of days the Project is under lease during such partial semi-annual period and a denominator of 365, or in a leap year, 366, multiplied by

(iii) 0.00147.

(c) For each semi-annual period during the Renewal Term of the Project, if any, an amount equal to the fair market rental value thereof, determined as provided in paragraph (d) of Section 13 hereof.

"BASIC RENT PAYMENT DATE" means June 20th and December 20th during the Initial Term, the Extended Term or Renewal Term, or, if such day is not a Business Day, the next succeeding Business Day.

"BUDGET" has the meaning set forth in the Agreement for Lease.

"BUSINESS DAY" means any day other than a Saturday, a Sunday or a day on which banking institutions in the City of New York are authorized by law to close.

"CAPITAL EXPENDITURES" means, for any period, the sum of the aggregate amount of all expenditures of the Lessee (other than expenditures made with the proceeds of casualty insurance) for fixed or capital assets made during such period which, in accordance with GAAP, would be classified as capital expenditures.

"CASH PROCEEDS" has the meaning set forth in paragraph (a) of Section 12 hereof.

"CEI NOTE" means the Promissory Note, dated November 16, 2000, from the Guarantor, as borrower, in favor of the Lessor, as lender, evidencing the advances made by the Lessor to the Guarantor thereunder, and any promissory note or notes of the Guarantor issued in substitution thereof, a copy of which is attached as Exhibit G hereto.

"CERCLA" has the meaning set forth in paragraph (i)(o) of Section 2 hereof.

"CERCLIS" has the meaning set forth in paragraph (i)(o) of Section 2 hereof.

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"CODE" means the Internal Revenue Code of 1986, as amended.

"COLLATERAL INDENTURE" means the Indenture of Trust, Security Agreement and Collateral Assignment of Contracts, dated as of the date hereof, entered into by the Lessor and the Collateral Trustee, pursuant to which the Lessor has granted a security interest in certain collateral to the Collateral Trustee, as the same may be amended, restated, modified or supplemented from time to time in accordance with the terms thereof.

"COLLATERAL TRUSTEE" means The Bank of New York, in its capacity as collateral trustee under the Collateral Indenture, and its successors.

"COMPLETION AMOUNT" has the meaning set forth in paragraph (b) of Section 3 hereof.

"COMPUTATION PERIOD" has the meaning set forth in the definition of Semi-Annual Cost of Project Debt in this Section 1.

"CONTAMINANT" means any pollutant or substance that is or may be harmful to human health, natural resources or the environment and any hazardous substance, radioactive substance, hazardous material, toxic substance, hazardous

waste, medical waste, radioactive waste, special waste, industrial waste, petroleum or petroleum-derived substance or waste, asbestos, PCBs or any hazardous or toxic constituent thereof defined as such or, regulated under Environmental Requirements as harmful to human health, natural resources or the environment.

"DEBT CAPITAL" means, at the time of determination, an amount equal to Adjusted Acquisition Cost minus Equity Capital.

"DEBT YIELD-MAINTENANCE PREMIUM" means an amount equal to the amount of Make-Whole Premium (as defined in the Note Purchase Agreement) payable by the Lessor at any time pursuant to the terms of the Note Purchase Agreement.

"EASEMENTS" means the easements listed on Exhibit F attached hereto, which easements have been or will be assigned and/or transferred to the Lessor, as such easements may be amended, restated, modified or supplemented from time to time in accordance with the terms hereof.

"EFFECTIVE DATE" means the date provided in paragraph (a) of Section 3 of this Lease.

"ENVIRONMENTAL APPROVALS" means all Governmental Actions, Permits, consents, licenses, and other approvals or authorizations required under applicable Environmental Requirements.

"ENVIRONMENTAL DAMAGES" means any and all claims, judgments, damages (including, without limitation, punitive damages), losses, penalties, fines, interest, fees, liabilities (including, without limitation, strict liability), taxes (other than taxes imposed by Section 59A of the Code or other taxes of general application which are not taxes in respect of an environmental condition), obligations, encumbrances, liens, costs and expenses (including, without limitation,

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costs and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement or judgment), of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, direct or indirect, including, without limitation, reasonable attorneys' fees and disbursements and consultants' fees (collectively "DAMAGES"), any of which are asserted, imposed or incurred at any time pursuant to Environmental Requirements, including, without limitation:

(i) Damages arising from the existence of Contaminants at any location or compliance or noncompliance with, or violation of, Environmental Requirements;

(ii) Damages for personal injury or threatened personal injury (including sickness, disease or death), or injury or threatened injury to property or natural resources, foreseeable or unforeseeable, including, without limitation, the cost of demolition and rebuilding of any improvements on real property;

(iii) Reasonable fees incurred for the services of attorneys, consultants, contractors, doctors, experts, laboratories and all other reasonable costs incurred in connection with any damages as described in subparagraphs (i) and (ii) of this definition, and the investigation or remediation of Contaminants or the suspected presence of Contaminants or the violation or threatened violation of Environmental Requirements, including, but not limited to, the preparation of any feasibility studies or reports or the performance of any investigation, cleanup, treatment, remediation, removal, response, abatement, containment, closure, storage, disposal, transport, restoration or monitoring work required by any federal, state, local or foreign governmental agency or political subdivision, or otherwise expended in connection with such conditions, and including, without limitation, any reasonable attorneys' fees, costs and expenses incurred in enforcing this Lease or the Agreement for Lease or collecting any sums due hereunder or thereunder;

(iv) Damages associated with Environmental Matters; and

(v) Liability to any third person or Governmental Authority to indemnify such person or Governmental Authority for costs expended in connection with the items referenced in subparagraphs (i), (ii), (iii) and (iv) of this definition.

"ENVIRONMENTAL EVENT" has the meaning set forth in paragraph (ii)(m) of Section 2 hereof.

"ENVIRONMENTAL LIEN" means a Lien in favor of any Governmental Authority for any (a) liability under any Environmental Requirement, or (b) damages arising from, or costs incurred by, such Governmental Authority in response to a Release or threatened Release of a Contaminant into the environment.

"ENVIRONMENTAL MATTERS" means any matter, fact or situation relating to or arising from (a) any violation or alleged violation of, or failure to meet, an Environmental Requirement relating to the Project, (b) any Release or threatened Release of any Contaminant on, under, emanating to or from the Project or the presence of any Contaminant which has come to be located on, from or under the Project from another location, (c) the generation, treatment, transport or disposal of any Contaminant at, to or from the Project, (d) any injury to human

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health or safety or the environment by reason of the matters described in clauses (a), (b) and (c) above, or (e) any revocation, expiration, termination or failure to obtain or maintain any Environmental Approval applicable to or required for the Project.

"ENVIRONMENTAL REPORTS" means collectively, (i) the Environmental Site Assessment Report dated May 21, 1998 with respect to the Avery Lane Site located in Newington, New Hampshire and an environmental update thereto dated November 6, 2000 and (ii) the Environmental Site Assessment Report dated March 1, 2000 with respect to the River Road Site located in Newington, New Hampshire, each prepared by TRC Environmental Corporation and delivered to the Lessor and Assignee pursuant to Section 4 of the Agreement for Lease.

"ENVIRONMENTAL REQUIREMENTS" means all applicable federal, state, local and foreign laws (including duties under the common law), statutes, codes, ordinances, rules, regulations, directives, binding policies, permits, authorizations or orders relating to or addressing the environment, natural resources or human health, including, but not limited to, any law, statute, code, ordinance, rule, regulation, directive, binding policy, permit, authorization or order relating to (a) the use, handling, disposal, Release or threatened Release of any Contaminant or (b) worker health.

"EPC CONTRACT" means the Engineer, Procure and Construct Contract, dated as of May 24, 2000, between the Lessor and the General Contractor, as the same may be amended, restated, modified or supplemented from time to time in accordance with the terms hereof.

"EPC GUARANTY" means each guaranty (or payment or performance bond issued in lieu thereof) jointly and severally executed and delivered by Fluor Corporation and Duke Energy Capital pursuant to Section 9.4 of the EPC Contract, as the same may be amended, restated, modified or supplemented from time to time in accordance with the terms hereof.

"EQUITY CAPITAL" means, at the time of determination, the aggregate amount of cash contributions to the Lessor's capitalization made by the Lessor's general partner and limited partners constituting a part of Adjusted Acquisition Cost, plus any undistributed Return on Equity Capital (as defined in the Agreement for Lease), less the aggregate amount of any returns of capital made to such partners at such time.

"ERISA" has the meaning set forth in paragraph (i)(m) of Section 2 hereof.

"EVENT OF DEFAULT" has the meaning set forth in Section 18 hereof.

"EVENT OF LOSS" means any of the following events: (a) loss of all or a substantial portion of the Project or the use thereof due to destruction, damage beyond economical repair or rendition of the Project permanently unfit for the use contemplated by the Project Contracts on a commercially feasible basis for any reason whatsoever; and (b) any event which results in an insurance settlement with respect to the Project on the basis of a total loss or constructive total loss. A loss of a "substantial portion" of the Project or the Premises shall be deemed to occur if after such event, the remainder is not sufficient to permit operation of the Project on a commercially feasible basis.

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THIS LEASE AGREEMENT IS

"EWG" means an Exempt Wholesale Generator, as defined in Section 32(a)(1) of the 1935 Act.

"EXTENDED TERM" has the meaning set forth in paragraph (b) of Section 6 hereof.

"FERC" means the Federal Energy Regulatory Commission, or any successor agency thereto.

"FINAL SURVEY" has the meaning set forth in the Agreement for Lease.

"FINANCIAL STATEMENTS" means the financial statements accompanying the Guarantor's Annual Report on Form 10-K or the Guarantor's Quarterly Reports on Form 10-Q filed from time to time with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934.

"FINANCING ARRANGEMENT" means each credit agreement, note purchase agreement, subordinated loan agreement, security agreement, indenture, mortgage, deed of trust and each other agreement or arrangement between the Lessor and a lender or lenders to the Lessor or other Person or Persons providing credit support to the Lessor or to debt issued by or on behalf of the Lessor related to the financing or refinancing of the Project, as any of the same may be amended, restated, modified or supplemented from time to time.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States, applied on a consistent basis.

"GE GUARANTY" means the guaranty, dated as of November 15, 2000, from General Electric Company to the Lessee, guaranteeing the obligations of General Electric International, Inc. under the O&M Agreement, as the same may be amended, restated, modified or supplemented from time to time in accordance with the terms hereof.

"GENERAL CONTRACTOR" means Duke/Fluor Daniel, a North Carolina partnership.

"GOVERNMENTAL ACTION" has the meaning set forth in paragraph (i)(d) of Section 2 hereof.

"GOVERNMENTAL AUTHORITY" means any agency, department, court or other administrative, legislative or regulatory authority of any federal, state, local or foreign governmental body.

"GUARANTOR" means Consolidated Edison, Inc., a New York corporation, and its successors.

"GUARANTOR'S CONSENT" means the Consent and Agreement, dated as of November 14, 2000, by and among the Guarantor, the Lessor and the Collateral Trustee, as the same may be amended, restated, modified or supplemented from time to time.

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"GUARANTY" means the Guaranty, dated as of the date hereof, from the Guarantor in favor of the Lessor and its successors and assigns, as the same may be amended, restated, modified or supplemented from time to time.

"INDEBTEDNESS" means, for any Person, without duplication, (i) all obligations of such Person for borrowed money or under any lease which, in either case, is recognized as debt on the balance sheet of such Person in accordance with GAAP, (ii) all obligations of such Person to pay the deferred purchase price of property or services, including any such obligations created under or arising out of any conditional sale or other title retention agreement (other than property and services obtained in the ordinary course of business or operations), (iii) all non-contingent obligations of such Person under reimbursement or similar agreements with respect to the issuance of letters of credit and (iv) all obligations of any other Person of the type specified in clause (i), (ii) or (iii) above, (A) the payment or collection of which such Person has guaranteed (except by reason of endorsement for collection in the ordinary course of business), (B) in respect of which such Person is liable, contingently or otherwise, including, without limitation, liable by way of agreement to purchase products or securities, to provide funds for payment, to maintain working capital or other balance sheet conditions or otherwise to assure a creditor against loss, or (C) secured by any Lien upon or in property (including, without limitation, accounts and contract rights) owned by such

Person; PROVIDED, HOWEVER, that Indebtedness shall not include Non-Recourse Debt (including, without limitation, Securitized Debt).

"INDEMNIFIED PERSON" has the meaning set forth in Section 11 hereof.

"INDEPENDENT ENGINEER" means any nationally recognized engineering firm appointed as independent engineer by the Lessor and Assignee.

"INDUSTRIAL CORRIDOR ROAD" has the meaning given to such term in the Agreement for Lease.

"INITIAL TERM" has the meaning set forth in paragraph (a) Section 6 hereof.

"INSURANCE REQUIREMENTS" means all insurance required to be obtained with respect to the Project pursuant to Section 10 hereof and all terms of any insurance policy covering or applicable to the Project, all requirements of the issuer of any such policy, all statutory requirements and all orders, rules, regulations and other requirements of any governmental body related to insurance applicable to the Project.

"INTELLECTUAL PROPERTY RIGHTS" means, collectively, all patents, patent applications, trademarks (whether registered or not), trademark applications, trade names, proprietary computer software or copyrights (or any licenses, permits or agreements with respect to any of the foregoing) necessary to construct, operate, lease or use the Project or any part thereof.

"JDA" has the meaning given to such term in the Agreement for Lease.

"INTERCONNECTIONS" means the interconnections at or available to the Project for transmission of electricity and the supply of water, natural gas, and other necessary utilities and services.

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"LEASE RATE DATE" has the meaning set forth in paragraph (b) of Section 7 hereof.

"LEASE TERM" means the Initial Term plus the Extended Term.

"LEGAL REQUIREMENTS" means all laws, judgments, decrees, ordinances and regulations and any other governmental rules, orders and determinations and all requirements having the force of law, now or hereinafter enacted, made or issued, whether or not presently contemplated, and all agreements, covenants, conditions and restrictions, applicable to the Project or the construction, ownership, operation or use thereof, including, without limitation, all requirements of labor laws and Environmental Requirements, compliance with which is required at any time from the date hereof through the Lease Term and any Renewal Term, whether or not such compliance shall require structural, unforeseen or extraordinary changes to the Project or the operation, occupancy or use thereof.

"LESSEE" has the meaning set forth in the first paragraph of this Lease.

"LESSEE'S CONSENT" means the Consent and Agreement, dated as of November 14, 2000, by and among the Lessee, the Lessor and the Collateral Trustee, as the same may be amended, restated, modified or supplemented from time to time.

"LESSOR" means Hawkeye Funding, Limited Partnership or any successor or successors to all of its rights and obligations as the Lessor hereunder and, for purposes of Section 11 hereof, shall include any partnership (general or limited), corporation, limited liability company, trust, individual or other entity which computes its liability for income or other taxes on a consolidated basis with Hawkeye Funding, Limited Partnership or the income of which for purposes of such taxes is, or may be, determined or affected directly or indirectly by the income of the Lessor or its successor or successors.

"LESSOR LIEN" means any Lien or disposition of title (a) arising as a result of any act or omission of the Lessor, or (b) which is otherwise claimed by or through the Lessor and which is not related to the Project leased hereunder or the business of the Lessee, and which, in either case, is not permitted or contemplated by this Lease, the Agreement for Lease, any Financing Arrangement, the Project Contracts or the transactions contemplated thereby.

"LETTER OF CREDIT" means any letter of credit issued in favor of the

Lessor pursuant to Section 7.1(A) of the EPC Contract.

"LIBOR RATE" means the rate of interest per annum (rounded upwards, if necessary, to the nearest 1/16th of 1%) quoted by The Bank of New York to the Lessor at or before 10:00 a.m. (New York, New York time) (or as soon thereafter as practicable), for the offering to The Bank of New York by prime banks in the London Eurodollar interbank market, at the time of determination and in accordance with the then usual practice in such market, of deposits in dollars for delivery on such date and having a maturity equal to six months. Each determination by the Lessor of the LIBOR Rate shall be conclusive and binding, absent manifest error, and may be computed using any reasonable averaging and attribution method.

"LIEN" means any security interest, mortgage, pledge, hypothecation, assignment, encumbrance, lien (statutory or other), or other security agreement of any kind or nature

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whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction in respect of any of the foregoing).

"MARITIMES AGREEMENTS" means, collectively, (i) the Precedent Agreement for Firm Transportation of Natural Gas to be entered into by and between Maritimes & Northeast Pipeline, L.L.C. and the Lessee and (ii) the other agreement or agreements to be entered into by and between Maritimes & Northeast Pipeline, L.L.C. and the Lessee pursuant to the Precedent Agreement with respect to the transportation of gas to the Project, as each of the same may be amended, restated, modified, or supplemented from time to time.

"MATERIAL ADVERSE EFFECT" where such definition is used means (a) the total common shareholders equity of the Guarantor and its subsidiaries as determined on a consolidated basis and as reflected in accordance with GAAP on the Guarantor's then most recent Financial Statements shall fall below \$4,610,510,000, (b) the fair market sales value of the Project shall decrease by an amount equal to or greater than 7.5% of the Adjusted Acquisition Cost of the Project, or (c) the Lessor or any Assignee shall become, by virtue of the transactions or activities contemplated by this Lease and the Agreement for Lease, subject to financial, rate or other similar regulation as, a public utility, or an electric utility or a public utility holding company under a Legal Requirement (including any Legal Requirement (i) under the 1935 Act, (ii) imposed by any state or local public utility commission or other similar regulatory body, authority or group having jurisdiction over the Lessor or the Lessee or any such transactions or activities or (iii) under the Federal Power Act, as amended).

"MATERIAL SUBSIDIARY" means any Subsidiary with shareholders' equity for financial reporting purposes in excess of \$500,000,000.

"MEMORANDUM" means the Confidential Private Placement Memorandum dated September 2000 prepared with respect to the offering of the Notes sold pursuant to the Note Purchase Agreement, together with the appendices thereto, any documents incorporated therein by reference, as supplemented by a Supplementary Update on or about September 21, 2000.

"MERRILL" means Merrill Lynch Money Markets Inc., a Delaware corporation.

"MERRILL LEASING" means ML Leasing Equipment Corp., a Delaware corporation.

"MERRILL LYNCH" means Merrill Lynch & Co., Inc., a Delaware corporation.

"MODIFIED CALL PREMIUM" means an amount equal to the amount of Modified Call Premium (as defined in the Note Purchase Agreement) payable by the Lessor at any time pursuant to the terms of the Note Purchase Agreement.

"MOODY'S" means Moody's Investors Service, Inc., and any successor thereto which is a nationally recognized statistical rating organization.

"1935 ACT" means the Public Utility Holding Company Act of 1935, as amended, and the rules and regulations issued, published or promulgated from time to time thereunder.



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"NON-RECOURSE DEBT" means, for any Person, obligations of such Person of the type specified in clauses (i)-(iv) of the definition of "Indebtedness" (not exceeding the cost of the acquisition, construction or creation of the relevant asset, project or property) incurred or existing in connection with the financing or refinancing of any asset, project or property, the repayment of which obligations is to be made from the revenues arising out of, or other proceeds of realization from, the acquired or created asset, project or property, with recourse to those revenues and proceeds and assets forming the subject matter of such asset, project or property (including, without limitation, insurance contracts and shares or other rights of ownership in the entity(ies) which own the relevant assets, projects or properties) and other assets and properties ancillary thereto but without recourse to any other asset or property or otherwise to such Person; PROVIDED that recourse liability shall not be deemed to exist by reason of normal and customary sponsor support arrangements.

"NOTE PURCHASE AGREEMENT" means, collectively, the several Note Purchase Agreements, each dated as of the date hereof, between the Lessor and the purchasers of the Lessor's Senior Secured Notes due 2022 (collectively, the "NOTES") in respect of an aggregate principal amount of \$340,971,000, as the same may be amended, restated, modified or supplemented from time to time.

"NOTES" has the meaning set forth in the definition of "Note Purchase Agreement" in this Section 1.

"NPL" has the meaning set forth in paragraph (i)(o) of Section 2 hereof.

"O&M AGREEMENT" means the Operation and Maintenance Agreement, dated as of December 20, 1999, between the Lessee and the Operator, relating to the operation and maintenance of the Project, as the same may be amended, restated, modified or supplemented from time to time in accordance with the terms hereof.

"OPERATING ACCOUNT" has the meaning set forth in the Collateral Indenture.

"OPERATOR" means General Electric International Inc., a Delaware corporation, or such other entity designated as successor operator of the Project by the Lessee in accordance with the terms hereof.

"PCBs" has the meaning set forth in paragraph (i)(o) of Section 2 hereof.

"PERMITTED CONTEST" has the meaning set forth in paragraph (a) of Section 27 hereof.

"PERMITTED INDEBTEDNESS" means the following indebtedness or other obligations of the Lessee: (i) letters of credit and other financial obligations arising under the Project Contracts, (ii) trade accounts payable (other than for borrowed money) arising, and accrued expenses incurred, in the ordinary course of business so long as such trade accounts payable are payable within ninety (90) days of the date the respective goods are delivered or the respective services are rendered and (iii) purchase money obligations incurred to finance certain items of discrete equipment not comprising an integral part of the Project that can be installed and removed from the Project without diminishing the value, utility or remaining economic useful

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life which the Project would have had at such time had such equipment not been installed and removed, which obligations extend only to the equipment being financed in an aggregate amount of secured principal and capitalized lease obligations not exceeding \$5,000,000 at any one time outstanding.

"PERMITTED LIENS" means the following Liens and other matters affecting the Project: (a) Liens securing the payment of taxes, assessments and other governmental charges or levies which are either not delinquent or, if delinquent, are being contested by the Lessee in good faith as a Permitted Contest (PROVIDED that the Lessee is in compliance with any security requirements under paragraph (b) of Section 27 hereof relating thereto); (b)

zoning and planning restrictions, subdivision and platting restrictions, easements, rights-of-way, licenses, reservations, covenants, conditions, waivers, restrictions on the use of the Project, minor encroachments or minor irregularities of title, none of which individually or in the aggregate could reasonably be expected to materially impair the intended use or value of the Project; (c) reservations of mineral interests, none of which individually or in the aggregate could reasonably be expected to materially impair the intended use or value of the Project; (d) the Liens created pursuant to any Financing Arrangement; (e) leases, easements and licenses in effect with respect to the Project which are permitted by this Lease or which are delivered to and accepted by the Lessor and Assignee prior to the Effective Date provided they are appurtenant to or benefit the use and operation of the Project; (f) other exceptions to the title of the Project as set forth in the title insurance policy delivered to the Lessor and Assignee under Section 4 of the Agreement for Lease (for the period prior to Substantial Completion) and in a notice of continuation or endorsement to the title insurance policy delivered to the Lessor and Assignee under Section 6 of the Agreement for Lease (for the period on and after Substantial Completion) other than Liens securing the payment of taxes, assessments and other governmental charges or levies; (g) deposits or pledges to secure statutory obligations or appeals and release of attachments, stay of execution or injunction, performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or for purposes of like general nature in the ordinary course of business, in each case for which the Lessee has set aside adequate reserves (to the extent required by GAAP), none of which individually or in the aggregate could reasonably be expected to materially impair the intended use or value of the Project; (h) liens in connection with workers' compensation, unemployment insurance or other social security or pension obligations for which the Lessee has set aside adequate reserves (to the extent required by GAAP), none of which individually or in the aggregate could reasonably be expected to materially impair the intended use or value of the Project; (i) legal or equitable encumbrances deemed to exist by reason of the existence of any litigation or other legal proceeding if the same is the subject of a Permitted Contest (excluding any attachment prior to judgment, any judgment lien or any attachment in aid of execution on a judgment), for which the Lessee has set aside adequate reserves (to the extent required by GAAP), none of which individually or in the aggregate could reasonably be expected to materially impair the intended use or value of the Project; (j) materialmen's, mechanics', worker's, repairmen's, employees', or similar Liens incurred in good faith and in the ordinary course of business which are the subject of a Permitted Contest; (k) liens securing purchase money obligations of the type described in clause (iii) of the definition of "Permitted Indebtedness"; and (l) such other or additional matters as may be approved in writing by the Lessor and each Assignee.

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"PERSON" means any individual, corporation, partnership, limited liability company, private limited company, joint venture, association, joint-stock company, trust, unincorporated organization of government or any agency or political subdivision thereof.

"PLEDGE AGREEMENT" means the Pledge Agreement, dated as of the date hereof, by and between the Lessee, as pledgor, and the Lessor, as pledgee, as the same may be amended, restated, modified or supplemented from time to time, a copy of which is attached as Exhibit E hereto.

"POTENTIAL DEFAULT" means any event which, but for the lapse of time or giving of notice, or both, would constitute an Event of Default.

"PREMISES" means collectively (a) the real property acquired by the Lessor pursuant to the Deeds (as defined in the Agreement for Lease), and (b) the Easements, each as more particularly described in Exhibit A hereto.

"PROJECT" means the Premises and the improvements and equipment (including all related appliances, appurtenances, accessions, controls, interconnection facilities, transmission lines, wiring, furnishings, materials and parts, and other related facilities and equipment, along with any replacements thereof) constructed thereon pursuant to the EPC Contract (or any other construction contracts entered into by the Lessor or the Lessee) and the Agreement for Lease, which constitute an approximately 525 megawatt nominal combined-cycle dual fuel-fired power generation facility known as the Newington Power Project, consisting of two GE Frame 7FA gas turbine generators, two heat recovery steam generators, one steam turbine generator and related equipment.

"PROJECT CONTRACTS" means the EPC Contract, the EPC Guaranty, the GE Guaranty, the O&M Agreement, any Replacement O&M Agreement and replacement guaranty (from and after the date such Replacement O&M Agreement and replacement

guaranty become effective), any replacement EPC Contract (from and after the date such replacement EPC Contract becomes effective), the Letter of Credit (if any), the Maritimes Agreements (from and after the date each such Maritimes Agreement becomes effective), and any other agreement or agreements entered into by the Lessee and necessary for the construction of the Project (from and after the date each such agreement becomes effective). A list of the Project Contracts as in existence on the date hereof is attached as Exhibit B hereto.

"PURPA" means the Public Utility Regulatory Policies Act of 1978, as amended from time to time, and the rules and regulations issued, published or promulgated from time to time thereunder.

"RELEASE" means the release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migrating into the indoor or outdoor environment of any Contaminant through or in the air, soil, surface water, groundwater, or any structure.

"RELEASE PARCEL" has the meaning set forth in paragraph (a) of Section 32 hereof.

"REMEDIAL ACTION" means actions required or otherwise undertaken by a Governmental Authority, or which are appropriate as a matter of prudent business practice and commercial reasonableness, to (i) clean up, remove, treat or in any other way address

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Contaminants in the indoor or outdoor environment; (ii) prevent the Release or threat of Release or minimize the further Release of Contaminants; (iii) investigate and determine if a remedial response is needed; or (iv) design such a response and post-remedial investigation, monitoring, operation, maintenance and care.

"REMOVABLE IMPROVEMENTS" has the meaning set forth in paragraph (b) of Section 8 hereof.

"RENEWAL NOTICE" has the meaning set forth in paragraph (c) of Section 13 hereof.

"RENEWAL TERM" has the meaning set forth in paragraph (c) of Section 13 hereof.

"REPLACEMENT O&M AGREEMENT" means any agreement relating to the operation and maintenance of the Project, entered into by the Lessee and a third party in accordance with the provisions of paragraph (ii)(n) of Section 2 hereof upon the termination of the O&M Agreement or the expiration of the O&M Agreement in accordance with its terms.

"RESPONSIBLE OFFICER" shall mean the President, Vice President or Secretary of the Lessee and any other officers or similar officials of the Lessee responsible for administering the obligations of the Lessee hereunder as designated in writing by the Lessee to the Lessor.

"S&P" means Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc., and any successor thereto which is a nationally recognized statistical rating organization.

"SEC" means the Securities and Exchange Commission.

"SECURITIZED DEBT" means, for any Person, obligations of such Person of the type specified in clauses (i)-(iv) of the definition of "Indebtedness" secured by a Lien on one or more assets or rights to receive revenues, in each case in respect of Stranded Costs (or related items) of such Person where the holders of such obligations do not have recourse to any other assets, properties or rights of such Person to receive revenue, in each case in respect of Stranded Costs (or related items) of such Person.

"SEMI-ANNUAL COST OF PROJECT DEBT" means the weighted average percentage cost per annum (including as part of such cost any fees payable under or pursuant to any Financing Arrangements, but net of any investment earnings of the Lessor applied to the payment of costs) of borrowings outstanding under any Financing Arrangements (whether or not interest is accruing at a default rate) at any time during the period from and including the first day of the first month in the semi-annual period for which Basic Rent is being computed to and including the last day of the last month of the semi-annual period for which Basic Rent is being computed (the "COMPUTATION PERIOD") to finance or refinance the acquisition and ownership of the Project.

"SEMI-ANNUAL RENT COMPONENT" means, with respect to each semi-annual period during the Lease Term, the amount set forth on Exhibit D hereto, as such Exhibit D may be amended from time to time pursuant to the terms of this Lease.

"STRANDED COSTS" means (i) charges in respect of prior utility investments or commitments in fossil-fueled and nuclear generating plants or operations, (ii) commitments for

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decommissioning fossil-fueled and nuclear generating plants or operations, (iii) charges with respect to contracts with non-utility generators for electric power and energy, (iv) charges in respect of prior utility investments or commitments in steam systems or operations and (v) charges with respect to contracts with non-utility steam suppliers.

"SUBSIDIARY" means, with respect to any Person, any corporation, partnership, joint venture, or other entity of which more than 50% of the outstanding capital stock or other ownership interest (irrespective of whether or not at the time capital stock or other equity interest of any other class or classes of such corporation, partnership, joint venture, or other entity shall or might have voting power upon the happening of any contingency) is at the time owned directly or indirectly by such Person; unless otherwise specified, "Subsidiary" means a Subsidiary of the Guarantor.

"SUBSTANTIAL COMPLETION" has the meaning set forth in the Agreement for Lease.

"TAKING" has the meaning set forth in paragraph (a) of Section 16 hereof.

"TERMINATION COVENANTS" means the following covenants made by the Lessee to the Lessor as a condition to the sale of the Project pursuant to Section 12 hereof: on the date of such sale (a) no Event of Loss, Taking, Termination Event, Event of Default or Potential Default shall have occurred and be continuing; (b) the Project shall not be undergoing any repairs, additions or alterations that could reasonably be expected to diminish the fair market value, utility or remaining economic useful life which the Project would have had at such time had such repair, addition or alteration not been undergoing (assuming the Project is in the condition required hereby); (c) the Project shall be in compliance with all Legal Requirements; (d) the Lessee shall, at its expense, deliver to the Lessor an environmental audit satisfactory in scope and content to the Lessor and Assignee (in each case in their reasonable discretion), to the effect that (i) no Environmental Matters exist with respect to the Project or the Premises as a result of the construction, operation and maintenance of the Project and (ii) the Project may be operated in accordance with the Project Contracts and in compliance with Environmental Requirements; and (e) the Lessee shall deliver to the Lessor and Assignee a report of the Independent Engineer reasonably satisfactory to the Lessor and Assignee, to the effect that the Project (i) has been maintained in accordance with the terms and conditions of Section 9 of this Lease and (ii) is capable of being operated and maintained in accordance with (1) the design specifications required by the EPC Contract, (2) all Legal Requirements and (3) prudent industry practices.

"TERMINATION EVENT" has the meaning set forth in paragraph (a) of Section 14 hereof.

"TERMINATION NOTICE" has the meaning set forth in paragraph (a) of Section 12 hereof.

"UNRECOVERED LIABILITIES AND JUDGMENTS" means all liabilities of an Indemnified Person, including, without limitation, taxes, losses, obligations, claims, damages (including, without limitation, Environmental Damages), penalties, premiums, make-whole payments, causes of action, suits, costs and expenses (including, without limitation, reasonable attorneys', experts', consultants' and accountants' fees and expenses) or judgments of any nature against an

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Indemnified Person relating to or in any way arising during the term of the Agreement for Lease and relating to or in any way arising out of (i) the

Lessor's acquisition, ownership and financing of the Project, (ii) the Lessor's acquisition of a fee interest in the Premises, (iii) the Lessee's construction of the Project, (iv) the operation or use of the Premises or the Project by the Lessee or any agent or subcontractor of the Lessee or (v) the Project Contracts, in each case to the extent that such Indemnified Person has not received full indemnification for such liabilities or judgments by the Lessee; PROVIDED, HOWEVER, that this definition of Unrecovered Liabilities and Judgments shall not include any taxes for which the Lessee is not obligated to indemnify such Indemnified Person under the provisions of paragraph (b) of Section 11 hereof.

"VARIABLE COMPONENT OF BASIC RENT" has the meaning set forth in the definition of Basic Rent in Section 1 hereof.

## SECTION 2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF LESSEE.

(i) The Lessee represents and warrants to the Lessor:

(a) CORPORATE MATTERS. The Lessee (i) has been duly formed and is validly existing as a limited liability company in good standing under the laws of the State of Delaware, (ii) has full power, authority and legal right to own and operate its properties and to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Lease, the Agreement for Lease, the Project Contracts, the Pledge Agreement and the Lessee's Consent, and (iii) is duly qualified to do business as a foreign limited liability company in good standing in the State of New Hampshire and in each other jurisdiction in which its ownership or leasing of properties or the conduct of its business requires such qualification.

(b) BINDING AGREEMENT. This Lease has been duly authorized, executed and delivered by the Lessee and, assuming the due authorization, execution and delivery of this Lease by the Lessor, this Lease is a legal, valid and binding obligation of the Lessee, enforceable according to its terms, subject, as to enforceability, to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(c) COMPLIANCE WITH OTHER INSTRUMENTS. The execution, delivery and performance by the Lessee of this Lease, the Project Contracts, the Pledge Agreement and the Lessee's Consent will not result in any violation of any provision of the certificate of formation or the operating agreement of the Lessee, do not require member approval or the approval or consent of any trustee or holders of indebtedness of the Lessee except such as have been obtained prior to the date hereof and will not conflict with or result in a breach of any terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than a Permitted Lien) upon any property or assets of the Lessee under, any indenture, mortgage or other agreement or instrument to which the Lessee is a party or by which it or any of its property is bound, or any existing applicable law, rule, regulation, license, judgment, order or decree of any government, governmental body or court having jurisdiction over the Lessee or any of its activities or properties.

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(d) GOVERNMENTAL CONSENTS. There are no consents, licenses, orders, authorizations, approvals, Environmental Approvals, Permits (as defined in the Agreement for Lease), waivers, extensions or variances of, or notices to or registrations or filings with any governmental or public body or authority (each a "GOVERNMENTAL ACTION"), (i) which are or will be required in connection with the valid execution, delivery and performance of this Lease or the Project Contracts, (ii) which are or will be required in connection with any participation by the Lessor or Assignee in the transactions contemplated by the Project Contracts or this Lease, (iii) which are or will be required in connection with the acquisition or ownership by the Lessor of the Project and all equipment for use with respect thereto, (iv) which are or will be required for the lease of the Project or the operation of the Project in accordance with and as contemplated by the Project Contracts and this Lease or (v) which are or will be required to be obtained by the Lessor, the Lessee, Merrill, Merrill Leasing, Assignee or any Affiliate of the foregoing, during the term of this Lease, the Agreement for Lease or the Project Contracts, with respect to the Project or the Project Contracts, except such Governmental Actions (A) each of which either (1) has been duly obtained, given or accomplished, is in full force and effect, is final and is not under appeal, with a true copy thereof delivered to the Lessor or (2) is to be obtained but is not now required (but which will be able to be obtained in the ordinary course of business on or before the time required), (B) as may be required by applicable law not now in effect, (C) which may be required as a result of the business, properties or activities of the

Lessor, Merrill Lynch, Merrill Leasing, Assignee or any Affiliate of the foregoing and which are not solely dependent on the nature of the Project or the business of the Lessee, or (D) the failure to obtain which, individually or in the aggregate, (x) will not subject either the Lessor or any Assignee to any danger of civil liability for which the Lessor or such Assignee is not adequately indemnified or subject the Lessor or any Assignee to any danger of criminal liability, provided that, in the case of any such danger of criminal liability, any grace period in which to cure such failure shall not be applicable and (y) could not reasonably be expected to have a material adverse effect on (a) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project (provided, that a material adverse effect with respect to the regulatory status of the Project shall only be deemed to occur if, as a result of the failure to obtain such Governmental Actions, the Lessee is unable to comply with the provisions of paragraphs (i)(cc) and (ii)(i) of Section 2 hereof or a Termination Event shall occur), (b) the ability of the Lessee to observe and perform its obligations under this Lease, the Agreement for Lease or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (c) the business, assets, properties, financial condition, operations or prospects of the Guarantor, or (d) the rights or interests of the Lessor or Assignee under this Lease, the Agreement for Lease, the Guaranty or the Project Contracts.

(e) FINANCIAL STATEMENTS. The Lessee has furnished to the Lessor copies of the Guarantor's Reports on Form 10-K for the year ended December 31, 1999 and the Guarantor's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2000 and June 30, 2000. The financial statements contained in such documents fairly present the financial position, results of operations and consolidated statements of cash flows of the Guarantor as of the dates and for the periods indicated therein and have been prepared in accordance with GAAP.

(f) CHANGES. Except as disclosed in the Memorandum or in public filings made by the Guarantor with the SEC after the date of the Memorandum and prior to the date hereof, copies of which are attached as Schedule 2(f) hereto, since December 31, 1999, there has

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been no change in the business, assets, properties, revenues, financial condition, operations or prospects of the Project or the Guarantor which has caused, directly or indirectly, the total common shareholders equity of the Guarantor and its subsidiaries as determined on a consolidated basis and as reflected in accordance with GAAP on the Guarantor's most recent Financial Statements to fall below \$4,610,510,000.

(g) LITIGATION. There is no action, suit, claim, counterclaim, proceeding or investigation, at law or in equity, by or before any court, governmental body, agency, commission or other tribunal now pending or, to the Lessee's knowledge, threatened against or affecting the Project, the Lessee, the Guarantor or any subsidiaries of the Guarantor, or any property or rights of the Lessee or the Guarantor or questioning the enforceability of this Lease or the Project Contracts, which, if adversely determined, will result, directly or indirectly, in a Material Adverse Effect.

(h) INTELLECTUAL PROPERTY. All Intellectual Property Rights required for the construction and operation of the Project in accordance with and as contemplated by the Project Contracts or this Lease, have been or will in the ordinary course of business be timely obtained and, once obtained, will remain in full force and effect. The Lessee owns or has the right to use all technology, licenses, patents and other proprietary rights that are material and are required to perform the Lessee's obligations under the Project Contracts without any conflict with the rights of others.

(i) PROJECT CONTRACTS. Each Project Contract to which the Lessee is a party has been duly authorized, executed and delivered by the Lessee and, assuming the due authorization, execution and delivery of the Project Contracts by the other parties thereto, is a legal, valid and binding obligation of the Lessee, enforceable according to its terms, subject, as to enforceability, to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law). The Lessee has not received notice from, nor is there any basis for the receipt of a notice from, any party to a Project Contract that (i) such party is terminating any Project Contract, (ii) a default has occurred under any Project Contract or any Person has alleged that a default has occurred under any Project Contract or (iii) there are any claims for damages existing as a result of the Lessee's performance of or its failure to perform any of its obligations under any Project Contract. No default has occurred and is continuing under any Project Contract on the date hereof.

(j) COMPLIANCE WITH LEGAL REQUIREMENTS AND INSURANCE REQUIREMENTS.

The construction, operation, use, and physical condition of the Project (i) are in full compliance with all Insurance Requirements and all premiums due with respect to such Insurance Requirements have been paid, and (ii) are in full compliance with all Legal Requirements, except any Legal Requirements, the noncompliance with which, individually or in the aggregate, (A) will not subject either the Lessor or any Assignee to any danger of civil liability for which the Lessor or such Assignee is not adequately indemnified or subject the Lessor or any Assignee to any danger of criminal liability, provided that, in the case of any such danger of criminal liability, any grace period in which to cure such non-compliance shall not be applicable and (B) could not reasonably be expected to have a material adverse effect on (a) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project (provided, that a

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material adverse effect with respect to the regulatory status of the Project shall only be deemed to occur if, as a result of the failure to comply with such Legal Requirements, the Lessee is unable to comply with the provisions of paragraphs (i)(cc) and (ii)(i) of Section 2 hereof or a Termination Event shall occur), (b) the ability of the Lessee to observe and perform its obligations under this Lease, the Agreement for Lease or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (c) the business, assets, properties, financial condition, operations or prospects of the Guarantor, or (d) the rights or interests of the Lessor or Assignee under this Lease, the Agreement for Lease, the Guaranty or the Project Contracts.

(k) LIENS. The Project is not subject to any Lien, except for Permitted Liens, and none of such Permitted Liens could reasonably be expected to materially interfere with the use or possession of the Project or the use or exercise by the Lessor of its rights under this Lease or any other document contemplated hereby or entered into in connection herewith.

(l) AGREEMENT FOR LEASE. The Project has been built in accordance with the terms of the Agreement for Lease. The representations and warranties of the Lessee, as agent, in the Agreement for Lease (other than the representation and warranty contained in subsection 8.10 thereof), are true and correct in all material respects (except to the extent such representations and warranties expressly relate specifically to an earlier date, in which case such representations and warranties were true and correct in all material respects as of such earlier date).

(m) ERISA. The Lessee has not established and does not maintain or contribute to any employee benefit plan that is covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended from time to time ("ERISA").

(n) STATUS OF LESSEE. A majority of the membership interests of the Lessee is owned (directly or indirectly) beneficially and of record by the Guarantor.

(o) ENVIRONMENTAL MATTERS.

(i) Except as expressly identified in the Environmental Reports, the Lessee and the Project comply and have at all times complied with all material Environmental Requirements applicable to the Project. The Lessee and the Project shall at all times comply with all material Environmental Requirements applicable to the Project, including, without limitation, the use, maintenance and operation of the Project, and all activities and conduct of business related thereto, including, without limitation, the treatment, remediation, removal, transport, storage or disposal of any Contaminant, and no material capital expenditures not included in the Budget are anticipated to maintain or achieve compliance with Environmental Requirements;

(ii) The Lessee has obtained or has taken appropriate and timely steps, as required by Environmental Requirements, to obtain, and shall obtain and maintain all Environmental Approvals necessary for the construction and operation of the Project, all such Environmental Approvals already obtained are in good standing, and the Lessee and the Project are currently in material compliance and shall remain in material compliance

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with all terms and conditions of such Environmental Approvals. No material change in the facts or circumstances reported or assumed in the applications for or the granting of such Environmental Approvals exists. There are no proceedings pending, or threatened, which would jeopardize the validity of or ability of the Lessee to obtain and comply with any such Environmental Approvals in a timely manner;

(iii) The Lessee has not received any notice that any of the third parties with which the Lessee has arranged, engaged or contracted to accept, treat, transport, store, dispose or remove any Contaminant generated or present at the Project, or which otherwise participate or have participated in activities or conduct related to the Project, were not properly permitted at the relevant time to perform the foregoing activities or conduct;

(iv) The Lessee has not received any notice that it or the Project is subject to any investigation, and is not subject to any judicial or administrative proceeding, notice, order, judgment, decree or settlement, alleging or addressing in connection with the Project (A) any violation of any Environmental Requirements, (B) any Remedial Action, or (C) any Environmental Damages, claims or liabilities and costs arising from the Release or threatened Release of any Contaminant;

(v) No Environmental Lien has attached to any portion of the Project, and the Lessee shall not cause or suffer any action or occurrence that will allow an Environmental Lien to attach to any portion of the Project;

(vi) The Lessee has not received, and is not otherwise aware of, any notice, claim or other communication concerning (A) any alleged violation of any Environmental Requirements at the Project, whether or not corrected to the satisfaction of the appropriate authority, (B) any alleged liability of the Lessee for Environmental Damages arising out of or related to the Project, or (C) any alleged liability of the Lessee arising out of or related to the Project for the Release or threatened Release of a Contaminant at any location, and there exists no writ, injunction, decree, order or judgment outstanding, nor, to the best knowledge of the Lessee, after due inquiry, any lawsuit, claim, proceeding, citation, directive, summons or investigation, pending or threatened, relating to the condition, ownership, use, maintenance or operation of the Project, or the suspected presence of Contaminants thereon or therefrom, nor does there exist any basis for such lawsuit, claim, proceeding, citation, directive, summons or investigation being instituted or filed;

(vii) To the best knowledge of the Lessee, there has been no Release of any Contaminants which would constitute a violation of any Environmental Requirement with respect to the Project and the Lessee shall not cause or suffer any such Release during the term of this Lease;

(viii) The Project is not listed or proposed for listing on the National Priorities List ("NPL") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), or listed on the Comprehensive Environmental Response Compensation Liability Information System List ("CERCLIS")

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or any similar state list of sites, and the Lessee is not aware of any conditions at the Project which, if known to a Governmental Authority, would qualify the Project for inclusion on any such list;

(ix) Neither the Lessee nor, to the best knowledge of the Lessee, after due inquiry, any contractor engaged by the Lessee in connection with the Project has transported or arranged for the transport of any Contaminant from the Project to any facility or site for the purpose of treatment or disposal which (A) is included on the NPL, or, to the best knowledge of the Lessee (B) is or was, at the time of disposal, subject to a Remedial Action requirement (other than routine, anticipated regulatory requirements, including, but not limited to, closure and post-closure related corrective action obligations affecting closed solid waste management units at such facility) issued under the federal Resource Conservation and Recovery Act or any state, local or foreign solid or hazardous waste regulatory law, or (C) at the time of the disposal was



subject to a governmental enforcement action with respect to alleged violations of any Environmental Requirements and the Lessee shall use its best efforts not to suffer or permit any such arrangement for treatment or disposal during the term of this Lease;

(x) Neither the Lessee nor, to the best knowledge of the Lessee, after due inquiry, any contractor engaged by the Lessee in connection with the Project has engaged in or permitted, nor shall the Lessee engage in or permit, any operations or activities upon, or any use or occupancy of the Project or any portion thereof, for the purpose of or in any way involving the illegal or improper release, discharge, refining or dumping of any Contaminant or the illegal or improper handling, storage, use or disposal of any Contaminant, nor has the Lessee or any other Person caused any Contaminant to be deposited, released, stored, disposed, leached or otherwise come to be located on, under, in or about the Premises, nor to the knowledge of the Lessee has any Contaminant migrated from the Premises onto or underneath other properties;

(xi) To the best knowledge of the Lessee, after due inquiry, there is not constructed, placed, deposited, stored, disposed nor located on the Project any asbestos in any form which has become or threatens to become friable. The Lessee shall not cause or suffer the use of any asbestos-containing material in connection with its management and operation of the Project during the term of this Lease (other than any asbestos-containing equipment used by subcontractors of the Lessee during the construction of the Project in compliance with all Environmental Requirements and to the extent the Lessor has adequate insurance or indemnification with respect thereto under the EPC Contract);

(xii) To the best knowledge of the Lessee, after due inquiry, there is not constructed, placed, deposited, released, stored, disposed, leached nor located on the Project any polychlorinated biphenyls ("PCBs") or transformers, capacitors, ballasts, or other equipment which contain dielectric fluid containing PCBs. The Lessee shall not cause or suffer the use of any article containing PCBs at or on the Project during the term of this Lease (other than any equipment containing PCBs used by subcontractors of the Lessee during the construction of the Project in compliance with all Environmental Requirements and to the extent the Lessor has adequate insurance or indemnification with respect thereto under the EPC Contract);

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(xiii) The Lessee has no liability, and has neither received nor is otherwise aware of any notice, claim or other communication alleging liability on the part of the Lessee, for the violation of any Environmental Requirements, for Environmental Damages, or for the Release or threatened Release of any Contaminant in connection with the Project; and

(xiv) None of the matters identified in the Environmental Reports, individually or in the aggregate, could reasonably be expected to result, directly or indirectly, in a Material Adverse Effect.

(p) PROJECT AUTHORIZATIONS. The Lessee has obtained, or shall in the ordinary course of business obtain prior to the time required, all certificates, permits, licenses, authorizations and approvals, including Environmental Approvals, required (i) in the management and operation of the Project in accordance with and as contemplated by the Project Contracts or this Lease, (ii) for any change or modification of the use of the Project, (iii) for construction of any improvements thereto and (iv) for acquisition of equipment related to the Project for use with respect thereto, except where the failure to obtain any permits, licenses, authorizations or approvals, individually or in the aggregate, (A) will not subject either the Lessor or any Assignee to any danger of civil liability for which the Lessor or such Assignee is not adequately indemnified or subject the Lessor or any Assignee to any danger of criminal liability, provided that, in the case of any such danger of criminal liability, any grace period in which to cure such failure shall not be applicable and (B) could not reasonably be expected to have a material adverse effect on (a) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project (provided, that a material adverse effect with respect to the regulatory status of the Project shall only be deemed to occur if, as a result of the failure to obtain such permits, licenses, authorizations or approvals, the Lessee is unable to comply with the provisions of paragraphs (i)(cc) and (ii)(i) of Section 2 hereof or Za Termination Event shall occur), (b) the ability of the Lessee to observe and perform its obligations under this Lease, the Agreement for Lease or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (c) the business, assets, properties,

financial condition, operations or prospects of the Guarantor, or (d) the rights or interests of the Lessor or Assignee under this Lease, the Agreement for Lease, the Guaranty or the Project Contracts. A list of all such certificates, permits, licenses, authorizations and approvals required by all applicable law in effect on the date hereof is attached as Exhibit C hereto.

(q) COMPLIANCE WITH PROJECT CONTRACTS. The physical condition of the Project as it is presently constructed complies with all material requirements of each Project Contract and will enable the Lessee to perform all obligations under the Project Contracts and this Lease in accordance with their respective terms.

(r) PLEDGE AGREEMENT. The Pledge Agreement has been duly authorized, executed and delivered by the Lessee and, assuming the due authorization, execution and delivery of the Pledge Agreement by the Lessor, is a legal, valid and binding obligation of the Lessee, enforceable according to its terms, subject, as to enforceability, to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law). The

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Pledge Agreement creates a valid first priority security interest in the Collateral (as defined in the Pledge Agreement) now in existence, securing the payment of the Secured Obligations (as defined in the Pledge Agreement), all action necessary to perfect the security interest in the Collateral has been taken, and such security interest has priority over any other Lien on the Collateral, except for Permitted Liens.

(s) OPERATION OF THE PROJECT. The Project will, on and after the achievement of Substantial Completion (as such term is defined in the Agreement for Lease), be able (i) to be operated in compliance with all material Governmental Actions, the technical parameters and other continuing requirements of the Project Contracts and this Lease for a period of at least 25 years thereafter, and (ii) to be mechanically operated in compliance with all existing material Governmental Actions for a period of at least 30 years thereafter.

(t) UTILITY AVAILABILITY. All utilities, services, facilities and Interconnections required for the operation of the Project (including, but not limited to, potable water supply, gas, electric and telephone facilities) are available for use at the boundaries of the Premises or within a reasonable distance from the Premises, and arrangements on commercially reasonable terms have been made for the provision of such services to the Project.

(u) GUARANTY. The Guaranty has been duly authorized, executed and delivered by the Guarantor and the Guaranty constitutes a legal, valid and binding obligation of the Guarantor, enforceable according to its terms, subject, as to enforceability, to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(v) DISCLOSURE. None of the financial statements referred to in paragraph (i)(e) of Section 2 hereof, or the information described in the Memorandum (insofar as such information relates to the Lessee, the Guarantor, any Affiliate of the Guarantor or the Project), contained as of its date any untrue statement of a material fact or omitted to state a material fact necessary in order to make the representations contained herein or the statements contained therein not misleading in light of the circumstances under which they were made.

(w) NO DEFAULT. Neither the Lessee nor the Guarantor is in violation of or in default under or with respect to any Legal Requirement in any respect which will result, directly or indirectly, in a Material Adverse Effect.

(x) TAXES. the Lessee has filed or caused to be filed all tax returns which are required to be filed by it, and has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its assets and properties and has paid all other taxes, fees or other charges imposed on it by any Governmental Authority (except taxes, fees and charges subject to a Permitted Contest).

(y) BUDGETS. All budgets (including the Budget) furnished or to be furnished to the Lessor and Assignee by or on behalf of the Lessee and the summaries of significant assumptions related thereto, if any (i) have been and

will be prepared with due care in accordance with prudent business practices,  
(ii) fairly present, and will fairly present the

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Lessee's expectations as to the matters covered thereby as of their date, (iii) are based on, and will be based on, assumptions that are reasonable as to all factual and legal matters material to the estimates therein (including interest rates and construction and financing costs) and (iv) are in all material respects consistent with, and will be in all material respects consistent with, the provisions of this Lease, the Agreement for Lease and the Project Contracts. The Budget includes all costs and expenses that could reasonably be expected to be incurred in connection with the construction of the Project.

(z) NATURE OF LESSEE'S BUSINESS. The Lessee (A) has not engaged in any business other than as contemplated by paragraph (ii)(j) of Section 2 herein, (B) is not a party to any contract, operating lease, agreement or commitment other than as contemplated by paragraph (ii)(j) of Section 2 herein and (C) has not created, assumed or incurred any Indebtedness other than Permitted Indebtedness.

(aa) CEI NOTE. The CEI Note has been duly authorized, executed and delivered by the Guarantor and is a legal, valid and binding obligation of the Guarantor, enforceable according to its terms, subject, as to enforceability, to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(bb) PUBLIC UTILITY HOLDING COMPANY ACT. The Lessee is not subject to regulation under the 1935 Act as a "public-utility company" or a "holding company", within the meaning of the 1935 Act (except that the Lessee may become an Affiliate of a holding company registered under the 1935 Act so long as the rights of the Lessee under the Project Contracts and the rights of the Lessor or Assignee under this Lease or any other document contemplated hereby are not adversely affected).

(cc) REGULATION. Neither the Lessor nor any Assignee nor any of their respective Affiliates is or will be, solely by reason of (i) its entering into this Lease or any other document contemplated hereby, (ii) the acquisition, ownership, leasing or financing of the Project (or any part thereof) or (iii) the operation of the Project (or any part thereof) in accordance with and as contemplated by the Project Contracts and this Lease, during the term of this Lease or the Agreement for Lease, be subject to financial, rate or other similar regulation as, a public utility, or an electric utility or a public utility holding company under a Legal Requirement (including any Legal Requirement (A) under the 1935 Act, (B) imposed by any state or local public utility commission or other similar regulatory body, authority or group having jurisdiction over the Lessor or the Lessee or any such transactions or activities, or (C) under the Federal Power Act, as amended).

(ii) The Lessee covenants to the Lessor:

(a) LIMITATION ON INDEBTEDNESS. The Lessee will not incur, assume, suffer to exist, directly or indirectly guaranty or at any time be liable with respect to any Indebtedness except Indebtedness of the Lessee evidenced by this Lease, the Agreement for Lease and any Permitted Indebtedness.

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(b) DISTRIBUTIONS IN DEFAULT. So long as an Event of Default pursuant to paragraph (a) of Section 18 of this Lease has occurred and is continuing, the Lessee will not make any distributions or return of capital of any kind to any of its equity investors or any payment of management fees.

(c) MAINTENANCE OF EXISTENCE. The Lessee will remain a validly existing limited liability company in good standing under the laws of the State of Delaware until the expiration or other termination of this Lease and the indefeasible payment of all amounts owing hereunder.

(d) LIENS. The Lessee will not create, incur, assume or permit to exist any Lien upon any of its Assets, other than Permitted Liens.

(e) SUBSIDIARIES. The Lessee will not acquire or create an equity

interest in any Person.

(f) PENSION PLANS. The Lessee will not establish or become party to any employee benefit plan that is covered by Title IV of ERISA.

(g) DELIVERY OF INFORMATION. The Lessee shall deliver to the Lessor and Assignee from time to time, (i) (A) promptly, and in any event not more than 120 days after the end of each fiscal year of the Lessee, copies of the Lessee's annual financial statements and promptly, and in any event not more than 60 days after the end of each fiscal quarter of the Lessee, copies of the Lessee's quarterly unaudited financial statements, both prepared in accordance with GAAP, and (B) promptly, and in any event not more than 120 days after each fiscal year of the Guarantor, copies of the Guarantor's Annual Report on Form 10-K and promptly, and in any event not more than 60 days after the end of each fiscal quarter of the Guarantor, copies of the Guarantor's Quarterly Reports on Form 10-Q and promptly, and in any event within 30 days after filing, any current reports on Form 8-K or other material reports the Guarantor files with the SEC pursuant to the Securities Exchange Act of 1934, PROVIDED that filing with the SEC of the Guarantor's Annual Report on Form 10-K and Quarterly Reports on Form 10-Q prepared in compliance with the requirements therefor shall be deemed to satisfy the requirements of clause (i)(B) of this paragraph (g), (ii) promptly, and in any event within five Business Days upon request, such other information with respect to the Lessee's or the Guarantor's operations, business, properties, assets, financial condition or litigation as the Lessor or Assignee shall reasonably request, (iii) promptly, and in any event within five Business Days after a Responsible Officer obtains knowledge of any Event of Default, Potential Default, Event of Loss, Taking, Termination Event or any default or alleged default by the other party thereto under any Project Contract, or of any claims for damages existing as a result of the Lessee's performance of, or its failure to perform any of its obligations under any Project Contract, a certificate of a Responsible Officer specifying the nature and period of existence of such Event of Default, Potential Default, Event of Loss, Taking, Termination Event or default under any Project Contract, and what action, if any, the Lessee has taken, is taking, or proposes to take with respect thereto, (iv) promptly, and in any event within five Business Days after a Responsible Officer obtains knowledge of any change in the financial condition or business of the Lessee which will result, directly or indirectly, in a Material Adverse Effect, or of any liabilities or obligations arising as a result of tortious action or Environmental Damages or in respect of

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governmental fines or obligations (other than taxes) or liabilities or obligations arising as a result of Environmental Matters, or of any change in the financial condition or business of the Guarantor which will result, directly or indirectly, in a Material Adverse Effect, or of any litigation of the type described in paragraph (i)(g) of this Section 2, a certificate of a Responsible Officer describing such change, liabilities, obligations or litigation, as the case may be, and what action, if any, the Lessee has taken, is taking, or proposes to take with respect thereto, (v) simultaneously with the delivery of each set of annual and quarterly financial statements referred to in clause (i) of this paragraph (g), a certificate of a Responsible Officer stating, to the best knowledge of such Responsible Officer after reasonable inquiry, whether there exists on the date of such certificate any Event of Default, Potential Default, Event of Loss, Taking, Termination Event, default under any Project Contract, and if any Event of Default, Potential Default, Event of Loss, Taking, Termination Event, or default under any Project Contract exists, specifying the nature and period of existence thereof and what action, if any, the Lessee has taken, is taking, or proposes to take with respect thereto and (vi) promptly, and in any event within five Business Days after a Responsible Officer obtains knowledge of any legal, governmental or regulatory proceeding that will result, directly or indirectly, in a Material Adverse Effect, a certificate of a Responsible Officer, describing each such proceeding and what action, if any, the Lessee has taken, is taking, or proposes to take with respect thereto.

(h) PUBLIC UTILITY HOLDING COMPANY ACT. The Lessee is not and shall not become a "public-utility company" or a "holding company" within the meaning of the 1935 Act, is not and shall not become an Affiliate of a holding company registered under the 1935 Act (except that the Lessee may become an Affiliate of a holding company registered under the 1935 Act so long as the rights of the Lessee under the Project Contracts and the rights of the Lessor or Assignee under this Lease or any other document contemplated hereby are not adversely affected), and is not and shall not become regulated as a public-utility company or a holding company under any other Federal, state or local Legal Requirement (except that the Lessee may become regulated as a public utility company so long as the rights of the Lessee under the Project Contracts and the rights of the Lessor and any Assignee under this Lease and any other documents contemplated

hereby are not adversely affected).

(i) REGULATION. Neither the Lessor nor any Assignee nor any of their respective Affiliates shall, solely by reason of (i) its entering into this Lease or any other document contemplated hereby, (ii) the acquisition, ownership, leasing or financing of the Project (or any part thereof) or (iii) the operation of the Project (or any part thereof) in accordance with and as contemplated by the Project Contracts and this Lease, during the term of this Lease or the Agreement for Lease, be subject to financial, rate or other similar regulation as, a public utility, or an electric utility or a public utility holding company under a Legal Requirement (including any Legal Requirement (A) under the 1935 Act, (B) imposed by any state or local public utility commission or other similar regulatory body, authority or group having jurisdiction over the Lessor or the Lessee or any such transactions or activities, or (C) under the Federal Power Act, as amended).

(j) LESSEE'S BUSINESS. The Lessee shall not construct or operate any generation facility that is not subject to the terms of this Lease or the Agreement for Lease. The Lessee will not enter into any business other than (i) as contemplated by the terms of the Project Contracts, (ii) the constructing, operating, maintaining, repairing and equipping of the Project as

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agent of the Lessor pursuant to the Agreement for Lease, (iii) the leasing and financing of the Project pursuant to this Lease and the documents incidental hereto, and (iv) matters incidental to the performance of its obligations under clauses (i), (ii) and (iii) of this sentence. The Lessee shall not enter into any contract other than those contracts (1) contemplated by this Lease or (2) in connection with matters contemplated by the foregoing clauses (i), (ii), (iii) and (iv); PROVIDED that (a) the Lessee shall collaterally assign to the Lessor, at no cost to the Lessor, all of the Lessee's right, title and interest in such contracts pursuant to the Pledge Agreement, and (b) if (x) such contract will adversely affect the Lessee's ability to perform its obligations under this Lease or the Project Contracts, or (y) unless such contract is related to the operation, maintenance or repair of the Project, such contract involves Indebtedness or other obligations (contingent or otherwise) that after the Project achieves Substantial Completion would exceed in the aggregate \$1,000,000 in any four year period, the Lessee shall be required to obtain the consent of the Lessor and Assignee to such contract prior to its execution.

(k) PROJECT INFORMATION. The Lessee shall furnish to the Lessor and Assignee:

(i) all material written communications relating to any pending or threatened investigations, claims or proceedings with respect to any Governmental Action or proposing to amend, modify or affect any Governmental Action then required to be in effect with respect to the Project;

(ii) written notice of the occurrence of any event giving rise (or that could reasonably be expected to give rise) to a claim under any insurance policy maintained pursuant to the terms of this Lease in an amount greater than \$1,000,000 together with copies of any document relating thereto (including copies of any such claim) in the possession or control of the Lessee;

(iii) promptly upon its execution, a copy of any Replacement O&M Agreement; and

(iv) promptly upon its execution a copy of any replacement Project Contract.

(l) CAPITAL EXPENDITURES. The Lessee will not make any Capital Expenditures other than Capital Expenditures with respect to the Project that will not result, directly or indirectly, in a Material Adverse Effect.

(m) NOTICE OF ENVIRONMENTAL EVENTS:

(i) The Lessee shall promptly, but in any case within five (5) Business Days of receiving actual or constructive notice thereof, notify the Lessor and Assignee if, after the date of this Lease, (A) any Environmental Matter has occurred involving the Project or any part thereof (including, but not limited to, the presence, emission or unpermitted Release of Contaminants or the violation of any applicable Environmental Requirements) that could reasonably be expected to result in penalties or other liabilities in excess of \$1,000,000 or (B) the Lessee has received

notification that it, the Project or any part thereof is the subject of a proceeding that could reasonably be expected to result in any ordered remediation or corrective action or other liability related to an Environmental

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Matter, the cost of which liability is reasonably expected to exceed \$1,000,000 (each of (A) and (B) an "ENVIRONMENTAL EVENT").

(ii) Following the receipt of a notice pursuant to (i) above, the Lessor and Assignee, in each case in their sole discretion, may require the Lessee to cause to be conducted by a qualified environmental consultant satisfactory in all respects to the Lessor and Assignee, an environmental audit of the Project or related operation on which the Lessor or Assignee may rely, the scope of which audit shall be limited to confirming the magnitude and anticipated cost of the liability resulting from the Environmental Event and to provide a copy of such environmental consultant's report on its audit to the Lessor and Assignee.

(iii) The Lessee shall immediately initiate, or cause to be initiated at no cost to the Lessor or Assignee, such actions as may be necessary to comply in all respects with all applicable Environmental Requirements and to alleviate any significant risk to human health or the environment if the same arises from a condition on or in respect of the Project or any part thereof, whether existing prior to, on or after the date of this Lease. Once the Lessee commences such actions, the Lessee shall thereafter diligently and expeditiously proceed to comply materially and in a timely manner with all Environmental Requirements and to eliminate any significant risk to human health or the environment and shall, at the request of the Lessor or Assignee during the Lease Term, give periodic progress reports on its compliance efforts and actions.

(n) REPLACEMENT O&M AGREEMENT. The Lessee shall not enter into any Replacement O&M Agreement on terms and conditions that (i) will result, directly or indirectly, in a Material Adverse Effect, or (ii) is not consistent with generally accepted and prudent industry practices for contracts relating to the operation and maintenance of facilities similar in size and nature to the Project.

(o) DELIVERY OF FINAL SURVEY. The Lessee shall deliver the Final Survey to the Lessor and Assignee within forty-five (45) days after the Effective Date, which shall indicate that no encroachments are to exist by the Project onto premises outside the boundary lines of the Premises or by existing improvements located on adjacent premises onto the Premises other than those that are Permitted Liens or that may have been consented to by the Lessor and Assignee and all set-back requirements have been complied with; PROVIDED, HOWEVER, that if any discrepancies exist between the legal description set forth on the Survey delivered pursuant to paragraph (j) of Section 4 of the Agreement for Lease and the legal description set forth on the Final Survey, the Lessor and the Lessee shall cooperate in amending the legal descriptions in all recorded documents creating or affecting the Premises.

(p) OPERATION OF PROJECT. The Lessee shall obtain in a timely manner and maintain in full force and effect all Governmental Actions required to perform its obligations under the Project Contracts and will upon the request of the Lessor or Assignee provide a copy of each such Governmental Action to the Lessor and Assignee.

SECTION 3. LEASE OF THE PROJECT

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(a) The date upon which the Lessee receives the Final Advance (as defined in the Agreement for Lease) under the Agreement for Lease shall be the "EFFECTIVE DATE". From and after the Effective Date, and during the Lease Term and any Renewal Term, the Lessor does hereby lease the Project (including a lease of the Premises) to the Lessee and the Project and the rights and obligations of the Lessor and the Lessee shall be governed by this Lease and not the Agreement for Lease, except to the extent otherwise expressly provided in this Lease and the Agreement for Lease. On the Effective Date, the Lessee shall be deemed to have certified that all representations and warranties of the Lessee contained in this Lease (other than the representation and warranty made

in paragraph (i)(f) of Section 2 hereof) are true and correct in all material respects on and as of the Effective Date. As provided in the Agreement for Lease, on the Effective Date, Exhibit D to this Lease shall be amended, if necessary.

(b) Up to three (3) months after the Final Advance (as defined in the Agreement for Lease), the Lessee may request Completion Advances under the Agreement for Lease by delivering a Certificate of Increased Cost (as defined in the Agreement for Lease) to the Lessor and otherwise complying with the terms of Section 7 of the Agreement for Lease. On or before the fifth Business Day prior to the date upon which the Lessee receives the Final Advance (as defined in the Agreement for Lease), the Lessee shall designate the maximum aggregate amount of all Completion Advances to be requested hereunder (the "COMPLETION AMOUNT"). After such designation the aggregate amount of all Completion Advances shall not exceed the Completion Amount. The provisions of paragraph (b) of subsection 2.3 and Section 7 of the Agreement for Lease shall govern (i) the designation of the Completion Amount, (ii) the making of Completion Advances and (iii) any amendments to Exhibit D to this Lease occasioned thereby. At the time each Completion Advance is made, the Lessee shall be deemed to have certified that all representations and warranties of the Lessee contained in this Lease are true and correct in all material respects on and as of such date.

#### SECTION 4. OPERATING LEASE.

(a) It is the intent of the Lessee and the Lessor that: (i) this Lease constitutes an operating lease from the Lessor to the Lessee for purposes of the SSSS Lessee's financial reporting, (ii) this Lease and other transactions contemplated hereby preserve the ownership of the Project in the Lessee for federal, state and local income tax and bankruptcy purposes, and (iii) this Lease grants to the Lessor a Lien on the Project. The Lessee and the Lessor agree that the Lessor shall be deemed to have a valid and binding security interest in and Lien on the Project, free and clear of all Liens, other than Permitted Liens, as security for the obligations of the Lessee under this Lease and the Agreement for Lease (it being understood and agreed that the Lessee does hereby grant a Lien on, and convey, transfer, assign, mortgage and warrant to the Lessor and its successors, transferees and assigns, for the benefit of the Lessor and its successors, transferees and assigns, the Project and any proceeds or products thereof, to have and hold the same as collateral security for the payment and performance of the obligations of the Lessee under this Lease and the Agreement for Lease).

(b) Specifically, without limiting the generality of paragraph (a) of this Section 4, the Lessee and the Lessor intend and agree that in the event of any insolvency or receivership proceedings or a petition under the United States bankruptcy laws or any other applicable insolvency laws or statute of the United States of America or any State thereof

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affecting the Lessee, the Lessor, Assignee or any collection actions relating thereto, the transactions evidenced by the Agreement for Lease and this Lease shall be regarded as loans made by the Lessor to the Lessee.

#### SECTION 5. ABSOLUTE OBLIGATION.

(a) The obligations of the Lessee to pay all amounts payable pursuant to this Lease (including specifically and without limitation amounts payable under Sections 7 and 11 hereof) shall be absolute and unconditional under any and all circumstances of any character, and such amounts shall be paid without notice, demand, defense, set-off, deduction or counterclaim and without abatement, suspension, deferment, diminution or reduction of any kind whatsoever, except as herein expressly otherwise provided. The obligation of the Lessee to lease the Project and pay Basic Rent, any Debt Yield-Maintenance Premium or Modified Call Premium, Additional Rent and any other amounts due hereunder for the Project accepted for lease pursuant to this Lease is without any warranty or representation, express or implied, as to any matter whatsoever on the part of the Lessor or any Assignee or any Affiliate of either, or anyone acting on behalf of any of them.

THE LESSEE HAS SELECTED THE PROJECT ON THE BASIS OF ITS OWN JUDGMENT. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN UPON A TRANSFER OF THE LESSOR'S INTEREST IN THE PROJECT TO THE LESSEE OR A THIRD PARTY, NEITHER THE LESSOR NOR ANY ASSIGNEE NOR ANY AFFILIATE OF EITHER, NOR ANYONE ACTING ON BEHALF OF ANY OF THEM MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO THE SAFETY, TITLE, CONDITION, QUALITY, QUANTITY, FITNESS FOR USE, MERCHANTABILITY, CONFORMITY TO SPECIFICATION, OR ANY OTHER CHARACTERISTIC, OF THE PROJECT, OR AS TO WHETHER THE

PROJECT OR THE OWNERSHIP, USE, OCCUPANCY OR POSSESSION THEREOF COMPLIES WITH ANY LAWS, RULES, REGULATIONS OR REQUIREMENTS OF ANY KIND.

AS BETWEEN THE LESSEE AND THE LESSOR, ANY ASSIGNEE OR ANY INDEMNIFIED PERSON, THE LESSEE ASSUMES ALL RISKS AND WAIVES ANY AND ALL DEFENSES, SET-OFFS, DEDUCTIONS, COUNTERCLAIMS (OR OTHER RIGHTS), EXISTING OR FUTURE, AS TO THE LESSEE'S OBLIGATION TO PAY BASIC RENT AND ALL OTHER AMOUNTS PAYABLE HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY RELATING TO:

(A) THE SAFETY, TITLE, CONDITION, QUALITY, FITNESS FOR USE, MERCHANTABILITY, CONFORMITY TO SPECIFICATION, OR ANY OTHER QUALITY OR CHARACTERISTIC OF THE PROJECT, LATENT OR NOT;

(B) ANY SET-OFF, COUNTERCLAIM, RECOUPMENT, ABATEMENT, DEFENSE OR OTHER RIGHT WHICH THE LESSEE MAY HAVE AGAINST THE LESSOR, ANY ASSIGNEE OR ANY INDEMNIFIED PERSON FOR ANY REASON WHATSOEVER ARISING OUT OF THIS OR ANY OTHER TRANSACTION OR MATTER;

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(C) ANY DEFECT IN TITLE OR OWNERSHIP OF THE PROJECT OR ANY TITLE ENCUMBRANCE NOW OR HEREAFTER EXISTING WITH RESPECT TO THE PROJECT;

(D) ANY FAILURE OR DELAY IN DELIVERY OR ANY LOSS, THEFT OR DESTRUCTION OF, OR DAMAGE TO, THE PROJECT, IN WHOLE OR IN PART, OR CESSATION OF THE USE OR POSSESSION OF THE PROJECT BY THE LESSEE FOR ANY REASON WHATSOEVER AND OF WHATEVER DURATION, OR ANY CONDEMNATION, CONFISCATION, REQUISITION, SEIZURE, PURCHASE, TAKING OR FORFEITURE OF THE PROJECT, IN WHOLE OR IN PART;

(E) ANY INABILITY OR ILLEGALITY WITH RESPECT TO THE USE, OWNERSHIP, OCCUPANCY OR POSSESSION OF THE PROJECT BY THE LESSEE;

(F) ANY INSOLVENCY, BANKRUPTCY, REORGANIZATION OR SIMILAR PROCEEDING BY OR AGAINST THE LESSEE OR THE LESSOR OR ANY ASSIGNEE;

(G) ANY FAILURE TO OBTAIN, OR EXPIRATION, SUSPENSION OR OTHER TERMINATION OF, OR INTERRUPTION TO, ANY REQUIRED LICENSES, PERMITS, CONSENTS, AUTHORIZATIONS, APPROVALS OR OTHER LEGAL REQUIREMENTS;

(H) THE INVALIDITY OR UNENFORCEABILITY OF THIS LEASE OR ANY OTHER INFIRMITY HEREIN OR ANY LACK OF POWER OR AUTHORITY OF THE LESSOR OR THE LESSEE TO ENTER INTO THIS CONTRACT;

(I) THE INVALIDITY OR UNENFORCEABILITY OF ANY BILL OF SALE EXECUTED IN CONNECTION WITH THIS LEASE OR ANY OTHER INFIRMITY THEREIN OR LACK OF POWER OR AUTHORITY OF ANY PARTY THERETO TO ENTER INTO SUCH BILL OF SALE; OR

(J) ANY OTHER CIRCUMSTANCES OR HAPPENING WHATSOEVER, WHETHER OR NOT SIMILAR TO ANY OF THE FOREGOING.

THE LESSEE HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS WHICH IT MAY NOW HAVE OR WHICH AT ANY TIME HEREAFTER MAY BE CONFERRED UPON IT, BY STATUTE OR OTHERWISE, TO TERMINATE, CANCEL, QUIT, RESCIND OR SURRENDER THIS LEASE EXCEPT IN ACCORDANCE WITH THE EXPRESS TERMS HEREOF. Each payment of Basic Rent, any Debt Yield-Maintenance Premium, any Modified Call Premium, Additional Rent and any other amount due hereunder made by the Lessee shall be final, and the Lessee, without waiving any other remedies it may have, will not seek or have any right to recover all or any part of such payment from the Lessor or any Assignee for any reason whatsoever.

(b) Notwithstanding any other provision contained in this Lease, it is specifically understood and agreed that neither the Lessor nor any Assignee nor any Affiliate of

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either, nor anyone acting on behalf of any of them makes any warranties or representations or has any responsibility to disclose any relevant information, nor, except as set forth in Section 21 of this Lease, has the Lessor or any Assignee or any Affiliate of either, or anyone acting on behalf of any of them made any covenants or undertakings or has any other responsibility or duty, as to the accounting treatment to be accorded the Lessee or as to the U.S. Federal or any state income or any other tax consequences, if any, to the Lessee as a



result of or by virtue of the transactions contemplated by this Lease.

SECTION 6. LEASE TERM.

(a) The "INITIAL TERM" shall commence on the Effective Date and shall continue until June 30, 2010, unless terminated earlier pursuant to Section 12, 13, 14, 15, 16 or 19 hereof.

(b) The "EXTENDED TERM" shall commence on the first day of the calendar month following the last day of the Initial Term and shall continue until June 30, 2022, unless terminated earlier pursuant to Section 12, 13, 14, 15, 16 or 19 hereof.

SECTION 7. RENT AND OTHER PAYMENTS.

(a) The Lessee hereby agrees to pay the Lessor on each Basic Rent Payment Date, in immediately available funds, as provided in paragraph (e) of this Section 7, Basic Rent for the semi-annual period (or part thereof) ending in the month in which such Basic Rent Payment Date falls; PROVIDED that, if the Effective Date is on or after the Lease Rate Date in any first partial semi-annual period of the Initial Term, Basic Rent for such partial semi-annual period shall be payable on the next succeeding Basic Rent Payment Date.

(b) The Lessor shall furnish to the Lessee on the 16th day of each calendar month in which a Basic Rent Payment Date falls the Semi-Annual Cost of Project Debt for such semi-annual period, or, if such day is not a Business Day, on the next succeeding Business Day (the "LEASE RATE DATE"). At least four (4) days prior to each Basic Rent Payment Date the Lessor shall furnish the Lessee with a summary of the calculations of Basic Rent for such Basic Rent Payment Date.

(c) The Lessee hereby agrees to pay on demand all amounts (other than Basic Rent) payable hereunder, including, without limitation, all amounts payable to any Indemnified Person pursuant to Section 11 hereof.

(d) Without prejudice to the full exercise by the Lessor of its rights under Sections 18 and 19 hereof, the Lessee shall pay to the Lessor from time to time, on demand, as additional rent ("ADDITIONAL RENT") (i) amounts required to reimburse the Lessor for its obligations, costs and expenses (not previously included in Basic Rent or Acquisition Cost) incurred in acquiring, financing (including obtaining, maintaining and terminating equity financing and all fees payable to the Lessor's general partner under its partnership agreement and, subject to any applicable restriction described in the Lessee's Consent, all amounts owing by the Lessor to its partners as a result of a sale of limited partnership interests by a limited partner of the Lessor or a modification of the terms of such equity financing) and maintaining security for and exercising remedies in connection with any such financing and leasing the

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Project (including, without limitation, all obligations, costs and expenses of the Lessor arising in connection with the termination of any Financing Arrangement (whether as a result of a default thereunder or otherwise)), all interest (including, without limitation, interest at a default rate), the Debt Yield-Maintenance Premium, the Modified Call Premium and other costs, fees and expenses incurred by the Lessor under any Financing Arrangement (including any such accruing after the commencement of a bankruptcy or similar proceeding) and amounts owing under any Project Contracts, and (ii) to the extent legally enforceable, an amount computed by multiplying (A) all sums not paid by the Lessee to the Lessor as provided in this Lease on or before the date such payments are due, by (B) the decimal equivalent of the Semi-Annual Cost of Project Debt as most recently furnished by the Lessor, and by (C) a fraction having a numerator equal to the number of days in the period from but excluding such due date to and including the date of payment thereof (provided that, all full calendar months during such period shall be computed on the basis of a 30-day month) and a denominator of 360. The Lessee shall also pay to the Lessor on demand an amount equal to any expenses incurred by the Lessor in collecting such unpaid sums.

(e) Basic Rent, any Debt Yield-Maintenance Premium, any Modified Call Premium, Additional Rent and any other amount payable by the Lessee to the Lessor shall be paid such that immediately available funds in the full amount due are available by not later than 2:00 p.m. (New York City time) on the date due, to the account of the Lessor at such bank, or to such account of such other Person at such bank, or otherwise as the Lessor may from time to time designate.

SECTION 8. RESTRICTED USE; COMPLIANCE WITH LAWS.

(a) The Lessee will not do or permit any act or thing which might impair, other than normal wear and tear arising out of the proper and normal use thereof, the value or usefulness of the Project.

(b) The Lessee shall promptly and duly execute, deliver, file and record, at the Lessee's expense, all such documents, statements, filings and registrations, and take such further action, as the Lessor shall from time to time reasonably request in order to establish, perfect and maintain the Lessor's title to and interest in the Project (other than Removable Improvements) and Assignee's interest in this Lease or the Project as against the Lessee or any third party in any applicable jurisdiction. Equipment, machinery, apparatus, fixtures, structures and installations may be substituted for portions of the Project (other than Removable Improvements) if (i) the Lessor and Assignee consent to such substitution, such consent not to be unreasonably withheld or denied, (ii) the Lessor and Assignee shall determine that such substitution is consistent with prudent business practices and could not reasonably be expected to adversely affect the Lessee's ability to perform its obligations under this Lease and the Project Contracts nor result in a reduction in the value, utility or remaining economic useful life of the Project (assuming the Project is in the condition required hereby), or (iii) such substitution is performed by the Lessee or the Operator in the normal course of operating and maintaining the Project in accordance with the Project Contracts and is consistent with prudent industry practices. As equipment, machinery, apparatus, fixtures, structures and installations are added to, or substituted for, portions of the Project (other than Removable Improvements), title to such additional or substitute equipment, machinery, apparatus, fixtures, structures and installations shall

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automatically be transferred to the Lessor and such equipment, machinery, apparatus, fixtures, structures and installations shall become a part of the Project and shall be subject to this Lease and title to the existing equipment, machinery, apparatus, fixtures, structures and installations which are being substituted for (other than Removable Improvements) shall be released by the Lessor to the Lessee. The Lessee may, so long as no Potential Default, Event of Default, Event of Loss, Taking or Termination Event has occurred and is continuing, remove any Removable Improvement in its entirety. "REMOVABLE IMPROVEMENTS", for the purposes hereof, shall mean any part that (i) is in addition to, and not in replacement of or substitution for (x) any part originally incorporated or installed in or attached to the Project on the Effective Date or (y) any part in replacement of, or substitution for, any such part, (ii) is not required to be incorporated or installed in or attached or added to the Project pursuant to the terms of the Plans (as defined in the Agreement for Lease), the Project Contracts or this Lease and (iii) can be removed from the Project without causing damage to the Project or any portion thereof, without adversely affecting the ability of the Project to operate in accordance with the Project Contracts and this Lease and without diminishing the value, utility or remaining economic useful life which the Project would have had at such time had such alteration, modification or addition not been made (assuming the Project is in the condition required hereby). Upon the removal by the Lessee of any Removable Improvement as provided in the immediately preceding two sentences, title thereto shall, without further act, vest in the Lessee and such Removable Improvement will no longer be deemed part of the Project. Any Removable Improvement not removed by the Lessee prior to the return of the Project to the Lessor hereunder shall remain the property of the Lessor.

(c) The Lessee shall use every reasonable precaution to prevent loss or damage to the Project and to prevent injury to third persons or property of third persons. The Lessee shall cooperate fully with the Lessor and all insurance companies providing insurance pursuant to Section 10 hereof in the investigation and defense of any claims or suits arising from the ownership, operation, occupancy or use of the Project; PROVIDED that nothing contained in this paragraph (c) shall be construed as imposing on the Lessor any duty to investigate or defend any such claims or suits. The Lessee shall comply and shall cause all Persons using, operating or occupying the Project to comply with all Insurance Requirements and Legal Requirements applicable to the Project, to the Lessee or such Person in connection with such Person's use, operation or occupancy of the Project (as the case may be) and to the acquiring, titling, registering, leasing, insuring, using, occupying, operating and disposing of the Project or any part thereof, and the licensing of operators thereof.

(d) The Lessor or Assignee, or any authorized representative of either, may during reasonable business hours and upon reasonable prior notice from time to time inspect the Project and deeds, registration certificates, certificates of title and related documents, including as to Environmental Matters, covering the Project wherever the same may be located, but neither the

Lessor nor Assignee shall have any duty to make any such inspection.

(e) The Lessee shall not, without the prior written consent of the Lessor, permit, or suffer to exist, any Lien upon the Project, including mechanics' liens or create any Lien upon the Premises, other than Permitted Liens or Liens which are subject to a Permitted Contest, nor may it assign any right or interest herein or in the Project. The Lessee shall not relinquish possession of the Project or any part thereof, except to the Operator, the General Contractor and to any other contractor for use in performing work on the Project for the Lessee

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pursuant to and in accordance with the Project Contracts; PROVIDED that such relinquishment of possession shall in no way affect the obligations of the Lessee or the rights of the Lessor hereunder and with respect to the Project. The Lessee may sublease the Project; PROVIDED that (A) the terms of the instrument of sublease and the identity of the sublessee shall be subject to the prior written approval of the Lessor and Assignee, which approval shall not be unreasonably withheld or delayed, (B) each such sublease shall expressly be made subject and subordinate to the provisions hereof and shall, at the sole option of the Lessor and Assignee, by its terms be subject to termination upon the termination for any reason of this Lease, (C) no such sublease shall modify or limit any right or power of the Lessor or Assignee hereunder or affect or reduce any obligation of the Lessee hereunder, and all such obligations shall continue in full force and effect as obligations of a principal and not of a guarantor or surety, as though no such subletting had been made, and (D) any such sublease made otherwise than as expressly permitted by this paragraph (e) shall be void and of no force and effect. As additional security to the Lessor for the performance of the Lessee's obligations under this Lease, the Lessee hereby assigns to the Lessor all of its right, title and interest in and to all subleases permitted hereby and agrees to cause any sublessee to enter into attornment agreements with the Lessor as the Lessor shall request. The Lessor shall have the present and continuing right to collect and enjoy all rents and other sums of money payable under any such sublease, and the Lessee hereby irrevocably assigns such rents and other sums to the Lessor for the benefit and protection of the Lessor; PROVIDED that, unless a Potential Default, Event of Default, Event of Loss, Taking or Termination Event shall have occurred and be continuing hereunder, the Lessee shall be entitled to collect and enjoy such rents and other sums. The Lessee shall, within thirty (30) days after the execution of any such sublease, deliver a conformed copy thereof to the Lessor. Nothing contained in this Lease shall be construed as constituting the consent or request of the Lessor, express or implied, to or for the performance by any contractor, laborer, materialman or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Project or any part thereof. Notice is hereby given that the Lessor will not be liable for any labor, services or materials furnished or to be furnished to the Lessee, or to anyone holding the Project or any part thereof through or under the Lessee, and that no mechanics' or other liens for any such labor, services or materials shall attach to or affect the interest of the Lessor in and to the Project.

(f) If any Lien or charge of any kind or any judgment, decree or order of any court or other Governmental Authority (including, without limitation, any state or local tax lien affecting the Project), whether or not valid, shall be asserted or entered which would interfere with the due and timely payment of any sum payable or the exercise of any of the rights or the performance of any of the duties or responsibilities under this Lease, the Lessee shall, upon obtaining knowledge thereof or upon receipt of notice to that effect from the Lessor, take such action to prevent or terminate such interference.

(g) So long as this Lease is in effect or thereafter if the Lessee remains as party to any Project Contract as a result of its failure to assign to the Lessor (or its designated purchaser) all right, title and interest of the Lessee in and to such Project Contract pursuant to the terms of this Lease, the Lessee shall not create, incur, assume or permit to exist any Lien upon the Lessee's rights or obligations with respect to any Project Contract (other than the Lien of the Pledge Agreement or any Permitted Lien), or sell or assign the Lessee's interest in any Project Contract, other than as permitted pursuant to a Financing Arrangement and the Pledge

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Agreement. The Lessee agrees that without the prior written consent of the Lessor and Assignee, no amendment, modification, supplement or restatement shall be made to any Project Contract, nor shall any Project Contract be terminated or replaced by a substitute agreement, nor shall the Lessee grant or request any waiver pursuant to any Project Contract other than (i) change orders under the EPC Contract in the manner and to the extent permitted under the Agreement for Lease, (ii) the termination of the EPC Contract upon making arrangements for a replacement construction contract, (iii) the termination of the O&M Agreement upon making arrangements for replacement operating and maintenance services, (iv) the replacement of the O&M Agreement by any Replacement O&M Agreement, in the manner and to the extent permitted under paragraph (ii)(n) of Section 2 hereof, and (v) any amendment, modification, supplement, restatement consent or waiver which could not reasonably be expected to result, directly or indirectly, in a Material Adverse Effect.

(h) The Project shall be maintained and operated solely as contemplated by the Project Contracts. The Lessee shall at its own expense take all actions as may from time to time be necessary so that neither the Lessor, Assignee nor any of their Affiliates will, solely as a result of entering into this Lease or any other document contemplated hereby or entered into in connection herewith or the transactions contemplated hereby or thereby (including, without limitation, the acquisition, operation, leasing, ownership or financing of the Project (or any part thereof) or the delivery of electricity) be deemed to be, or be subject to regulation as, a public utility, an electric utility or a public utility holding company under any Legal Requirement, and the Lessee shall promptly and duly prepare and, if necessary, execute and file, and prepare for execution and filing by the Lessor, Assignee or any Affiliate thereof, such notices, applications and other documents as shall be necessary so that the Lessor, Assignee or any such Affiliate, as the case may be, shall be free of all such regulation. The Lessor, Assignee or any Affiliate thereof shall cooperate with the Lessee with respect to all actions of the Lessee required by this paragraph (h).

#### SECTION 9. MAINTENANCE, IMPROVEMENT AND REPAIR OF THE PROJECT.

(a) Upon the request of the Lessee, the Lessor will, so long as no Event of Default shall have occurred and be continuing, assign or otherwise make available to the Lessee any and all rights the Lessor may have under any vendor's or manufacturer's warranties or undertakings with respect to any equipment constituting a part of the Project.

(b) The Lessee shall pay all costs, expenses, fees and charges incurred in connection with the ownership, use, operation or occupancy of the Project. Except as otherwise provided in Section 15, the Lessee shall at all times, at its own expense, and subject to reasonable wear and tear, maintain or cause the Operator to maintain the Project as contemplated by, and during the term of, the Project Contracts. The Lessee hereby agrees to indemnify and hold the Lessor and Assignee harmless from and against all costs, expenses, claims, losses, damages, fines or penalties, including reasonable counsel fees, arising out of or due to the Lessee's failure to fulfill its obligations under this paragraph (b).

(c) The Lessee shall pay and discharge: (i) all taxes, assessments, levies, fees, water and sewer rents and charges, and all other governmental charges, general and special,

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ordinary and extraordinary, foreseen and unforeseen, which are, at any time, imposed or levied upon or assessed against (A) the Project, (B) any Basic Rent, any Additional Rent or other sum payable hereunder or (C) this Lease, the leasehold estate hereby created, or which arises in respect of the ownership, operation, occupancy, possession or use of the Project; (ii) all gross receipts or similar taxes (i.e., taxes based upon gross income which fail to take into account all customary deductions (e.g., ordinary operating expenses, depreciation and interest) relating to the Project) imposed or levied upon, assessed against or measured by any Basic Rent or any Additional Rent or other sum payable hereunder and all New York Unincorporated Business Tax owing by the Lessor; (iii) all sales, value added, use and similar taxes at any time levied, assessed or payable on account of the acquisition, leasing or use of the Project; and (iv) all charges of utilities and communications services serving the Project. Notwithstanding the previous sentence, the Lessee shall not be required to pay any franchise, estate, inheritance, income or similar tax of the Lessor or any of its Affiliates (other than any tax referred to in clause (ii) above) unless such tax is imposed, levied or assessed in substitution for any other tax, assessment, charge or levy which the Lessee is required to pay

pursuant to this paragraph (c); PROVIDED, HOWEVER, that, if at any time during the term of this Lease, the method of taxation shall be such that there shall be levied, assessed or imposed on the Lessor a capital levy or other tax directly on the rents received therefrom, or upon the value of the Project or any present or any future improvement or improvements on the Project, then all such taxes, assessments, levies or charges or the part thereof so measured or based, shall be payable by the Lessee, and the Lessee shall pay and discharge the same as herein provided. The Lessee will furnish to the Lessor, promptly after demand therefor, proof of payment of all items referred to above which are payable by the Lessee. If any such assessments may legally be paid in installments, the Lessee may pay such assessment in installments. The Lessee will pay and discharge, or cause to be paid and discharged, all taxes, assessments and governmental charges or levies imposed upon it or its income or properties, prior to the date on which penalties attach thereto, except to the extent that any such tax, assessment, governmental charge or levy is the subject of a Permitted Contest. The Lessor shall cooperate in good faith with the Lessee with respect to all matters described in this paragraph (c). Notwithstanding anything contained herein to the contrary, this paragraph (c) is not intended to increase the Lessee's obligations to pay any tax under this Lease beyond those taxes for which the Lessee is obligated to indemnify the Lessor or any other Indemnified Person under the provisions of paragraph (b) of Section 11 hereof. In addition, any refund of local real estate taxes payable to the Lessor with respect to the Project shall be promptly paid over to the Lessee.

(d) So long as no Event of Default, Event of Loss, Taking or Termination Event shall have occurred and be continuing, the Lessee may, at its expense, make or permit additions to and alterations to the Project; PROVIDED that the Lessee has obtained the prior approval of the Lessor and Assignee that during construction and upon completion of such additions or alterations (i) neither the fair market value of the Project shall be lessened thereby nor the condition of the Project impaired, below the value, utility or condition thereof immediately prior to such action (assuming the Project was then of a condition and repair required to be maintained pursuant to paragraph (b) of Section 9 hereof), (ii) such work shall be completed in a good and workmanlike manner in accordance with generally accepted and prudent engineering and construction practices and in compliance with all applicable Legal Requirements and Insurance Requirements and (iii) at all times the Project will be capable of delivering electricity at or above the level of its capability prior to the undertaking of such

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additions or alterations and will continue to be able to fully perform under (without any default or excuse to performance) all Project Contracts and this Lease.

(e) The Lessee agrees to, or to cause the Operator to, maintain at the Project at all times the necessary equipment in such condition so as to enable the Project to be operated and maintained in accordance with generally accepted and prudent industry practices and any other standards required by the Project Contracts and this Lease. The Lessee shall obtain or cause to be obtained in a timely manner and maintain or cause to be maintained in full force and effect all Governmental Actions required for the ownership, construction, leasing, operation and maintenance of the Project in accordance with and as contemplated by the Project Contracts and this Lease and as otherwise necessary to perform its obligations under the Project Contracts and will promptly upon the request of the Lessor or Assignee provide a copy of each such Governmental Action to the Lessor and Assignee. The Lessee shall obtain and maintain, or cause to be obtained and maintained, all patents, licenses and proprietary rights and technology necessary in connection with the construction, operation and maintenance of the Project.

(f) The Lessee shall give notice to the Lessor and each Assignee promptly upon the receipt of any notices from any party to any Project Contract that (i) such party is amending, modifying or waiving or has proposed to amend, modify or waive any term of any Project Contract, (ii) such party is commencing or proposes to commence any dispute resolution procedure under the terms of any Project Contract, (iii) such party is terminating or has proposed to terminate any Project Contract, (iv) a default or a force majeure event has occurred under any Project Contract or any Person has alleged that a default or a force majeure event has occurred under any Project Contract, or (v) there are claims for damages existing as a result of the Lessee's performance of or its failure to perform any of its obligations under any Project Contract.

#### SECTION 10. INSURANCE.

(a) Insurance pursuant to the Project Contracts. The Lessee shall

maintain or cause to be maintained in full force and effect at all times insurance required by the terms of the Project Contracts.

(b) Insurance by the Lessee.

(i) The Lessee shall procure (or cause to be procured) at its own cost and expense and maintain (or cause to be maintained) in full force and effect at all times on and after the Effective Date (except with respect to the physical damage described in clause (ii) below), and continuing throughout the term of this Lease insurance policies with responsible insurance companies with a Best Insurance Reports rating of "A-" or better and a financial size category of "X" or higher, or if not rated by Best, an S&P claims paying ability rating of BBB+ or higher, or, if not rated by either of the foregoing, the Lessee's insurance companies shall be of substantially equivalent financial strength and creditworthiness of insurance companies that maintain such ratings (or such other company acceptable to the Lessor and each Assignee), with such deductibles as are approved by the Lessor and each Assignee, and with such limits and coverage as is

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consistent with prudent industry practices, but in no event less than the limits and coverage provisions set forth below:

- (1) Workers' Compensation Insurance. Workers' compensation insurance, if the Lessee has any employees, in accordance with and as required under the laws of the State of New Hampshire.
- (2) Employer's Liability Insurance. Employer's liability insurance, if the Lessee has any employees, providing compensation for occupational diseases and for injuries sustained by or death resulting to employees of the Lessee as required by law, including the laws of each state wherein any work is performed under the Lease and where employment contracts of such employees were made, including employer's liability insurance coverage with a \$2,000,000 minimum limit per accident.
- (3) General Liability Insurance. Liability insurance on an occurrence (or AEGIS or EIM claims-made form) basis against claims for bodily injury (including death) and property damage. Such insurance shall provide coverage for products-completed operations, contractual liability, explosion, collapse and underground coverage, broad form property damage, personal injury insurance, and hostile fire exception to the pollution liability exclusion with a \$1,000,000 minimum limit per occurrence and \$2,000,000 annual aggregate for combined bodily injury and property damage.
- (4) Automobile Liability Insurance. Automobile liability insurance against claims for bodily injury (including death) and property damage covering all owned, leased non-owned and hired motor vehicles, including loading and unloading, with a \$1,000,000 minimum limit per occurrence for combined bodily injury and property damage and containing appropriate no-fault insurance provisions wherever applicable.
- (5) Excess Insurance. Excess liability insurance on an occurrence or claims-made basis covering claims in excess of the underlying insurance described in the foregoing subsections (2), (3) and (4), with a \$100,000,000 minimum limit per occurrence; PROVIDED, HOWEVER, that in the event the available limit of liability is less than \$50,000,000 due to claims against such excess liability insurance, the Lessee shall purchase additional coverage so that the available limit of liability under such excess liability insurance is not less than \$100,000,000. Notwithstanding the foregoing, the Lessee shall be entitled to maintain the insurance with respect to this subsection (5) with EIM, provided that EIM maintains a Best Insurance Reports rating of "A-" or better and a financial size category of "IX" or higher.

The amounts of insurance required in the foregoing subsections (2), (3), (4) and this subsection (5) may be satisfied by the Lessee purchasing coverage in the amounts specified or by

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any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

(ii) The Lessee shall procure (or cause to be procured) at its own cost and expense and maintain (or cause to be maintained) in full force and effect at all times on and after the Effective Date and continuing throughout the term of this Lease insurance policies with responsible insurance companies with a Best Insurance Reports rating of "A-" or better and a financial size category of "X" or higher, or if not rated by Best, an S&P's claims paying ability rating of BBB+ or higher, or, if not rated by either of the foregoing, the Lessee's insurance companies shall be of substantially equivalent financial strength and creditworthiness of insurance companies that maintain such ratings (or such other company acceptable to the Lessor and Assignee), with such limits and coverage provisions sufficient to satisfy the requirements set forth in each of the Project Contracts, but in no event less than the limits and coverage provisions set forth below:

Physical Damage Insurance. Property damage insurance on an "all risk" basis, boiler and machinery insurance on a comprehensive basis (covering all production machinery, including but not limited to pressure vessels, electrical turbines, generators, transformers and other related equipment, motors, air tanks, boilers, machinery, pressure piping or any other similar objects) including coverage against damage or loss caused by earth movement (including, but not limited to, earthquake, landslide, subsidence and volcanic eruption) fire, lightning and flood and providing coverage for (1) the Project in an amount equal to one hundred percent (100%) of the "full insurable value" of the Project, (2) transit including ocean marine transit, if applicable, with sub-limits of \$5,000,000, (3) gas, steam and electrical transmission lines along with related equipment for which the Lessee has an insurable interest and (4) engineering and other consulting costs up to a sublimit of \$250,000, and permit fees directly incurred in order to repair or replace damaged insured property in a minimum amount of \$1,000,000. For purposes of this Section 10(b)(ii), "full insurable value" shall mean the full replacement value of the Project, including any improvements, equipment, spare parts, fuel and supplies, without deduction for physical depreciation and/or obsolescence. All such insurance may be subject to such reasonable and customary deductibles as is consistent with prudent industry practices after accounting for the size and value of the Project. Such insurance shall (1) not include any coinsurance provision, (2) provide for increased cost of construction and loss to undamaged property as the result of enforcement of building laws or ordinances with sub-limits not less than 10% of the "full insurable value" of the Project, and (3) include debris removal with sub-limits not less than \$1,000,000 or 15% of the loss, whichever is greater. The earth movement and flood coverage may be insured with a sub-limit not less than \$100,000,000. The property damage coverage shall not contain an exclusion for freezing, mechanical breakdown, loss or damage covered under any guaranty or warranty, or resultant damage caused by faulty workmanship, design or materials.

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If the insurance company providing the physical damage insurance is different from the insurance company providing the boiler & machinery insurance required in this Section 10, then a joint loss agreement between such companies will be required and included as part of the respective policies.

(iii) Notwithstanding the foregoing provisions of paragraph (a) and (b) above, in the event (i) the Lessee is unable to procure, or cause to be procured, the renewal of any insurance policies in effect on the date of this Lease and (ii) the Lessee is unable to procure, or cause to be procured, in the Lessee's judgment, replacement insurance policies with insurance companies that satisfy the Best Insurance Reports rating and financial size category standards described in paragraphs (a) and (b)

above, the Lessee shall be permitted to procure, or cause to be procured, replacement insurance policies for up to twenty-five percent (25%) of the aggregate required limits of such insurance being replaced, with insurance companies with a Best Insurance Reports rating below "A-" and a financial size category below "X".

(iv) Endorsements. All policies of insurance required by this Section 10 shall provide for waivers of subrogation by the insurers in favor of the Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor and its shareholders, officers and directors, the limited partners of the Lessor and Assignee and their respective officers, directors, members, trustees and employees (and such other Persons as may be required by the Project Contracts).

All policies of liability insurance required to be maintained by the Lessee under paragraphs (b)(i)(3), (4) and (5) of this Section 10 shall be endorsed as follows:

- (1) To provide a severability of interest or cross liability clause;
- (2) Such that the insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by the Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor and its shareholders, officers and directors, the limited partners of the Lessor or Assignee;
- (3) To name Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor and its shareholders, officers and directors, the limited partners of the Lessor and Assignee and their respective officers, directors, members, trustees and employees (and such other Persons as may be required by the Project Contracts) as additional insureds; and
- (4) To name the Lessor as a named insured.

All policies of insurance required to be maintained by the Lessee under paragraph (b)(ii) of this Section 10 shall name the Lessor as a named insured and name Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor and its shareholders, officers and directors, the limited partners of the Lessor and Assignee and its respective officers and employees (and such other Persons as may be required by the Project Contracts) as additional insureds.

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(v) Waiver of Subrogation. The Lessee hereby waives any and all claims for recovery from the Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor and its shareholders, officers and directors, the limited partners of the Lessor and Assignee and their respective officers, directors, members, trustees and employees for any and all loss or damage covered by any of the insurance policies to be maintained under this Lease to the extent that such loss or damage is recovered under any such policy. Inasmuch as the foregoing waiver will preclude the assignment of any such claim to the extent of such recovery, by subrogation (or otherwise), to an insurance company (or other Person), the Lessee shall give written notice of the terms of such waiver to each insurance company which has issued, or which may issue in the future, any such policy of insurance (if such notice is required by the insurance policy) and shall cause each such insurance policy to be properly endorsed by the issuer thereof, or to otherwise contain one or more provisions that prevent the invalidation of the insurance coverage provided thereunder by reason of such waiver.

(c) Amendment of Requirements. The Lessor, with the consent of Assignee, may at any time amend the requirements and approved insurance companies of this Section 10, due to (i) new information not known by the Lessor or Assignee on the date of this Lease or (ii) changed circumstances after the date of this Lease which in the reasonable judgment of the Lessor or Assignee either renders such coverage materially inadequate or materially reduces the financial ability of the approved insurance companies to pay claims.

(d) Additional Requirements.

(i) The Lessee shall promptly notify the Lessor and Assignee of any loss in excess of \$100,000 covered by any insurance maintained pursuant to paragraph (b)(ii) of this Section 10.



(ii) All policies of insurance required to be maintained pursuant to paragraph (b)(ii) of this Section 10 shall provide that the Collateral Trustee shall be the lenders' loss payee thereunder and that the proceeds of such policies shall be payable to the Operating Account pursuant to a standard first mortgage endorsement substantially equivalent to the Lenders Loss Payable Endorsement 438BFU or ISO endorsement CP12181091, without contribution. The Lessor and Assignee shall have the right to join the Lessee in adjusting any loss in excess of \$100,000. All policies (other than in respect to liability or workers compensation insurance) shall insure the interests of the Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor, the limited partners of the Lessor and Assignee regardless of any breach or violation by the Lessee or Lessor of any warranties, declarations or conditions contained in such policies, any action or inaction of the Lessee or the Lessor or others, or any foreclosure relating to the Project or any change in ownership of all or any portion of the Project.

(iii) A loss under any insurance required to be carried under paragraph (b)(ii) of this Section 10 shall be adjusted with the insurance companies, including the filing in a timely manner of appropriate proceedings by the Lessee, subject to the approval of the Lessor and Assignee if such loss is in excess of \$100,000. In addition the Lessee may in its reasonable judgment consent to the settlement of any loss; PROVIDED that, in the event

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that the amount of the loss exceeds \$100,000, the terms of such settlement shall be consented to by the Lessor and Assignee.

(iv) All policies of insurance required to be maintained pursuant to paragraph (b) of this Section 10 shall be endorsed so that if at any time they should be canceled, or coverage shall be reduced in a manner which affects the interests of the Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor, the limited partners of the Lessor or Assignee, such cancellation or reductions shall not be effective as to the Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor, officers and directors, the limited partners of the Lessor and Assignee for 60 days (except for non-payment of any premium, which shall be for 10 days), after receipt by the Lessor and the Assignee of written notice from such insurer of such cancellation or reduction.

(v) The Lessee may, at its own cost and expense, prosecute any claim against any insurer or contest any settlement proposed by any insurer, and the Lessee may bring any such prosecution or contest in the name of the Lessor, the Lessee, or both, and the Lessor will join therein at the Lessee's request, provided that the Lessee shall indemnify the Lessor against any losses, costs or expenses (including reasonable attorney's fees) which the Lessor may incur in connection with such prosecution or contest.

(e) Evidence of Insurance. On the date of this Lease and on an annual basis at least two days prior to each policy anniversary, the Lessee shall furnish the Lessor and Assignee with (1) approved certification of all insurance required under this Section 10 and (2) a schedule of the insurance policies held by or for the benefit of the Lessee and required to be in force by the provisions of paragraph (b) of this Section 10. Such certification shall be executed by each insurer or by an authorized representative of each insurer where it is not practical for such insurer to execute the certificate itself. Such certification shall identify underwriters, the type of insurance, the insurance limits and the policy term and shall specifically list the special provisions enumerated for such insurance required by paragraph (b) of this Section 10. Upon request, the Lessee will promptly furnish the Lessor and Assignee with copies of all insurance policies, binders and cover notes or other evidence of such insurance relating to the insurance required to be maintained by the Lessee. The schedule of insurance shall include, to the extent such information is not included on the insurance certificates, the name of the insurance company, policy number, type of insurance, major limits of liability and expiration date of the insurance policies.

(f) Reports. Upon the request of the Lessor, concurrently with the furnishing of the certification referred to in paragraph (e) above, the Lessee shall furnish the Lessor and Assignee with a report of an independent broker, signed by an officer of the broker, stating that in the opinion of such broker, the insurance then carried or to be renewed is in accordance with the terms of paragraph (b) of this Section 10 and attaching an updated copy of the schedule of insurance required by paragraph (e) above. In addition, the Lessee will

advise the Lessor and Assignee in writing promptly of any default in the payment of any premium and of any other act or omission on the part of the Lessee which may invalidate or render unenforceable, in whole or in part, any insurance being maintained by the Lessee pursuant to paragraph (b) of this Section 10.

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(g) Failure to Maintain Insurance. In the event the Lessee fails to maintain the full insurance coverage required by paragraph (b) of this Section 10, the Lessor or Assignee, upon 30 days' prior notice (unless the aforementioned insurance would lapse within such period, in which event notice should be given as soon as reasonably possible) to the Lessee of any such failure, may (but shall not be obligated to) take out the required policies of insurance and pay the premiums on the same.

(h) No Duty of the Lessor or Assignee to Verify or Review. No provision of this Section 10, or any provision of this Lease or any Project Contract, shall impose on the Lessor or Assignee any duty or obligation to verify the existence or adequacy of the insurance coverage maintained by the Lessee, nor shall the Lessor or Assignee be responsible for any representations or warranties made by or on behalf of the Lessee to any insurance company or underwriter. Any failure on the part of the Lessor or Assignee to pursue or obtain the evidence of insurance required by this Lease from the Lessee and/or failure of the Lessor or the Assignee to point out any non-compliance of such evidence of insurance shall not constitute a waiver of any of the insurance requirements in this Lease.

(i) Application of Insurance Proceeds for Loss or Taking. It is agreed that any insurance payments received as the result of the occurrence of (i) any Event of Loss, or (ii) any event of Taking described in paragraph (a) of Section 16 hereof, shall be paid to the Operating Account and disposed of as set forth in paragraph (c) of Section 15 hereof.

(j) Application of Insurance Proceeds for Other than Loss or Taking. The insurance proceeds of any property loss to the Project or any event of Taking described in paragraph (b) of Section 16 hereof will be held in the Operating Account and applied in payment (or to reimburse the Lessee) for repairs or replacement in accordance with the terms of paragraph (b) of Section 15 hereof. The Lessee shall be entitled, subject to its compliance with the immediately succeeding sentence, (i) to receive the amounts so deposited against certificates, invoices or bills reasonably satisfactory to the Lessor, delivered to the Lessor from time to time as such work or repair progresses, and (ii) to direct the investment of the amounts so deposited as provided in paragraph (k) of this Section 10. To the extent that the Lessor reasonably estimates that the cost of such work or repair shall exceed the amount of proceeds, the Lessee shall make adequate provisions for the payment thereof, which provisions shall be reasonably acceptable to the Lessor and Assignee (as to the terms of the commitment and the creditworthiness of the funding party). Any moneys remaining in the aforesaid account after final payment for repairs has been made shall be paid to the Lessee.

(k) Investment. The Lessor, at the Lessee's instruction, shall invest the amounts deposited with the Lessor pursuant to paragraph (j) of this Section 10 in any investments permitted under a Financing Arrangement. Such investments shall mature in such amounts and on such dates so as to provide that amounts shall be available on the draw dates sufficient to pay the amounts requested by and due to the Lessee. Any interest earned on investments of such funds shall be paid to the Lessee. The Lessor shall not be liable for any loss resulting from the liquidation of each and every such investment and the Lessee shall bear the risk of such loss, if any.

(l) Application. Any amount referred to in paragraphs (i), (j) or (k) of this

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Section 10 which is payable to the Lessee shall not be paid to the Lessee or, if it has been previously paid to the Lessee, shall not be retained by the Lessee, if at any time of such payment a Potential Default or an Event of Default, Event of Loss, Taking or Termination Event shall have occurred and be continuing. In such event, all such amounts shall be paid to and held by the Lessor as security for the obligations of the Lessee hereunder or, at the Lessor's option, applied by the Lessor toward payment of any of such obligations of the Lessee at the

time due hereunder as the Lessor may elect. At such time as there shall not be continuing any Potential Default, Event of Default, Event of Loss, Taking or Termination Event, all such amounts at the time held by the Lessor in excess of the amount, if any, which the Lessor shall have elected to apply as above provided shall be paid to the Lessee.

(m) "Claims Made" Policies for Certain Types of Insurance. If any liability insurance required under the provisions of this Section 10 is allowed to be written on a "claims made" basis, then such insurance shall include the following:

- (i) The retroactive date (as such term is specified in each of such policies) shall be no later than the date of this Lease; and
- (ii) each time any policy written on a "claims made" basis is not renewed or the retroactive date of such policy is to be changed, the Lessee shall obtain or cause to be obtained for each such policy or policies the broadest extended reporting period coverage, or "tail" reasonably available in the commercial insurance market for each such policy or policies, as determined in the reasonable judgment of the Lessor and Assignee, but in no event less than two years after the expiration of such policy or policies.

(n) Use or Operation of the Project. The Lessee covenants that it will not use, occupy or operate the Project or permit the use, occupancy or operation of the Project at a time when the insurance required by this Section 10 is not in force.

(o) Environmental Impairment Liability Insurance. Within ten (10) days following the date of this Lease, the Lessee shall provide the Lessor with (i) a binder of coverage demonstrating that the Lessee has obtained an environmental impairment liability insurance policy which contains the following terms and conditions: (A) coverage for third-party claims for on-site bodily injury and property damage, (B) coverage for third-party claims for off-site investigation and remediation costs, if deemed property damage or environmental damage under the policy, (C) coverage for third-party claims for off-site bodily injury and property damage, (D) coverage for onsite investigation and remediation, (E) coverage for legal defense costs, (F) policy limit in an amount not less than \$10,000,000, and (G) a self-insured retention not to exceed \$100,000 per claim; and (ii) an Officer's Certificate of the Lessee or the Guarantor setting forth such insurance and stating that it is in full force and effect and that all premiums then due thereon have been paid.

#### SECTION 11. INDEMNITIES.

(a) The Lessee shall indemnify, protect, defend and hold harmless the Lessor, each general and limited partner of the Lessor, Merrill, Merrill Lynch, Merrill Leasing, each

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Assignee, and their respective assigns and successors, and each Affiliate of each of them, and their respective officers, directors, trustees, incorporators, shareholders, partners (general and limited, including, without limitation, the general and limited partners of the Lessor), employees, agents and servants (each of the foregoing an "INDEMNIFIED PERSON") from and against any and all liabilities (including, without limitation, Environmental Damages and strict liability in tort), losses, obligations, claims (including, without limitation, Environmental Damages and strict liability in tort), damages, penalties, causes of action, suits, costs and expenses (including, without limitation, attorneys', experts', consultants' and accountants' fees and expenses) or judgments of any nature relating to or in any way arising out of:

(i) the purchasing, ordering, delivery, acquisition, construction, title on acquisition, rejection, installation, possession, titling, retitling, registration, re-registration, custody by the Lessee of title and registration documents, ownership, fee interest in the Premises, use, non-use, misuse, financing, operation, transportation, repair or control of the Project or any part thereof, accident, injury, death or property damage on or about the Project and the Project Contracts, (A) except to the extent that such costs are included in the Acquisition Cost or Adjusted Acquisition Cost of the Project, (B) except for any general administrative expenses of the Lessor and (C) except that this indemnity shall not increase any payment required to be made by the Lessee pursuant to paragraph (b)(iii)(A) or (c)(iii)(A) of Section 12 of this Lease; PROVIDED, THAT, this paragraph (a) of Section 11 shall not require indemnification for any tax, regardless of whether indemnification for any tax

is required under paragraph (b) of this Section 11;

(ii) the assertion of any claim or demand based upon any infringement or alleged infringement of any patent or other right, by or in respect of the Project or any part thereof; PROVIDED, HOWEVER, that, upon request of the Lessee, the Lessor will make available to the Lessee the Lessor's rights under any similar indemnification arising from any manufacturer's or vendor's warranties or undertakings with respect to any equipment constituting a part of the Project;

(iii) any violation, or alleged violation, by the Lessee of this Lease or the Project Contracts or of any contracts or agreements to which the Lessee is a party or by which it is bound or of any laws, rules, regulations, orders, writs, injunctions, decrees, consents, approvals, exemptions, authorizations, licenses and withholdings of objection, of any governmental or public body or authority and all other Legal Requirements applicable to the Project;

(iv) any and all Environmental Damages relating to or in any way arising out of the Project, including, without limitation:

(A) the violation or alleged violation of or compliance or non-compliance with any Environmental Requirements (i) in connection with the ownership or operation of the Project, and (ii) by any prior owner or operator of the Premises in connection with the ownership or operation of the Premises;

(B) the Release or threatened Release at, to or from any location of any Contaminants, or Remedial Action or corrective action (as the latter term is used

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in Section 3004(u), 3004(v), and 3008(h) of the Resource Conservation and Recovery Act or any equivalent state, local or foreign law) to address any Contaminants, (i) generated, treated, recycled, stored, processed, used or disposed by or on behalf of the Lessee at or in connection with the Project, (ii) generated, treated, recycled, stored, processed, used or disposed by or on behalf of any prior owner or operator of the Premises in connection with the ownership or operation of the Premises, (iii) transported by or on behalf of the Lessee or any other Person to or from the Project for treatment, recycling, processing, use or disposal at any location, or (iv) removed by any Person from any portion of the Project; and

(C) the presence of any Contaminant at, in, on or under the Project;

(D) the failure to report, disclose or remediate any of the foregoing or to comply with any applicable consent order or voluntary agreement with any Governmental Authority relating to any of the foregoing; and

(E) any allegations of any of the foregoing;

(v) any breach of a representation, warranty or covenant made herein or which is contained in any certificate, document or financial or other statement furnished by or on behalf of the Lessee under or in connection with this Lease;

(vi) any default by the Lessee in the performance or observance of any term, covenant, condition or obligation contained in this Lease; and

(vii) the Project Contracts.

(b) The Lessee agrees to indemnify, protect, defend and hold harmless each Indemnified Person from and against all U.S. Federal, state, county, municipal, foreign or other fees and taxes of whatsoever nature, including, but not limited to, license, qualification, franchise, rental, withholding, sales, use, net income, gross income, gross receipts, ad valorem, business, personal property, real estate, value added, excise, motor vehicle, occupation fees and stamp or other taxes or tolls of any nature whatsoever, and penalties and interest thereon (all of which shall be deemed to be taxes), assessed, levied against or payable by the Lessor or any Indemnified Person, with respect to the Project or the acquisition, purchase, sale, rental, use, operation, control or ownership of the Project (including, without limitation, any claim by any Governmental Authority for transfer tax, transfer gains tax, mortgage recording tax, filing or other similar taxes or fees in connection with the acquisition of the Project

by the Lessor or otherwise in connection with this Lease) or measured in any way by the value thereof or by the business of, investment in, or ownership by the Lessor with respect thereto; PROVIDED, HOWEVER, that this indemnity shall not apply to (i) any U.S. withholding tax imposed because the recipient or legal or beneficial owner of the amount being taxed is not a U.S. Person within the meaning of Section 7701 of U.S. Internal Revenue Code of 1986 by reason of the failure by an Indemnified Person to comply with any withholding certification or other procedure required by applicable law as a precondition to any exemption from, or reduction of, such tax to which such Indemnified Person would be legally entitled and eligible to make such certification or comply with such procedure, (ii) as long as no Event of Default shall have occurred and be continuing,

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taxes that result solely from events (other than the payments of amounts described in this Lease) that occur and relate to periods after the expiration or earlier termination of this Lease as provided under Sections 12, 13 and 14 hereof, (iii) any taxes or increase in taxes imposed on an Indemnified Person as a result of such Indemnified Person not being a citizen or resident of, or not being organized under the laws of, the United States or any political subdivision thereof, or having had a permanent establishment or otherwise been engaged in a trade or business outside the United States, PROVIDED, that such tax or increase in tax would not have been imposed had such Indemnified Person been a U.S. Person without a foreign permanent establishment or trade or business outside the United States, (iv) taxes that result from (a) any voluntary transfer by an Indemnified Person (including such Indemnified Person's voluntary imposition of a Lessor Lien) of any interest in or obligation of the Project or any part thereof or the Lessor or any interest arising under this Lease other than to which the Lessee consents or which is otherwise expressly permitted or contemplated by this Lease, the Agreement for Lease or any document contemplated thereby, or (b) from any voluntary transfer of any interest in an Indemnified Person or from any involuntary transfer of any of the foregoing interests in connection with any bankruptcy or other proceeding for the relief of debtors in which such Indemnified Person is the debtor or any foreclosure by a creditor of any Indemnified Person; PROVIDED, HOWEVER, that this exclusion (iv) shall not apply if any such transfer occurs at any time after an Event of Loss, Event of Default or Termination Event hereunder, or an Event of Default (as defined in the Agreement for Lease), Event of Project Termination (as defined in the Agreement for Lease), or Event of Loss (as defined in the Agreement for Lease) shall have occurred and is continuing, (v) taxes that have not been paid or credited and that are being contested in accordance with the provisions of Section 27 or 11(f) hereof, during the pendency of such contest, (vi) taxes (including, without limitation, taxes in the nature of interest, penalties, fines and additions to tax), payable as the result of an Indemnified Person's failure to file, in accordance with the appropriate filing procedures and on a timely basis, any tax reports, returns or statements (other than any such tax reports, returns or statements which the Lessee is required to file pursuant to the terms of this Lease), and (vii) Federal, state, local or other net income taxes imposed directly upon the Lessor or any Indemnified Person, and PROVIDED, FURTHER that, subject to clauses (i) through (vi) above, this indemnity shall apply to (1) such net income taxes imposed by a state or local government or other taxing authority thereof (A) as a result of the location or use of the Project within the jurisdiction of such government or taxing authority or (B) to the extent imposed in whole or in part by reason of a relationship or asserted relationship between such government or other taxing authority and the Project or the transactions contemplated herein, (2) such net income taxes to the extent imposed as a result of the inability to claim, or disallowance or other loss of deductions customarily allowed in computing net income (e.g., interest expense, financing, administrative, ordinary operating expenses and other fees and expenses), by reason of such Indemnified Person's relationship to the Project, to the extent, if any, that such circumstances described in clause (1) and (2) above shall have resulted in a net increase in the overall net income taxes of such Indemnified Person over the net income taxes that would have occurred without regard to such circumstances and, in each case to the extent such net income taxes (or benefit of a deduction as the case may be) would not have been imposed (a) had the Lessee been the titled owner of the Project under applicable state law and (b) had the Lessor made a secured loan to the Lessee corresponding to the characterization contemplated by Section 21 hereof, or (3) the Lessor for the New York Unincorporated Business Tax.

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(c) The Lessee shall forthwith upon demand, reimburse any Indemnified Person for any sum or sums expended with respect to any of the foregoing or, upon request from any Indemnified Person, shall pay such amounts directly. Any payment made to, or on behalf of, any Indemnified Person pursuant to this Section 11 shall be increased to such amount as will, after taking into account all taxes imposed with respect to the accrual or receipt of such payment (as the same may be increased pursuant to this sentence), equal the amount of the payment, reduced by the amount of any savings in such taxes actually realized by the Indemnified Person as a result of the payment or accrual of the amounts in respect of which the payment to or on behalf of the Indemnified Person hereunder is made. To the extent that the Lessee in fact indemnifies any Indemnified Person under the indemnity provisions of this Lease, the Lessee shall be subrogated to such Indemnified Person's rights in the affected transaction and shall have the exclusive right to determine the settlement of such indemnified claims therein. If any Indemnified Person shall actually realize a tax benefit as a result of the failure of the Lessee to be treated as the owner of the Project for Federal, state or local income tax purposes, which tax benefit has not previously been taken into account in computing the amount of the indemnity payable with respect to claims under Section 11(b) hereof, then an amount equal to such tax benefit shall reduce any amount that the Lessee is subsequently obligated to pay pursuant to Section 11(b) hereof. The determination of whether a tax benefit has actually been realized or whether such tax benefit has previously been taken into account by such Indemnified Person, shall be determined in good faith by such Indemnified Person.

(d) The indemnities and all exclusions to the tax indemnity and tax savings provisions contained in this Section 11 shall not be affected by any termination or expiration of this Lease.

(e) Notwithstanding any provisions of this Section 11 to the contrary, the Lessee shall not indemnify and hold harmless any Indemnified Person against any claims, liabilities or taxes to the extent arising from the gross negligence or willful misconduct of such Indemnified Person.

(f) Promptly after receipt by an Indemnified Person of notice of any claim, action, proceeding or suit against such Indemnified Person, the Lessor or such Indemnified Person will, if a claim for indemnification is to be made against the Lessee under this Section 11 with respect thereto, notify the Lessee in writing of such claim or the commencement of such action, proceeding or suit, but an omission so to notify will not relieve the Lessee from any liability which it may have to an Indemnified Person under this Section 11, except to the extent that any amount for which indemnity is required hereunder is a direct result of such failure to give notice. In case any such claim, action, proceeding or suit is brought against an Indemnified Person, and the Lessor or such Indemnified Person notifies the Lessee of the existence thereof, the Lessee will be entitled to participate in and, to the extent that it may wish, assume the defense thereof, with counsel selected by the Lessee and reasonably satisfactory to such Indemnified Person, it being understood that Bingham Dana LLP is reasonably acceptable for this purpose. The Indemnified Person will cooperate with the Lessee in such defense. After notice from the Lessee to an Indemnified Person of its election to assume the defense of any claim or action, the Lessee will not be liable to such Indemnified Person under this Section 11 for any legal or other expenses subsequently incurred by such Indemnified Person in connection with the defense thereof, unless incurred at the request or with the consent of the Lessee or unless the Lessee fails, in a timely manner, to engage such counsel reasonably satisfactory to such Indemnified Person; PROVIDED, that the Lessee shall not have the right to assume the defense thereof, to the extent that

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such Indemnified Person shall deliver to the Lessee a written notice waiving the benefits of the indemnification of such Indemnified Person provided by this Section 11 in connection with such claim, action, proceeding or suit and any other claim, action, proceeding or suit whose outcome will be controlled thereby. Notwithstanding the foregoing, if (i) any criminal proceeding is brought against an Indemnified Person who is an individual, (ii) the action threatens to restrain or adversely affect the conduct of the business of an Indemnified Person, excluding the business of the Lessor's ownership of the Project, or (iii) independent counsel to an Indemnified Person shall conclude that there may be defenses available to such Indemnified Person which are different from, or additional to, and may conflict with those available to the Lessee, the Lessee shall not have the right to assume the defense of any such action on behalf of the Indemnified Person if such Indemnified Person chooses to defend such action, and all reasonable costs, expenses and attorneys' fees incurred by the Indemnified Person in defending such action shall be borne by the Lessee; provided, that with respect to claims arising under clause (ii) or

(iii) of this sentence, the Lessee shall have the right, at the Lessee's cost and expense, to participate in the defense of any such action. Notwithstanding the assumption of its defense by the Lessee pursuant to this paragraph, any Indemnified Person shall have the right to employ separate counsel and to participate in its defense, but, except as set forth in the immediately preceding sentence, the fees and expenses of such counsel shall be borne by the Indemnified Person. In addition, the Lessee will not be liable in all events for any settlement of any claim, action, proceeding or suit unless the Lessee has consented thereto in writing (such consent not to be unreasonably withheld). Any decision by an Indemnified Person to employ its own counsel rather than counsel selected by the Lessee (whether or not at the Lessee's expense) shall in no way affect any rights of such Indemnified Person otherwise arising under this Lease.

#### SECTION 12. LESSEE'S RIGHT TO TERMINATE.

(a) So long as the Lessee can satisfy the Termination Covenants, the Lessee shall have the right, upon eighteen (18) months' irrevocable notice (the "TERMINATION NOTICE") to the Lessor (which notice shall indicate if the Lessee will cause the Guarantor to assume the outstanding indebtedness of the Lessor under its Financing Arrangements pursuant to the terms of paragraph (d) of this Section 12 at the end of the Initial Term), to terminate the lease of the Project as a whole (i) on the last day of the last month of the Initial Term or the Extended Term or (ii) on any Basic Rent Payment Date during the Renewal Term, by arranging, at its own cost and expense, for the sale of the Project in an arm's-length transaction on the date of termination and the indefeasible receipt by the Lessor of cash in an amount equal to the sale price of the Project (the "CASH PROCEEDS"). In the event the Lessee is unable to satisfy the Termination Covenants, the Lessee shall not terminate this Lease pursuant to this paragraph (a) unless the Lessee has obtained the prior written consent of the Lessor and Assignee to such termination of this Lease and the sale of the Project. In addition, if an Event of Default or Termination Event has occurred and is continuing, and, prior to the termination of this Lease pursuant to this paragraph (a), the Lessor arranges for the sale of the Project to a third party purchaser, the Termination Notice shall be invalidated and the Lessee shall no longer have the right to cause the termination of the lease of the Project and sale of the Project to its designee in accordance with the terms of this paragraph (a). At the time the Project is sold pursuant to this Section 12, the Lessor shall deliver the documents described in paragraph (i) of Section 29 hereof. In addition, (i) the Lessee shall assign to the purchaser, at no cost, all right, title and interest of the Lessee in, to and under all Governmental Actions and Intellectual Property Rights needed for the

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equipping, maintenance, operation or use of the Project and obtained and held by the Lessee at that time, (ii) the Lessee shall assign to the purchaser, at no cost, and the purchaser shall assume, all right, title and interest of the Lessee in, to and under the Project Contracts, and in the event any additional consent of any party to a Project Contract is required as a precondition thereunder to an assignment to any such non-foreclosure purchaser designated by the Lessee, to use its best efforts to obtain any such required consent to such proposed non-foreclosure assignment and assumption of the Project Contracts, and (iii) the Lessee shall assign to the purchaser, at no cost, all right, title and interest of the Lessee in, to and under all service agreements in existence at that time in connection with the equipping, maintenance, operation or use of the Project. In the event the Lessee fails to obtain any consents required in clause (ii) of the immediately preceding sentence, at the request of such purchaser, the Lessee shall agree to (1) at the expense of such purchaser, continue to perform under and maintain in full force and effect the Project Contracts and pay all sums received under the Project Contracts to such purchaser, (2) at the expense of such purchaser, and subject to the receipt of indemnification acceptable to the Lessee, take all actions requested by such purchaser with respect to such Project Contracts (including all actions with respect to the enforcement of the Lessee's rights and remedies under such Project Contracts), and (3) not amend, modify, supplement, waive a provision of, grant any consent under or terminate any such Project Contract without the prior written consent of such purchaser.

(b) In the event the Lessee exercises its right to terminate the lease of the Project pursuant to this Section 12 on the last day of the last month of the Initial Term or in the event a termination of the lease of the Project occurs pursuant to paragraph (a) of Section 14 hereof and the date on which such termination occurs is on or before the last day of the last month of the Initial Term and the Lessee chooses to effect a sale pursuant to this Section 12:

- (i) if the Cash Proceeds are greater than the Adjusted Acquisition Cost plus the Modified Call Premium, the Lessor shall pay to

the Lessee the amount by which such Cash Proceeds exceed the Adjusted Acquisition Cost plus the Modified Call Premium;

- (ii) if the Cash Proceeds are equal to or less than the Adjusted Acquisition Cost plus the Modified Call Premium, but greater than or equal to 27.06% of the Adjusted Acquisition Cost plus the Modified Call Premium, the Lessee shall pay to the Lessor an amount equal to (A) the Adjusted Acquisition Cost plus the Modified Call Premium less (B) the Cash Proceeds; and
- (iii) if the Cash Proceeds are less than 27.06% of the Adjusted Acquisition Cost plus the Modified Call Premium (or if there are no Cash Proceeds), the Lessee shall pay to the Lessor an amount equal to the sum of (A) 72.94% of the Adjusted Acquisition Cost and (B) the amount, if any, by which the residual value of the Project has been reduced by wear and tear in excess of that attributable to normal and proper use (the amount of such excess wear and tear to be such amount as the Lessor and the Lessee agree, or if no agreement is reached, the amount determined pursuant to the Appraisal Procedure).

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(c) In the event the Lessee exercises its right to terminate the lease of the Project pursuant to this Section 12 on the last day of the last month of the Extended Term or on any Basic Rent Payment Date during any Renewal Term or in the event a termination of the lease of the Project occurs pursuant to paragraph (a) of Section 14 hereof or the Lessee exercises its option under paragraph (e) of Section 13 to arrange for the Project to be sold and the date on which such termination occurs or such option is exercised is on or before the last day of the last month of the Extended Term or during any Renewal Term and the Lessee chooses to effect a sale pursuant to this Section 12:

- (i) if the Cash Proceeds are greater than the Adjusted Acquisition Cost, the Lessor shall pay to the Lessee the amount by which such Cash Proceeds exceed the Adjusted Acquisition Cost;
- (ii) if the Cash Proceeds are equal to or less than the Adjusted Acquisition Cost, but greater than or equal to the percentage of the Adjusted Acquisition Cost described in Exhibit H hereto and for the periods described therein, the Lessee shall pay to the Lessor an amount equal to (A) the Adjusted Acquisition Cost less (B) the Cash Proceeds; and
- (iii) if the Cash Proceeds are less than 33.13% of the Adjusted Acquisition Cost (or if there are no Cash Proceeds), the Lessee shall pay to the Lessor an amount equal to the sum of (A) 66.87% of the Adjusted Acquisition Cost and (B) the amount, if any, by which the residual value of the Project has been reduced by wear and tear in excess of that attributable to normal and proper use (the amount of such excess wear and tear to be such amount as the Lessor and the Lessee agree, or if no agreement is reached, the amount determined pursuant to the Appraisal Procedure).

(d) All payments and credits referred to in paragraphs (b) and (c) above shall be made on the termination date of the lease of the Project pursuant to this Section 12, and the parties shall account to each other for such payments and credits, and the Lessee shall pay to the Lessor (i) all Basic Rent payable through the date of termination of this Lease, (ii) the Variable Component of Basic Rent accrued through the date of termination of this Lease, (iii) any Additional Rent owing, (iv) all amounts payable pursuant to Sections 11, 24 and 26 hereof, (v) all losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses, commissions, filing fees and sales or transfer taxes) sustained by the Lessor by reason of such sale, and (vi) all other amounts owing hereunder (after taking into account the application under the Financing Arrangements of such purchase price and other payments hereunder), each as of the termination date; PROVIDED, HOWEVER, that with respect to the amounts described in clause (v) of this sentence, the Lessee shall not be obligated to pay any such amounts that, when combined with the amounts paid by the Lessee pursuant to paragraph (b) or (c) of this Section 12, as the case may be, exceed an amount equal to 72.94% of the Adjusted Acquisition Cost (in the case of a termination pursuant to such paragraph (b)) or 66.87% of the Adjusted Acquisition Cost (in the case of a termination pursuant to such paragraph (c)), plus the amount, if any, by which the residual value of the Project has been reduced by wear and tear in excess of that attributable to normal and proper use (the amount of such excess wear and tear to



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be such amount as the Lessor and the Lessee agree, or if no agreement is reached, the amount determined pursuant to the Appraisal Procedure). Upon indefeasible receipt by the Lessor of the Cash Proceeds and all other amounts then due and owing hereunder, including, without limitation, the amount of excess wear and tear determined pursuant to paragraph (b)(iii) or (c)(iii) of Section 12, as the case may be, the Lessor shall transfer its interest in the Project to the purchaser at the sale designated by the Lessee. The "CASH PROCEEDS" referred to in paragraphs (b) and (c) of this Section 12 shall mean the cash proceeds of sale without reduction for any amounts paid by the Lessee. In the event of a sale pursuant to this Section 12, neither the Lessee nor any Affiliate of the Lessee shall purchase the Project; PROVIDED, HOWEVER, that if (A) the Lessee exercises its right to terminate the lease of the Project pursuant to paragraph (b) of Section 12 hereof on the last day of the last month of the Initial Term, (B) such sale results in the applicability of paragraph (b)(ii) or paragraph (b)(iii) of Section 12, and (C) the Lessee provided notice to the Lessor pursuant to paragraph (a) of this Section 12 that it will cause the Guarantor to assume the outstanding indebtedness of the Lessor under its Financing Arrangements, the Lessee shall be required, as an alternative to making the payment required under such paragraph (b)(ii) or paragraph (b)(iii), as the case may be, to cause the Guarantor to assume the Lessor's outstanding indebtedness under all Financing Arrangements pursuant to the terms and conditions of such Financing Arrangements, in a principal amount equal to the amount the Lessee would have been obligated to pay to the Lessor pursuant to such paragraph (b)(ii) or paragraph (b)(iii), as the case may be (the "ASSUMED INDEBTEDNESS AMOUNT"), on the terms and conditions required for such assumption of indebtedness under such Financing Arrangements. Upon such assumption of indebtedness, the Lessor and the Assignee shall execute and deliver documentation permitting the Guarantor to assume the Lessor's obligations under the Financing Arrangements, and to release the Lessor from all obligations in respect of the Financing Arrangements, this Lease, the Agreement for Lease, and all related documents, and the Lessor and Assignee shall take all such other actions (at the Lessee's cost and expense) as are reasonably necessary to permit such assumption by the Guarantor. In the event the Guarantor assumes the outstanding indebtedness of the Lessor under its Financing Arrangements pursuant to this paragraph (d), if the Cash Proceeds plus the Assumed Indebtedness Amount are greater than the Adjusted Acquisition Cost plus the Modified Call Premium, the Lessor shall pay to the Lessee the amount by which the Cash Proceeds plus the Assumed Indebtedness Amount exceed the Adjusted Acquisition Cost plus the Modified Call Premium.

(e) In its notice given pursuant to paragraph (a) of this Section 12, the Lessee shall advise the Lessor if the sale provided for in such notice will result in the applicability of paragraph (b)(iii) or (c)(iii) of Section 12 hereof. If the Lessee advises the Lessor that any such paragraph will be applicable, the Lessor shall have the right to arrange for a sale of the Project to be made to a purchaser designated by the Lessor, if such purchaser will pay an amount greater than the amount offered by the Lessee's purchaser. Unless the Lessor shall arrange for such sale and shall give the Lessee notice thereof within thirty (30) days of the Lessor's receipt of the Lessee's notice, the Lessee may proceed with the sale to a purchaser designated by it. Within thirty (30) days of the Lessee's receipt of the Lessor's notice provided for in the preceding sentence, the Lessee may arrange for such sale to be made to another purchaser designated by it, if such purchaser shall pay an amount sufficient to render paragraph (b)(iii) of Section 12 or paragraph (c)(iii) of Section 12 hereof inapplicable.

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SECTION 13. LESSEE'S RIGHTS OF PURCHASE AND RENEWAL.

(a) The Lessee (or the Guarantor as its designee) shall have the right, upon ninety (90) days' written notice to the Lessor, to purchase the Project as a whole on any Basic Rent Payment Date for an amount equal to its Adjusted Acquisition Cost; PROVIDED, HOWEVER, that, if an Event of Default or Termination Event has occurred and is continuing, and, prior to the purchase by the Lessee pursuant to this paragraph (a), the Lessor arranges for the sale of the Project to a third party purchaser, the Lessee shall no longer have the right to purchase the Project in accordance with the terms of this paragraph (a). If the Guarantor elects to purchase the Project pursuant to this Section 13, the Guarantor has the option to assume in whole (but not in part) the outstanding

indebtedness of the Lessor under all Financing Arrangements pursuant to the terms and conditions of such Financing Arrangements, in which case the cash portion of the purchase price to be paid by the Guarantor shall be reduced by an amount equal to the principal outstanding under such Financing Arrangements so assumed by the Guarantor. Upon such assumption of indebtedness, the Lessor and Assignee shall execute and deliver documentation permitting the Guarantor to assume the Lessor's obligations under the Financing Arrangements, and to release the Lessor from all obligations in respect of the Financing Arrangement, this Lease, the Agreement for Lease, and all related documents, and the Lessor and Assignee shall take all such other actions (at the Lessee's cost and expense) as are reasonably necessary to permit such assumption by the Guarantor. In connection with, and as a condition to, any purchase under this Section 13, on the date upon which such purchase occurs, the Lessee shall pay to the Lessor (i) the purchase price, (ii) all Basic Rent payable through the date of purchase, (iii) the Variable Component of Basic Rent accrued through the date of purchase, (iv) any Additional Rent and Debt Yield-Maintenance Premium owing, (v) all amounts payable pursuant to Sections 11, 24 and 26 hereof, (vi) all Unrecovered Liabilities and Judgments, (vii) all losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses, commissions, filing fees and sales or transfer taxes) sustained by the Lessor by reason of such purchase, and (viii) all other amounts owing hereunder (after taking into account the application under the Financing Arrangements of such purchase price and other payments hereunder). At the time the Project is sold pursuant to this paragraph (a), the Lessor shall deliver the documents described in paragraph (i) of Section 29 hereof.

(b) Upon the occurrence of an Event of Default and upon the written request of the Lessee, which shall be received no later than fifteen (15) Business Days subsequent to receipt of notice from the Lessor or Assignee pursuant to this Lease that an Event of Default has occurred, the Lessee shall have the right, not later than thirty (30) Business Days after the Lessor's receipt of such request, to purchase the Project as a whole at a price equal to its then Adjusted Acquisition Cost; PROVIDED that the purchase option contained in this paragraph shall only be available to the Lessee if (i) in the reasonable judgment of counsel to the Lessor and Assignee, the purchase price and all other amounts paid by the Lessee will not in the circumstances in which such payment is made constitute a preferential payment or a voidable transfer or otherwise be subject to recapture pursuant to the provisions of the Federal Bankruptcy Code in a bankruptcy proceeding by or against the Lessee and will not otherwise result in the payment being subject to recapture from the Lessor or (ii) the Guarantor has provided a guaranty of the payment of such purchase price and all other amounts required to be paid by the Lessee under this paragraph (b) in the event payment of such amounts is recovered as such a preferential payment or voidable transfer, which guaranty shall be in form and substance reasonably

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satisfactory to the Lessor and Assignee. In connection with, and as a condition to, the purchase of the Project pursuant hereto, (1) the Lessee shall pay at the time of purchase, in addition to the purchase price, (A) all Basic Rent owing through the date of termination, (B) any Additional Rent and Debt Yield-Maintenance Premium owing, (C) all amounts payable pursuant to Sections 11, 24 and 26 hereof, (D) all Unrecovered Liabilities and Judgments, (E) all losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses, commissions, filing fees and sales or transfer taxes), sustained by the Lessor by reason of such purchase, and (F) all other amounts owing by the Lessee hereunder as of the date of termination, and (2) when the Lessor transfers title, such transfer shall be on an as-is, non-installment sale basis, without warranty by, or recourse to, the Lessor, but free of any Lessor Lien. At the time the Project is sold pursuant to this paragraph (b), the Lessor shall deliver the documents described in paragraph (i) of Section 29 hereof.

(c) Subject to the provisions of paragraph (a) of Section 14 of this Lease, so long as (i) no Event of Default, Event of Loss, Taking or Termination Event has occurred and is continuing and (ii) all amounts owing under any Financing Arrangements and all Equity Capital have been paid in full (after taking into account the application under the Financing Arrangements of all payments hereunder), the Lessee shall have the right, upon twelve (12) months' written notice to the Lessor (the "RENEWAL NOTICE"), to renew the lease of the Project for an additional term (the "RENEWAL TERM") to be determined by the Lessee, commencing on the first day of the calendar month following the last day of the Extended Term, on the same terms and conditions (including, without limitation, being subject to all rights and remedies of the Lessor and Assignee relating to Events of Default and Events of Loss) as existed during the Lease Term, at the fair market value rental.

(d) The fair market value rental of the Project for purposes of paragraph

(c) of this Section 13 shall be an amount agreed to by the Lessor and the Lessee or, if they are unable to agree, an amount determined pursuant to the Appraisal Procedure.

(e) In the event the Lessee does not deliver the Renewal Notice in accordance with the provisions of paragraph (c) of this Section 13, the Lessee shall take either of the following two actions: (i) purchase, on the last day of the Extended Term the Lessor's interest in the Project for cash at its Adjusted Acquisition Cost, in accordance with the provisions of paragraph (a) of this Section 13 (including the payment of all amounts described in such paragraph (a)) or (ii) arrange for the Project to be sold in accordance with the provisions of Section 12 hereof and with the consequences therein provided (including, without limitation, indefeasible receipt by the Lessor of the Cash Proceeds and all other amounts described in such Section 12), except that such sale must occur on the last day of such Extended Term; PROVIDED, HOWEVER, that if the Project is not sold pursuant to Section 12 hereof on the last day of the Extended Term and the Lessee does not purchase the Project pursuant to clause (i) above on the last day of the Extended Term, then a sale of the Lessee's interest in the Project to the Lessor pursuant to Section 12 shall be deemed to occur, the Cash Proceeds shall be deemed to be \$1, and the provisions of Section 12 and the eighth paragraph of Section 19 hereof shall be applicable.

#### SECTION 14. LESSOR'S RIGHT TO TERMINATE.

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(a) The Lessor shall have the right, upon written notice to the Lessee, to terminate the lease of the Project as a whole, if any of the following events (each a "TERMINATION EVENT") shall occur during the term of this Lease: (A) solely as a result of this Lease, the Agreement for Lease, a Financing Arrangement, the Project Contracts and the transactions contemplated hereby or thereby, the Lessor becomes (or with the passage of time would become), or is declared by any Governmental Authority to be a "public-utility company" as defined in the 1935 Act, or the Lessor, Merrill, Merrill Leasing, Assignee, any Affiliate of the foregoing or their respective officers, directors, members, trustees, shareholders, partners (general and limited, including, without limitation, the general and limited partners of the Lessor) or employees shall become subject to regulation under the 1935 Act; (B) solely as a result of this Lease, the Agreement for Lease, a Financing Arrangement, the Project Contracts and the transactions contemplated hereby or thereby, the Lessor becomes (or with the passage of time would become), or is declared by the Secretary of Energy (or any successor thereto) or the FERC to be, a public utility, an electric utility or a utility holding company subject to regulation under the Federal Power Act, as amended, or the Lessor, Merrill, Merrill Leasing, Assignee, any Affiliate of the foregoing or their respective officers, directors, shareholders, partners (general and limited, including, without limitation, the general and limited partners of the Lessor) or employees shall become subject to regulation by the FERC; (C) solely as a result of this Lease, the Agreement for Lease, a Financing Arrangement, the Project Contracts and the transactions contemplated hereby or thereby, the Lessor becomes (or with the passage of time would become), or is declared by any relevant Governmental Authority under the laws of any state or locality to be, subject to regulation as a public utility, an electric utility or a utility holding company or the Lessor, Merrill, Merrill Leasing, Assignee, any Affiliate of the foregoing or their respective officers, directors, shareholders, partners (general and limited, including, without limitation, the general and limited partners of the Lessor) or employees shall become subject to regulation as a public utility, an electric utility or a utility holding company under any such laws; or (D) any law or regulation or interpretation of any law or regulation shall be adopted or enforced by any Governmental Authority (including, without limitation, the Secretary of Energy, the FERC, the public service commission of any state or any similar commission of any locality and the Securities and Exchange Commission), and as a result of such adoption or enforcement, approval of this Lease, the Agreement for Lease, a Financing Arrangement, the Project Contracts or the transactions contemplated thereby shall be required and shall not have been obtained within any grace period after such adoption or enforcement, or as a result of which adoption or enforcement this Lease, the Agreement for Lease, a Financing Arrangement, the Project Contract or the transactions contemplated thereby, including any payments to be made by or to the Lessee or the ownership of the Project by the Lessor, shall be or become unlawful or unenforceable or the performance of this Lease, the Agreement for Lease, a Financing Arrangement, the Project Contracts or the transactions contemplated thereby shall be rendered impracticable in any material way. Promptly upon learning of any action or event, the effect of which results in any Termination Event, the Lessee shall notify the Lessor of such action or event.

(b) Upon the occurrence of a Termination Event pursuant to paragraph (a)

of this Section 14, the Lessee shall, at its option, either (A) arrange for the Project to be sold in accordance with the terms of Section 12 above and with the consequences therein provided (other than the payment of Debt Yield-Maintenance Premium or Modified Call Premium referred to in Section 12), except that if such sale does not occur within nine (9) months after the date stipulated in the written notice contemplated in paragraph (a) of this Section 14 and the Lessee

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does not purchase the Project pursuant to clause (B) below on or before such date, then a sale of the Lessee's interest in the Project to the Lessor pursuant to Section 12 shall be deemed to occur, the Cash Proceeds shall be deemed to be \$1, and the provisions of Section 12 and the eighth paragraph of Section 19 hereof shall be applicable, or (B) purchase, within nine (9) months after the date stipulated in the written notice contemplated by paragraph (a) of this Section 14, the Project for cash at its Adjusted Acquisition Cost. In connection with, and as a condition to, any sale or purchase under this paragraph, on the date upon which such sale or purchase occurs, the Lessee shall pay to the Lessor, in addition to any amount payable in connection with a sale or purchase, all other amounts owing hereunder as of the date of such sale or purchase including, without limitation, (i) all Basic Rent payable and the Variable Component of Basic Rent accrued through the date of sale or purchase, (ii) any Additional Rent owing, (iii) all amounts payable pursuant to Sections 11, 24 and 26 hereof, (iv) all losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses, commissions, filing fees and sales or transfer taxes) sustained by the Lessor by reason of such sale or purchase, (v) all Unrecovered Liabilities and Judgments and (vi) all other amounts owing hereunder. At the time the Project is sold pursuant to this paragraph (b), the Lessor shall deliver the documents described in paragraph (i) of Section 29 hereof.

SECTION 15. LOSS OF OR DAMAGE TO THE PROJECT.

(a) The Lessee hereby assumes all risk of loss of or damage to the Project, however caused. No loss of, or damage to, the Project shall impair any obligation of the Lessee under this Lease, which shall continue in full force and effect regardless of such loss or damage. The foregoing shall not be construed as requiring the Lessee to repair the Project when it is not otherwise required to do so under paragraphs (b) or (c) of this Section 15.

(b) In the event of damage of any kind whatsoever to the Project (unless the same is reasonably determined by the Lessor and Assignee to be damaged beyond repair) the Lessee, at its own cost and expense, shall place the same in good operating order, repair, condition and appearance. The Lessee's right to any proceeds paid under any insurance policy or policies required under Section 10 of this Lease with respect to any such damage to the Project which has been so placed by the Lessee in good operating order, repair, condition and appearance is governed by paragraph (j) of Section 10 hereof.

(c) If (A) an Event of Loss shall occur, or (B) a Taking as described in paragraph (a) of Section 16 shall occur, then in any such event, (i) the Lessee shall promptly notify the Lessor in writing of such event, (ii) within one hundred eighty (180) days of such event the Lessee shall pay to the Lessor an amount equal to the Adjusted Acquisition Cost and (iii) the Initial Term, Extended Term or Renewal Term shall continue until the Lessor receives payment from the Lessee of the amount payable pursuant to this paragraph (c) including, without limitation, (1) all Basic Rent payable and the Variable Component of Basic Rent accrued through the date of purchase, (2) any Additional Rent owing, (3) all amounts payable pursuant to Sections 11, 24 and 26 hereof, (4) all losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses, commissions, filing fees and sales or transfer taxes) sustained by the Lessor by reason of such event and (5) all other amounts owing hereunder after taking into account the application under the Financing Arrangements of such payments hereunder, and shall thereupon terminate. Upon the indefeasible payment by the Lessee of all amounts referred

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to in the immediately preceding sentence, (x) insurance and condemnation proceeds up to an amount equal to the Adjusted Acquisition Cost of the Project (net of all collection costs), shall be paid by the Lessor to the Lessee, (y) the Lessee shall be subrogated to the Lessor's rights resulting from the events described in clauses (A) and (B) above, and (z) the Lessor shall convey title to

the Project to the Lessee pursuant to the documents described in paragraph (i) of Section 29 hereof.

#### SECTION 16. CONDEMNATION AND DEDICATION OF THE PROJECT; EASEMENTS.

(a) If the use, occupancy or title to all or a substantial portion of the Project or all or a substantial portion of the Premises, is taken, requisitioned or sold in, by or on account of actual or threatened eminent domain proceedings or other action by any Person or Governmental Authority having the power of eminent domain (such events collectively referred to as a "TAKING"), then the Lessee shall make the payment provided in, and the Initial Term, Extended Term or Renewal Term shall terminate as provided in, paragraph (c) of Section 15 hereof. The portion of the proceeds from any award or sale made in connection with such Taking attributable to the Lessor's interest in the Project shall be retained by the Lessor and, upon the indefeasible payment by the Lessee of all amounts referred to in respect of clause (B) of paragraph (c) of Section 15 hereof, such amount shall be paid to the Lessee. A Taking shall be deemed to affect a "substantial portion" of the Project or the Premises if after such Taking the remainder is not sufficient to permit operation of the Project on a commercially feasible basis after taking into account the rental and other monetary obligations of the Lessee hereunder and under the Project Contracts.

(b) If less than a substantial portion of the Project is subject to a Taking, then this Lease shall continue in effect as to the portion of the Project not taken and any net proceeds, so long as (i) no Potential Default, Event of Default, Event of Loss or Termination Event has occurred and is continuing, and (ii) the Lessor and Assignee shall determine that restoration of the Project is consistent with prudent business practices and that sufficient funds are available to complete such restoration, shall be paid to the Lessee for the restoration of the Project in accordance with paragraph (j) of Section 10 hereof; PROVIDED that, if either of the conditions set forth in clauses (i) or (ii) above are not satisfied, then the net proceeds shall be paid to the Lessor and if and to the extent that such proceeds are not applied to (or paid to the Lessee in reimbursement for) the restoration of the Project, the Adjusted Acquisition Cost shall be reduced by the Lessor by the amount of such proceeds. Thereupon, Exhibit D shall be revised to reflect such reduction in Adjusted Acquisition Cost.

#### SECTION 17. SURRENDER OF THE PROJECT.

(a) Subject to the provisions of Sections 12, 13, 14, 15 and 19 hereof, upon termination of the lease of the Project under this Lease, the Lessee shall surrender the Project to the Lessor. The Project shall be surrendered in the condition required by paragraph (b) of Section 9.

(b) Upon the surrender of the Project, the Lessee shall deliver to the Lessor or its designee all logs, manuals, inspection data, books and records or copies thereof and other

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information, which are necessary to operate the Project and which are in accordance with sound industry practice customarily retained (or that the Lessee actually did retain) or are required by law to be retained with respect to similar property and equipment, including, without limitation, all software and manuals applicable to the Project and all design plans, know-how, records and information used by the Lessee and the Operator during the prior 12 months of operation of the Project.

#### SECTION 18. EVENTS OF DEFAULT

Any of the following events of default shall constitute an "EVENT OF DEFAULT" and shall give rise to the rights on the part of the Lessor described in Section 19 hereof:

(a) Failure of the Lessee to pay amounts due to the Lessor at the time of any scheduled sale or deemed sale of the Project hereunder or under paragraph (c) of Section 15 hereof, failure of the Lessee to pay Basic Rent, Debt Yield-Maintenance Premium or Modified Call Premium for more than five (5) days after such payment is due pursuant to Section 7 hereof or failure of the Lessee to pay any other amount payable by the Lessee hereunder for more than ten (10) days after such payment is due; or

(b) Failure to maintain the insurance required by Section 10 hereof, or default in the performance of the covenants contained in paragraphs (ii)(a), (ii)(b), (ii)(c), (ii)(e), (ii)(f), (ii)(g), or (ii)(j) of Section 2, paragraph (g) of Section 8, paragraph (n) of Section 10, Section 25 or paragraph (j) of

(c) Default in the performance of any other obligation or covenant of the Lessee pursuant to this Lease or the Lessee's Consent and (other than a default arising from a failure to deliver notice of an Event of Default, Potential Default, Event of Loss, Taking or Termination Event under clause (iii) of paragraph (ii)(g) of Section 2 hereof, which shall not be subject to any grace period), the continuance of such default for thirty (30) days after the earlier of the date (i) the Lessee becomes aware of such default or (ii) written notice of such default shall have been given to the Lessee by the Lessor or Assignee specifying such default and requiring such default to be remedied; PROVIDED, that if such default is of a nature that it is not capable of being cured by the payment of money or cannot with due diligence be cured within such thirty (30) day period, and if the Lessee shall have diligently commenced curing such default and proceeds diligently and in good faith thereafter to complete curing such default, then the time within which such default may be cured shall be extended for such period (not to exceed ninety (90) days or the expiration date of the Lease Term) as is necessary to cure such default; or

(d) The occurrence of any event or circumstance relating to Environmental Matters (not otherwise covered under any other provision of this Section 18) that results, directly or indirectly, in a Material Adverse Effect; or

(e) (1) Any representation or warranty made by the Lessee in this Lease (other than the representations or warranties made in paragraphs (i)(d), (i)(j) and (i)(p) of Section 2 hereof) or in the Lessee's Consent or which is contained in any certificate, document or financial or other statement furnished under or in connection with this Lease proves to be false or misleading on or as of the date made or deemed made and results, directly or indirectly, in a Material

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Adverse Effect, or (2) any representation or warranty made by the Lessee in paragraphs (i)(d), (i)(j) and (i)(p) of Section 2 hereof proves to be false, misleading or inaccurate in any material respect on or as of the date made or deemed made; or

(f) (i) The Pledge Agreement ceases to be in full force and effect prior to the termination thereof in accordance with its terms, (ii) the Lessee defaults in the performance of any obligation or covenant contained in the Pledge Agreement, any required notice of such default shall have been given, and any applicable grace period shall have expired, or (iii) the representation contained in the second sentence of paragraph (i)(r) of Section 2 shall at any time become untrue; or

(g) The entry of a decree or order for relief in respect of the Lessee or the Guarantor by a court having jurisdiction in the premises or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Lessee or the Guarantor or of any substantial part of the Lessee's or the Guarantor's property, or ordering the winding up or liquidation of the Lessee's or the Guarantor's affairs, in an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law and such decree or order remains unstayed and in effect for sixty (60) consecutive days; or the commencement against the Lessee or the Guarantor of an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, and the continuance of any such case unstayed and in effect for a period of sixty (60) consecutive days; or

(h) The Lessee's or the Guarantor's insolvency (however evidenced) or the Lessee's or the Guarantor's admission of insolvency or bankruptcy, or the commencement by the Lessee or the Guarantor of a voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, or the consent by the Lessee or the Guarantor to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Lessee or the Guarantor or of any substantial part of the Lessee's or the Guarantor's property, or the making by the Lessee or the Guarantor of an assignment for the benefit of creditors, or the failure of the Lessee or the Guarantor generally to pay their debts as such debts become due, or the taking of corporate action by the Lessee or the Guarantor in furtherance of any such action; or

(i) (i) The Guaranty ceases to be in full force and effect prior to the termination thereof in accordance with its terms or the Guarantor asserts that the Guaranty is not in full force and effect, or (ii) an Event of Default (as

defined in the Guaranty) shall occur under the Guaranty; or

(j) Any representation or warranty made by the Guarantor in the Guaranty or in the Guarantor's Consent or any document contemplated hereby or thereby proves to be false or misleading on or as of the date made or deemed made and results, directly or indirectly, in a Material Adverse Effect; or

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(k) The Guarantor shall fail to own (directly or indirectly) beneficially and of record a majority of the membership interests of the Lessee; or

(l) (i) The CEI Note ceases to be in full force and effect prior to the termination thereof in accordance with its terms, or (ii) the Guarantor shall fail to perform or observe any agreement, obligation or covenant contained in the CEI Note, any required notice of such default shall have been given, and any grace period shall have expired; or

(m) A default or event of default by the Guarantor or any of its Material Subsidiaries shall occur, the effect of which is that the holder or holders of any Indebtedness of the Guarantor or any such Material Subsidiary having a then outstanding principal balance in excess of \$100,000,000, causes or declares such Indebtedness of the Guarantor or any such Material Subsidiary to become due prior to its stated maturity under the provisions of any agreement or agreements pursuant to which such Indebtedness was created; or

(n) The Guarantor or any of its Material Subsidiaries shall default in any payment of principal or interest on any Indebtedness of the Guarantor or any such Material Subsidiary having a then outstanding principal balance in excess of \$100,000,000, beyond the period of grace, if any, under the provisions of any instrument or instruments or agreement or agreements pursuant to which such Indebtedness was created; or

(o) Final judgment or judgments for the payment of money in excess of \$100,000,000 in the aggregate shall be rendered against the Guarantor or any of its Material Subsidiaries by any court of competent jurisdiction and the same shall remain undischarged for a period of thirty (30) days from the date such payment is due, during which execution of such judgment or judgments shall not be effectively stayed.

#### SECTION 19. RIGHTS UPON DEFAULT.

Upon the occurrence and continuation of any Event of Default the Lessor may do any one or more of the following (subject to the provisions of paragraph (b) of Section 13 of this Lease):

(i) Terminate the lease of the Project hereunder;

(ii) Whether or not the lease of the Project is terminated, take immediate possession of the Project and remove any equipment or property of the Lessor in the possession of the Lessee, wherever situated, and for such purpose, enter upon the Premises without liability to the Lessee for so doing;

(iii) Whether or not any action has been taken under clause (i) or (ii) above, sell the Project (with or without the concurrence or request of the Lessee);

(iv) Hold, use, occupy, operate, repair, remove, lease or keep idle the Project as the Lessor in its sole discretion may determine, without any duty to mitigate damages with respect to any such action or inaction or with respect to any proceeds thereof; and

(v) Exercise any other right or remedy which may be available under applicable law and in general proceed by appropriate judicial proceedings, either at law or in equity, to enforce the terms hereof.

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Suit or suits for the recovery of any default in the payment of any sum due hereunder or for damages may be brought by the Lessor from time to time at the Lessor's election, and nothing herein contained shall be deemed to require the Lessor to await the date whereon this Lease or the term hereof would have

expired by limitation had there been no such default by the Lessee or no such termination or cancellation.

The receipt of any payments under this Lease by the Lessor with knowledge of any breach of this Lease by the Lessee or of any default by the Lessee in the performance of any of the terms, covenants or conditions of this Lease, shall not be deemed to be a waiver of any provision of this Lease.

No receipt of moneys by the Lessor from the Lessee after the termination or cancellation hereof in any lawful manner shall reinstate, continue or extend the Initial Term, the Extended Term or the Renewal Term, or affect any notice theretofore given to the Lessee, or operate as a waiver of the right of the Lessor to enforce the payment of Basic Rent, any Debt Yield-Maintenance Premium, Additional Rent or other charges payable hereunder, or operate as a waiver of the right of the Lessor to recover possession of by proper suit, action, proceedings or remedy; it being agreed that, after the service of notice to terminate or cancel this Lease, and the expiration of the time therein specified, if the default has not been cured in the meantime, or after the commencement of any suit, action or summary proceedings or of any other remedy, or after a final order, warrant or judgment for the possession of the Project, the Lessor may demand, receive and collect any moneys payable hereunder, without in any manner affecting such notice, proceedings, suit, action, order, warrant or judgment. Acceptance of the keys to the Project, or any similar act, by the Lessor, or any agent or employee of the Lessor, during the term hereof, shall not be deemed to be an acceptance of a surrender of the Project unless the Lessor and Assignee shall consent thereto in writing.

After any Event of Default, the Lessee shall be liable for, and the Lessor may recover from the Lessee, (i) all Basic Rent payable and the Variable Component of Basic Rent accrued through the date of termination of this Lease, (ii) any Additional Rent and Debt Yield-Maintenance Premium owing, (iii) all amounts payable pursuant to Sections 11, 24 and 26 hereof, (iv) all losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses, commissions, filing fees and sales or transfer taxes and all costs and expenses related to (1) the conduct of investigations, studies, sampling and/or testing of the Premises and (2) the taking of any action, including, without limitation, any remedial measures or removal with respect to the Premises, each as required by Assignee pursuant to the terms of a Financing Arrangement) sustained by the Lessor by reason of such Event of Default and the exercise of the Lessor's remedies with respect thereto, including without limitation, in the event of a sale by the Lessor of its interest in the Project pursuant to this Section 19, all costs and expenses associated with such sale and (v) all other amounts owing hereunder. The amounts payable in clauses (i) through (v) above are hereinafter sometimes referred to as the "ACCRUED DEFAULT OBLIGATIONS".

After an Event of Default, the Lessor may sell its interest in the Project upon any terms that the Lessor deems satisfactory, free of any rights of the Lessee or any Person claiming through or under the Lessee (including, without limitation, any rights hereunder or under the Agreement for Lease or the Project Contracts). In the event of any such sale, in addition to the Accrued Default Obligations, the Lessor shall be entitled to recover from the Lessee, as

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liquidated damages and not as a penalty, and subject to the second succeeding sentence, an amount equal to the Adjusted Acquisition Cost. Proceeds of sale received by the Lessor in excess of the Adjusted Acquisition Cost shall be credited against the Accrued Default Obligations the Lessee is required to pay under this Section 19. If such proceeds plus the Adjusted Acquisition Cost, exceed the sum of (i) Accrued Default Obligations and (ii) the Adjusted Acquisition Cost and (iii) any Unrecovered Liabilities and Judgments, and if the Lessee has indefeasibly paid the Adjusted Acquisition Cost, the Accrued Default Obligations plus all Unrecovered Liabilities and Judgments and all other amounts required to be paid under this Section 19, such excess shall be paid by the Lessor to the Lessee; PROVIDED, HOWEVER, that the Lessee shall remain liable from such excess proceeds for any Unrecovered Liabilities and Judgments that arise after the payment of such excess proceeds to the extent such Unrecovered Liabilities and Judgments arise from or relate to acts or omissions occurring, or circumstances or conditions created or existing at any time as of or prior to the expiration or termination of this Lease. As an alternative to any such sale, or if the Lessee converts the Project after an Event of Default, or if the Project suffers an Event of Loss or Taking or is otherwise lost or destroyed at the time of the Event of Default, in addition to the Accrued Default Obligations, the Lessor may require the Lessee to pay to the Lessor, and the Lessee shall pay to the Lessor, as liquidated damages and not as a penalty, an amount equal to the Adjusted Acquisition Cost plus an additional amount equal to two and one half percent (2 1/2%) of the Adjusted Acquisition Cost. If the



Lessor subsequently sells its interest in the Project, the proceeds of any such sale (net of any unreimbursed costs or liabilities incurred by the Lessor or Assignee with respect to the Project or Project Contracts after the termination of the Lease, which are not included in the Accrued Default Obligations (after taking into account any revenues received from the operation of the Project)) shall be distributed as provided in the third and fourth sentences of this paragraph. In the event the Lessor receives indefeasible payment from the Lessee of the Adjusted Acquisition Cost of the Project plus an additional amount equal to two and one half percent (2 1/2%) of the Adjusted Acquisition Cost, and the Accrued Default Obligations, the Lessor shall transfer all of the Lessor's right, title and interest in and to the Project to the Lessee.

In the event of a sale pursuant to this Section 19, upon indefeasible receipt by the Lessor of all amounts payable hereunder, the Lessor shall transfer all of the Lessor's right, title and interest in and to the Project to a purchaser other than the Lessee or to the Lessee, as the case may be.

In the event the Lessor is not paid an amount equal to the Adjusted Acquisition Cost and an additional amount equal to two and one half percent (2 1/2%) of the Adjusted Acquisition Cost, plus the Accrued Default Obligations, then, in addition to the Lessor's other rights in this Section 19, the Lessee shall upon the Lessor's request (i) assign to the Lessor (or to an assignee designated by the Lessor or Assignee), at no cost, all right, title and interest of the Lessee in, to and under all Governmental Actions and Intellectual Property Rights needed for the equipping, maintenance, operation or use of the Project and obtained and held by the Lessee at that time, (ii) assign to the Lessor (or to a foreclosure purchaser designated by the Lessor or the Assignee), at no cost, all right, title and interest of the Lessee in, to and under the Project Contracts, and in the event any additional consent of any party to a Project Contract is required as a precondition thereunder to an assignment to any other third party assignee designated by the Lessor or Assignee, use its best efforts to obtain any such required consent to such proposed non-foreclosure assignment and assumption of the Project Contracts; and (iii) assign to the

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Lessor, at no cost, all right, title and interest of the Lessee in, to and under all service agreements in existence at the time of such sale and transferable by the Lessee and any easements available to the Lessee and transferable by the Lessee in connection with the equipping, maintenance, operation or use of the Project. The Lessee acknowledges that it would be difficult to ascertain the value to the Lessor of the Lessee's agreement to assign, transfer or have reissued to the Lessor such Governmental Actions and Intellectual Property Rights, to assign such Project Contracts (and, if necessary, to obtain such consents to such assignment) and to assign to the Lessor such service agreements and easements or to adequately compensate the Lessor by an award of damages for the Lessee's failure to assign to the Lessor such Governmental Actions and Intellectual Property Rights, to assign such Project Contracts (and, if necessary, to obtain such consents to such assignment) and to assign to the Lessor such service agreements and easements, and that therefore the Lessor would not have an adequate remedy at law for breach by the Lessee of its agreement hereunder to the Lessor. Accordingly, the Lessee acknowledges that the Lessor shall be entitled to obtain specific performance of the Lessee's obligation to assign to the Lessor such Governmental Actions and Intellectual Property Rights, to obtain such consents to such assignment and to assign to the Lessor the service agreements and easements. In the event the Lessee fails to obtain any consents required in clause (ii) of the third preceding sentence, at the request of the Lessor or such purchaser, as the case may be, the Lessee shall agree to (A) at the expense of such purchaser or the Lessor, as the case may be, continue to perform under and maintain in full force and effect the Project Contracts and pay all sums received under the Project Contracts to such third party or the Lessor, as the case may be, (B) at the expense of such third party or the Lessor, as the case may be, and subject to the receipt of indemnification reasonably acceptable to the Lessee, take all actions requested by such third party or the Lessor, as the case may be, with respect to such Project Contracts (including all actions with respect to the enforcement of the Lessee's rights and remedies under such Project Contracts), and (C) not amend, modify, supplement, waive a provision of, grant any consent under or terminate any such Project Contract without the prior written consent of such third party or the Lessor, as the case may be.

No remedy referred to in this Section 19 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Lessor at law or in equity, and the exercise in whole or in part by the Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by the Lessor of any or all such

other remedies.

No waiver by the Lessor of any Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default.

With respect to the termination of this Lease as a result of an Event of Default, the Lessee hereby waives service of any notice of intention to re-enter. The Lessee hereby waives any and all rights to recover or regain possession of the Project or to reinstate this Lease as permitted or provided by or under any statute, law or decision now or hereafter in force and effect.

#### SECTION 20. SALE OR ASSIGNMENT BY LESSOR.

(a) The Lessor shall have the right to obtain equity and debt financing for the acquisition and ownership of the Project by selling or assigning its right, title and interest in any

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or all amounts due from the Lessee or any third party under this Lease and granting a security interest in this Lease and the Project to the Collateral Trustee or any successor to the Collateral Trustee under a Financing Arrangement, notice of the identity of which shall be given to the Lessee; PROVIDED that, any sale or assignment by the Lessor shall be made consistent with the terms of this Lease and shall be subject to the rights and interests of the Lessee under this Lease and the Agreement for Lease.

(b) Any Assignee shall, after the occurrence and during the continuance of any Event of Loss, Event of Default or Termination Event hereunder, except as otherwise agreed by the Lessor and such Assignee, have all the rights, powers, privileges and remedies of the Lessor hereunder, and the Lessee's obligations as between itself and such Assignee hereunder shall not be subject to any claims or defense that the Lessee may have against the Lessor. Upon written notice to the Lessee of any such assignment, the Lessee shall thereafter make payments of Basic Rent and the Variable Component of Basic Rent, any Debt Yield-Maintenance Premium, Additional Rent and other sums due hereunder to Assignee, to the extent specified in such notice, and such payments shall discharge the obligation of the Lessee to the Lessor hereunder to the extent of such payments. Anything contained herein to the contrary notwithstanding, no Assignee shall be obligated to perform any duty, covenant or condition required to be performed by the Lessor hereunder, and any such duty, covenant or condition shall be and remain the sole obligation of the Lessor, unless and until Assignee has taken possession of the Premises or the Project or otherwise foreclosed upon the Lessor's interest therein or accepted a conveyance in lieu of foreclosure of the Premises or the Project pursuant to a Financing Arrangement.

#### SECTION 21. INCOME TAXES.

The Lessor agrees that it will not file any Federal, state or local income tax returns or state or local sales tax returns during the Lease Term or any Renewal Term with respect to the Project that are inconsistent with the treatment of the Lessee as owner of the Project for Federal, state and local income tax purposes and state and local sales tax purposes.

#### SECTION 22. NOTICES AND REQUESTS.

All notices, offers, acceptances, approvals, waivers, requests, demands and other communications hereunder or under any other instrument, certificate or other document delivered in connection with the transactions described herein shall be in writing, shall be addressed as provided below and shall be considered as properly given (a) if delivered in person, (b) if sent by express courier service (including, without limitation, Federal Express, Emery, DHL, Airborne Express, and other similar express delivery services), (c) in the event overnight delivery services are not readily available, if mailed through the United States Postal Service, postage prepaid, registered or certified with return receipt requested, or (d) if sent by telecopy and confirmed; PROVIDED that, in the case of a notice by telecopy, the sender shall in addition confirm such notice by writing sent in the manner specified in clause (a), (b) or (c) of this Section 22. All notices shall be effective upon receipt by the addressee; PROVIDED, HOWEVER, that, if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. For the purposes of notice, the addresses of the parties shall be as set forth below; PROVIDED, HOWEVER, that any party shall have the right to

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change its address for notice hereunder to any other location by giving written notice to the other party in the manner set forth herein. The initial addresses of the parties hereto are as follows:

If to the Lessor:

Hawkeye Funding, Limited Partnership  
c/o ML Leasing Equipment Corp.  
Strategic Asset Lease and Finance Group  
Four World Financial Center  
New York, New York 10080

Attention: Jean M. Tomaselli  
Telephone: (212) 449-7925  
Telecopy: (212) 449-2854

With a copy of all notices under this Section 22 to be simultaneously given, delivered or served to Joseph Valenti at the following address:

ML Leasing Equipment Corp.  
Controller's Office  
Two World Financial Center  
14th Floor  
New York, New York 10281

If to the Lessee:

Newington Energy, L.L.C.  
c/o Consolidated Edison Development, Inc.  
111 Broadway  
16th Floor  
New York, New York 10006

Attention: President  
Telephone: (212) 393-9242  
Telecopy: (212) 393-9282

With a copy of all notices under this Section 22 to Assignee at such address as Assignee may specify by written notice to the Lessor and the Lessee.

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#### SECTION 23. COVENANT OF QUIET ENJOYMENT.

During the Lease Term or any Renewal Term hereunder and so long as no Event of Default, Event of Loss, Taking or Termination Event shall have occurred and be continuing, the Lessor recognizes the Lessee's right to quiet enjoyment of the Project on the terms and conditions provided in this Lease without any interference from the Lessor or anyone claiming through or under the Lessor.

#### SECTION 24. RIGHT TO PERFORM FOR LESSEE.

(a) If the Lessee fails to perform or comply with any of its covenants or agreements contained in this Lease, and any period to cure such failure has expired without the Lessee curing such failure, the Lessor may, upon notice to the Lessee but without waiving or releasing any obligations or default, itself perform or comply with such covenant or agreement, and the amount of the reasonable expenses of the Lessor incurred in connection with such performance or compliance shall be payable by the Lessee, not later than ten (10) days after written notice by the Lessor.

(b) Without in any way limiting the obligations of the Lessee hereunder, the Lessee hereby irrevocably appoints the Lessor as its agent and attorney at the time at which the Lessee is obligated to deliver possession of the Project to the Lessor, to demand and take possession of the Project in the name and on behalf of the Lessee from whomsoever shall be at the time in possession thereof.

#### SECTION 25. MERGER, CONSOLIDATION OR SALE OF ASSETS.

The Lessee may consolidate with or merge into any other corporation or sell all or substantially all of its assets to any Person; PROVIDED that, following such consolidation, merger or sale of assets, (a) the Guarantor shall

own (directly or indirectly) beneficially and of record a majority of the membership interests of the Lessee, and (b) no Event of Default, Event of Loss, Taking or Termination Event shall exist under this Lease. The terms and provisions of this Lease shall be binding upon and inure to the benefit of the Lessee and its respective successors and assigns.

#### SECTION 26. EXPENSES.

The Lessee shall pay all of the out-of-pocket costs and expenses incurred by the Lessor and any Assignee in connection with this Lease, including, without limitation, the reasonable fees and disbursements of counsel to the Lessor and counsel to such Assignee. Notwithstanding anything contained herein to the contrary, this Section 26 is not intended to increase the Lessee's obligation to pay any tax under this Lease beyond those taxes for which the Lessee is obligated to indemnify the Lessor or any other Indemnified Person under the provisions of paragraph (b) of Section 11 hereof.

#### SECTION 27. PERMITTED CONTESTS.

(a) The Lessee shall not be required, nor shall the Lessor have the right, to pay, discharge or remove any tax, assessment, levy, fee, rent, charge or Lien, or to comply or

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cause the Project to comply with any Legal Requirements applicable thereto or the occupancy, use or operation thereof, so long as no Potential Default and no Event of Default, Event of Loss, Taking or Termination Event exists under this Lease, and, in the reasonable judgment of the Lessee's counsel, the Lessee shall have reasonable grounds to contest the existence, amount, applicability or validity thereof by appropriate proceedings, which proceedings in the reasonable judgment of the Lessor Assignee (i) shall not involve any danger that the Project or any portion thereof or any Basic Rent or any Additional Rent would be subject to sale, forfeiture or loss, as a result of failure to comply therewith, (ii) shall not affect the payment of any Basic Rent or any Additional Rent or other sums due and payable hereunder or result in any such sums being payable to any Person other than the Lessor or Assignee, (iii) will not subject either the Lessor or any Assignee to any danger of civil liability for which the Lessor or such Assignee is not adequately indemnified or subject the Lessor or any Assignee to any danger of criminal liability, (iv) if involving taxes, shall suspend the collection of taxes (unless the Lessee has provided a bond for the full amount in dispute), and (v) shall be permitted under and be conducted in accordance with the provisions of any other instrument to which the Lessee or the Project is subject and shall not constitute a default thereunder (the "PERMITTED CONTEST"). The Lessee shall conduct all Permitted Contests in good faith and with due diligence and shall promptly after the final determination (including appeals) of any Permitted Contest (or, if earlier, upon any of the above criteria no longer being satisfied) pay and discharge all amounts which shall be determined to be payable therein. The Lessor shall cooperate in good faith with the Lessee with respect to all Permitted Contests conducted by the Lessee pursuant to this Section 27.

(b) In the event the Lessor or Assignee deems, in its reasonable discretion, that its interests under this Lease or in the Project are not adequately protected in connection with a Permitted Contest brought by the Lessee as permitted under this Section 27, the Lessee shall give such reasonable security as may be demanded by the Lessor or Assignee to ensure payment of such tax, assessment, levy, fee, rent, charge or Lien and compliance with Legal Requirements and to prevent any sale or forfeiture of the Project or any portion thereof, any Basic Rent or any Additional Rent by reason of such nonpayment or noncompliance. The Lessee hereby agrees that the Lessor may assign such security provided by the Lessee to Assignee.

(c) At least ten (10) days prior to the commencement of any Permitted Contest, the Lessee shall notify the Lessor in writing thereof if the amount in contest exceeds \$100,000, and shall describe such proceeding in reasonable detail. In the event that a taxing authority or subdivision thereof proposes an additional assessment or levy of any tax for which the Lessee is obligated to reimburse the Lessor under this Lease, or in the event that the Lessor is notified of the commencement of an audit or similar proceeding which could result in such an additional assessment, then the Lessor shall in a timely manner notify the Lessee in writing of such proposed levy or proceeding.

#### SECTION 28. INTENTIONALLY OMITTED.

#### SECTION 29. MISCELLANEOUS.

(a) All agreements, indemnities, representations and warranties, and the obligation to pay Basic Rent and the Variable Component of Basic Rent, any Debt Yield-Maintenance Premium, Additional Rent and other amounts contained in this Lease shall survive until the expiration or other termination of this Lease, provided that (i) any obligations under this

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THIS LEASE AGREEMENT IS  
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Lease accrued at the time of or related to periods prior to such expiration or other termination (including, without limitation, any obligation to pay Unrecovered Liabilities and Judgments) shall survive such expiration or other termination, and (ii) any obligation under this Lease which is expressly provided to be performed after or to survive the expiration or termination of this Lease shall survive the expiration or other termination hereof.

(b) This Lease and the instruments, documents or agreements referred to herein constitute the entire agreement between the parties and no representations, warranties, promises, guarantees or agreements, oral or written, express or implied, have been made by any party hereto with respect to this Lease or the Project, except as provided herein or therein.

(c) This Lease may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective for any purpose unless it is in writing, signed by the party against whom enforcement thereof is sought. A waiver on one occasion shall not be construed to be a waiver with respect to any other occasion.

(d) The captions in this Lease are for convenience of reference only and shall not be deemed to affect the meaning or construction of any of the provisions hereof. Any provision of this Lease which is prohibited by law or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and the parties hereto shall negotiate in good faith appropriate modifications to reflect such changes as may be required by law, and, as nearly as possible, to produce the same economic, financial and tax effects as the provision which is prohibited or unenforceable; and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Lessee and the Lessor hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect. THIS LEASE HAS BEEN EXECUTED AND DELIVERED IN THE STATE OF NEW YORK. THE LESSEE AND THE LESSOR AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY THE LAW OF THE STATE OF NEW YORK, THIS LEASE, AND THE RIGHTS AND DUTIES OF THE LESSEE AND THE LESSOR HEREUNDER, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (INCLUDING, WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW) IN ALL RESPECTS, INCLUDING, WITHOUT LIMITATION, IN RESPECT OF ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THE LESSEE HEREBY IRREVOCABLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND THE SUPREME COURT OF THE STATE OF NEW YORK IN THE COUNTY OF NEW YORK IN ANY ACTION, SUIT OR PROCEEDING BROUGHT AGAINST IT AND RELATED TO OR IN CONNECTION WITH THIS LEASE OR THE TRANSACTIONS CONTEMPLATED HEREBY, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LESSEE HEREBY WAIVES AND AGREES NOT TO ASSERT BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURT, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN

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THIS LEASE AGREEMENT IS  
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INCONVENIENT FORUM, THAT THE VENUE OF THE SUIT, ACTION OR PROCEEDING IS IMPROPER, OR THAT THIS LEASE OR ANY DOCUMENT OR ANY INSTRUMENT REFERRED TO HEREIN OR THE SUBJECT MATTER HEREOF MAY NOT BE LITIGATED IN OR BY SUCH COURT. THIS SUBMISSION TO JURISDICTION IS NONEXCLUSIVE AND DOES NOT PRECLUDE THE LESSOR OR ANY ASSIGNEE FROM OBTAINING JURISDICTION OVER THE LESSEE IN ANY COURT OTHERWISE HAVING JURISDICTION. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LESSEE AGREES NOT TO SEEK AND HEREBY WAIVES THE RIGHT TO ANY REVIEW OF THE JUDGMENT OF ANY SUCH COURT BY ANY COURT OF ANY OTHER NATION OR JURISDICTION WHICH MAY BE CALLED UPON TO GRANT AN ENFORCEMENT OF SUCH JUDGMENT. THE LESSEE AGREES THAT SERVICE OF PROCESS MAY BE MADE UPON IT BY CERTIFIED OR REGISTERED MAIL TO THE ADDRESS FOR NOTICES SET FORTH IN THIS LEASE OR ANY METHOD AUTHORIZED BY THE LAWS OF NEW YORK. THE LESSOR AND THE LESSEE EXPRESSLY WAIVE ALL RIGHT TO

TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM RELATED TO THIS LEASE OR THE TRANSACTIONS CONTEMPLATED HEREBY. THE LESSOR AND THE LESSEE ACKNOWLEDGE THAT THE PROVISIONS OF THIS PARAGRAPH (D) OF SECTION 29 HAVE BEEN BARGAINED FOR AND THAT THEY HAVE BEEN REPRESENTED BY COUNSEL IN CONNECTION THEREWITH.

(e) In connection with any sale of the Project pursuant to Section 12, 13, 14, 15 or 19 of this Lease, when the Lessor transfers title, such transfer shall be on an as-is, non-installment sale basis, without warranty by, or recourse to, the Lessor, but free of any Lessor Lien.

(f) In connection with the sale or purchase of the Project pursuant to Section 12, 13, 14, 15 or 19 of this Lease, the Lessee or the Guarantor shall pay or the Lessee shall cause the purchaser of the Project to pay, in addition to the purchase price, all transfer taxes, transfer gains taxes, mortgage recording tax, if any, recording and filing fees and all other similar taxes, fees, expenses and closing costs (including reasonable attorneys' fees) in connection with the conveyance of the Project to the Lessee, the Guarantor or any purchaser. Notwithstanding anything contained herein to the contrary, this paragraph (f) is not intended to increase the Lessee's obligation to pay any tax under this Lease beyond those taxes for which the Lessee is obligated to indemnify the Lessor or any other Indemnified Person under the provisions of paragraph (b) of Section 11 hereof.

(g) At all times during the term of this Lease, the Lessor's capitalization shall be such that at least three percent (3%) of its capitalization in accordance with GAAP (including interest required to be capitalized in accordance with GAAP on the principal outstanding on any Financing Arrangement) consists of cash contributions from the Lessor's general partner and limited partners.

(h) Each time that the Adjusted Acquisition Cost is increased or decreased pursuant to the terms of this Lease (other than a decrease in connection with the amortization of the Acquisition Cost of the Project as contemplated by this Lease), the Lessee and the Lessor shall promptly revise Exhibit D hereto to reflect such increase or decrease.

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THIS LEASE AGREEMENT IS  
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(i) In connection with the purchase of the Project by the Lessee, the Guarantor or any third party pursuant to the provisions of this Lease, the Lessor shall deliver to the Lessee, the Guarantor or such third party, as the case may be, a bill of sale and deed conveying to the Lessee, the Guarantor or such third party, as the case may be, and the Lessee, the Guarantor or such third party, as the case may be, shall accept a conveyance of, the Lessor's interest in the Premises and the Project, and, if applicable, any Project Contract, such conveyance to be without warranty by, or recourse to, the Lessor, but free of any Lessor Lien (PROVIDED that the purchase price paid by the Lessee to the Lessor, exclusive of the other amounts payable hereunder in connection with such purchase, shall equal the Adjusted Acquisition Cost).

(j) In the event of any Event of Default, the Lessee shall, to the extent required by the Lessor or Assignee, exercise all commercially reasonable efforts (i) to provide the Lessor (or a designated assignee of the Lessor or Assignee) with all easements, manuals and other matters and services to be provided by the Operator under the Project Contracts necessary to enable the Project to operate on commercially reasonable terms, (ii) to provide the Lessor (or a designated assignee of the Lessor or Assignee) with any Project Contracts and Intellectual Property Rights not assigned to the Lessor (or a designated assignee of the Lessor or Assignee) pursuant to the applicable terms hereof that are necessary to enable the Project to operate on commercially reasonable terms, (iii) to provide the Lessor (or a designated assignee of the Lessor or Assignee) with any permits, licenses or other Governmental Actions (to the extent not already provided to such party by the Lessee or Guarantor) that are necessary to enable the Project to operate on commercially reasonable terms in connection with its operation as an EWG or a "qualifying cogeneration facility" under PURPA and its delivery of electricity, including, without limitation, all permits, licenses or other Governmental Actions required to enable such party (PROVIDED that such party is not a "public-utility company", as such term is defined in Section 2(a)(5) of the 1935 Act, or otherwise subject to regulation as a public utility by any relevant governmental body or similar entity under the laws of any state or locality) to operate the Project on commercially reasonable terms as an EWG or a "qualifying cogeneration facility" under PURPA in connection with the sale of electricity to third parties, and (iv) to negotiate in good faith with the Lessor (or a designated assignee of the Lessor or Assignee), or exercise all commercially reasonable efforts to locate a third party reasonably acceptable to the Lessor and Assignee who is capable of operating the Project for the Lessor (or a designated assignee of the Lessor or Assignee), to operate

the Project for the Lessor (or such designated assignee of the Lessor or Assignee), for fair market value compensation for such services. The Lessee's obligations contained in this paragraph (j) shall survive the expiration or other termination of this Lease until the Lessor receives payment of (1) all amounts payable pursuant to this Lease and the Agreement for Lease, (2) all losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses, commissions, filing fees and sales or transfer taxes) sustained by the Lessor, (3) all amounts owing under the Financing Arrangements and (4) any unreimbursed costs incurred by the Lessor or Assignee with respect to the Project or the Project Contracts after the term of this Lease, net of any revenues received from the operation of the Project.

#### SECTION 30. NO RECOURSE.

The Lessor's obligations hereunder are intended to be the obligations of the limited partnership and of the corporation which is the general partner thereof only and no recourse for the payment of any amount due under this Lease, any Project Contract or any other agreement contemplated hereby, or for any claim based thereon or otherwise in respect thereof,

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#### THIS LEASE AGREEMENT IS CONFIDENTIAL AND PROPRIETARY

shall be had against any limited partner of the Lessor or any incorporator, shareholder, officer, director or Affiliate, as such, past, present or future of such corporate general partner or of any corporate limited partner or of any successor corporation to such corporate general partner or any corporate limited partner of the Lessor, or against any direct or indirect parent corporation of such corporate general partner or of any limited partner of the Lessor or any other subsidiary or Affiliate of any such direct or indirect parent corporation or any incorporator, shareholder, officer or director, as such, past, present or future, of any such parent or other subsidiary or Affiliate. Nothing contained in this Section 30 shall be construed to limit the exercise or enforcement, in accordance with the terms of this Lease, the Project Contracts and any other documents referred to herein, of rights and remedies against the limited partnership or the corporate general partner of the Lessor or the assets of the limited partnership or the corporate general partner of the Lessor.

#### SECTION 31. NO MERGER OF ESTATES.

There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Project by reason of the fact that the same person acquires or holds, directly or indirectly, this Lease or the leasehold estate hereby created or any interest herein or in such leasehold estate as well as the fee estate in the Project or any interest in such fee estate.

#### SECTION 32. INDUSTRIAL CORRIDOR ROAD.

(e) The Lessor and the Lessee acknowledge that a portion of the Premises is expected to be released (the "RELEASE PARCEL") in connection with constructing a segment of the Industrial Corridor Road and that the Town of Newington, New Hampshire and the Lessee have not reached a definitive agreement as to the exact location, length or construction requirements of the Industrial Corridor Road. Notwithstanding anything to the contrary contained herein, it is the intention of the Lessor and the Lessee, and the Lessor and the Lessee hereby agree, that the provisions hereof regarding construction, completion and operation of the Project shall not apply to the construction, completion and operation of any portion of the Industrial Corridor Road; PROVIDED, HOWEVER, that notwithstanding subsection 8.25 of the Agreement for Lease (A) upon Substantial Completion (as defined in the Agreement for Lease), the Lessee shall be in compliance with all terms, conditions and requirements of the Town of Newington, New Hampshire and all other Governmental Authorities with respect to the construction, completion and operation of the Industrial Corridor Road, except where the failure to comply will not result, directly or indirectly, in a Material Adverse Effect; and (B) no act or omission by the Lessee in connection with the Release Parcel prior to the time of its release from the Premises shall result in any Lien on the Premises (other than Permitted Liens).

(b) The Lessor and the Lessee further acknowledge and agree that any remedial actions taken by the Lessor, its successors or assigns, may be subject to the Lessee's obligations to, and the rights of, the Town of Newington, New Hampshire and other Governmental Authorities in connection with the Industrial Corridor Road. The Lessee agrees to construct, maintain and repair the Industrial Corridor Road in compliance with the Lessee's obligations to the Town of Newington, New Hampshire and any other applicable Governmental Authority relating thereto, except where the failure to comply will not result, directly or indirectly, in a Material Adverse Effect.

THIS LEASE AGREEMENT IS  
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IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease  
to be executed and delivered as of the day and year first above written.

HAWKEYE FUNDING, LIMITED PARTNERSHIP

By Hawkeye Funding, Inc.,  
its General Partner

By: \_\_\_\_\_  
Name:  
Title:

NEWINGTON ENERGY, L.L.C.

By CED/SCS Newington, LLC,  
its sole member

By: \_\_\_\_\_  
Name:  
Title:

THIS LEASE AGREEMENT IS  
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EXHIBIT A

LEGAL DESCRIPTION OF PREMISES AND EASEMENTS

A-1

EXHIBIT B

LIST OF PROJECT CONTRACTS

- (a) The Operation and Maintenance Agreement, dated as of December 20, 1999, between Newington Energy, L.L.C. and General Electric International, Inc.
- (b) The Guaranty, dated as of November 15, 2000, from General Electric Company to Newington Energy, L.L.C, guaranteeing the obligations of General Electric International, Inc. under the O&M Agreement.
- (c) The Engineer, Procure and Construct Contract, dated as of May 24, 2000, between Duke/Fluor Daniel and Hawkeye Funding, Limited Partnership.
- (d) The Guaranty, dated as of May 24, 2000, by Fluor Corporation to Hawkeye Funding, Limited Partnership, guaranteeing the obligations of Duke/Fluor Daniel under the EPC Contract.
- (e) The Guaranty, dated as of May 24, 2000, by Duke Capital Corporation to Hawkeye Funding, Limited Partnership, guaranteeing the obligations of Duke/Fluor Daniel under the EPC Contract.

B-1

EXHIBIT C

LIST OF PROJECT AUTHORIZATIONS

PERMIT GROUPING  
 PERMIT/APPROVAL  
 PARTICIPATING  
 REGULATORY  
 AGENCY(IES)  
 FEDERAL/NH STATE Air  
 Operating Permit  
 NHDES-Air Resources  
 Division US EPA



Region I National  
Pollutant Discharge  
Elimination System  
(NPDES) NHDES-Water  
Division US EPA  
Region I Wetlands  
Permit NHDES-  
Wetlands Town of  
Newington  
Conservation  
Commission US Army  
Corps of Engineers  
Section 401 Water  
Quality  
Certification NHDES  
- Water Division US  
EPA Region I US Army  
Corps of Engineers  
Stack Height  
Approval Federal  
Aviation  
Administration Fuel  
Use Act US  
Department of Energy  
NH STATE Certificate  
of Site and Facility  
Energy Facility Site  
Evaluation Cmte  
Significant  
Alteration of  
Terrain NHDES-Water  
Division Rivers  
Management/Shoreline  
Protection NHDES-  
Water Division  
Coastal Zone  
Management (CZM)  
Program Office of  
State Planning  
Historic Resources  
Review State  
Historical  
Preservation Ofc.  
Natural Heritage  
Inventory Program  
Dept of Resources &  
Economic Devel.  
Hazardous Waste  
Generator  
Registration NHDES-  
Waste Management  
Div. Above-Ground  
Storage Tank  
Application NHDES-  
Waste Management  
Div. Public Utility  
Crossing Another  
Utility Public  
Utilities Commission  
Public Utility in or  
Across Railroad  
Right-of-Way Public  
Utilities Commission  
MUNICIPAL/LOCAL  
Municipal Water  
Supply City of  
Portsmouth  
Wastewater  
Connection/Discharge  
Permit City of  
Portsmouth  
CONSTRUCTION-  
Building Permits  
Local Governmental  
Authority RELATED  
PROJECT Mechanical  
Permits Local  
Governmental  
Authority  
AUTHORIZATIONS  
Electrical Permits

Local Governmental  
Authority Plumbing  
Permits Local  
Governmental  
Authority  
Construction Release  
/ Inspection Local  
Governmental  
Authority Fire  
Protection Permit  
Local Governmental  
Authority  
Engineering Licenses  
State of New  
Hampshire

C-1

EXHIBIT D

SEMI-ANNUAL RENT COMPONENT

D-1

EXHIBIT E

PLEDGE AGREEMENT

E-1

EXHIBIT F

EASEMENTS

1. EASEMENTS FOR TRANSMISSION LINE ROUTE OPTION 2:

1.1 CE Nuclear Power, LLC. Executed Option Agreement to acquire Transmission Line Easement Route Option 2 on CE Nuclear Power, LLC property in place.

1.2 A.A.& M., Inc. Executed Option Agreement to acquire Transmission Line Easement Route Option 2 on A.A.& M., Inc. property in place. Notice of exercise given and acknowledged. Closing set for January 15, 2001.

1.3 TyCom Integrated Cable Systems, Inc. Executed Option Agreement to acquire Transmission Line Easement Route Option 2 and Back-up Underground Transmission Line Easement on TyCom Integrated Cable Systems, Inc. property in place.

1.4 Boston & Maine Railroad. Executed License Agreement in place.

1.5 Public Service Company of New Hampshire, Inc. Agreement to acquire Transmission Line Easement Route Option 2 on Newington Station property of Public Service Company of New Hampshire, Inc. not yet finalized.

1.6 Town of Newington Sewer Commission. Executed easement and consent for placement of Transmission Line Easement Route Option 2 on property of TyCom Integrated Cable Systems, Inc. and property of Town of Newington in place.

2. WATER INTAKE AND DISCHARGE:

2.1 Sea 3, Inc. Executed Waterline and Pumping Station Easement in place.

2.2 Sprague Energy Corp. Waterline Easement not yet finalized.

3. ICR ROAD:

3.1 CE Nuclear Power, LLC. Executed Option Agreement to acquire land for ICR Road on CE Nuclear Power, LLC property, in place.

3.2 A.A.& M., Inc. Executed Option Agreement to acquire land for ICR Road on A.A.& M., Inc. property in place. Notice of exercise given and acknowledged. Closing set for January 15, 2001.

3.3 TyCom Integrated Cable Systems, Inc. Executed Option Agreement to

acquire land for ICR Road on TyCom Integrated Cable Systems, Inc. property, in place.

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3.4 Public Service Company of New Hampshire, Inc. Executed Access Agreement in place for entry on land of Public Service Company of New Hampshire, Inc. to construct ICR Road. Agreement to convey title not yet finalized.

4. MISCELLANEOUS PROPERTY MATTERS:

4.1 Northeast Medical Properties, Inc. Executed Construction Parking Lease with Northeast Medical Properties, Inc., in place.

4.2 Sprague Energy Corp. Construction Parking and Laydown Agreement not yet finalized.

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EXHIBIT G

CEI NOTE

G-1

SCHEDULE 2(f)

SEC PUBLIC FILINGS OF THE GUARANTOR

AMENDMENT No. 1

Dated as of April 2, 2002

To

LEASE AGREEMENT

between

HAWKEYE FUNDING, LIMITED PARTNERSHIP,

as Lessor

and

NEWINGTON ENERGY, L.L.C.,

as Lessee

This Amendment No. 1 has been manually executed in 40 counterparts, numbered consecutively from 1 through 40, of which this is No. \_\_\_\_\_. To the extent, if any, that this Amendment No. 1 constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any jurisdiction), no security interest in this Amendment No. 1 may be created or perfected through the transfer or possession of any counterpart other than the original counterpart which shall be the counterpart identified as counterpart No. 1.

This Amendment No. 1 dated as of April 2, 2002 to Lease Agreement ("AMENDMENT NO. 1"), between HAWKEYE FUNDING, LIMITED PARTNERSHIP, a Delaware limited partnership ("LESSOR"), and NEWINGTON ENERGY, L.L.C., a Delaware limited liability company ("LESSEE"), amending the Original Lease referred to below.

WHEREAS, Lessor and Lessee have heretofore entered into a Lease Agreement dated as of November 14, 2000 (the "ORIGINAL LEASE"); and

WHEREAS, Lessor and Lessee wish to amend the Original Lease as hereinafter provided (the Original Lease, as amended hereby and as may hereafter be further amended, modified, supplemented or restated from time to time, the "LEASE");

NOW, THEREFORE, in consideration of the premises and in order to induce Lessor to amend the Original Lease, the parties hereto agree as follows:

SECTION 1. DEFINITIONS. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Original Lease.

SECTION 2. AMENDMENTS. The Original Lease is hereby amended as follows:

2.1 Paragraph (c) of Section 12 of the Original Lease is amended by deleting such paragraph and inserting the following in its place:

"(c) In the event the Lessee exercises its right to terminate the lease of the Project pursuant to this Section 12 on the last day of the last month of the Extended Term or on any Basic Rent Payment Date during any Renewal Term or in the event a termination of the lease of the Project occurs pursuant to paragraph (a) of Section 14 hereof or the Lessee exercises its option under paragraph (e) of Section 13 to arrange for the Project to be sold and the date on which such termination occurs or such option is exercised is on or before the last day of the last month of the Extended Term or during any Renewal Term and the Lessee chooses to effect a sale pursuant to this Section 12:

- (i) if the Cash Proceeds are greater than the Adjusted Acquisition Cost, the Lessor shall pay to the Lessee the amount by which such Cash Proceeds exceed the Adjusted Acquisition Cost;
- (ii) if the Cash Proceeds are equal to or less than the

Adjusted Acquisition Cost, but greater than or equal to the percentage of the Adjusted Acquisition Cost described under the heading "Column I" on Exhibit H hereto and for the periods described therein, the Lessee shall pay to the Lessor an amount equal to (A) the Adjusted Acquisition Cost less (B) the Cash Proceeds; and

- (iii) if the Cash Proceeds are less than the percentage of the Adjusted Acquisition Cost described under the heading "Column I" on Exhibit H hereto and for the periods described therein (or if there are no Cash Proceeds), the Lessee shall pay to the Lessor an amount equal to the sum

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of (A) the percentage of the Adjusted Acquisition Cost described under the heading "Column II" on Exhibit H hereto and for the periods described therein and (B) the amount, if any, by which the residual value of the Project has been reduced by wear and tear in excess of that attributable to normal and proper use (the amount of such excess wear and tear to be such amount as the Lessor and the Lessee agree, or if no agreement is reached, the amount determined pursuant to the Appraisal Procedure)."

- 2.2 Exhibit H to the Original Lease is amended by deleting such Exhibit and inserting the following Exhibit H to read in its entirety in the form attached hereto and made a part hereof as Annex I.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF LESSEE. Lessee hereby represents and warrants as follows:

- 3.1 The execution, delivery and performance by Lessee of this Amendment No. 1 are within Lessee's power and authority, have been duly authorized by all necessary corporate action and do not contravene Lessee's certificate of formation or the operating agreement, any law, rule or regulation or any contractual restriction binding on or affecting Lessee.
- 3.2 The representations and warranties of Lessee contained in the Original Lease, after giving effect to this Amendment No. 1, are and remain true and correct in all material respects on and as of the date of this Amendment No. 1 with the same effect as though such representations and warranties had been made on and as of such date, except to the extent such representations and warranties expressly relate specifically to an earlier date.

SECTION 4. MISCELLANEOUS.

- 4.1 Upon the effectiveness of Section 2 hereof: (a) each reference in the Lease to "this Agreement", "hereunder", "hereof" or words of like import referring to the Lease shall mean and be a reference to the Lease as amended hereby, and (b) each reference in any other related agreements to the "Lease", "thereunder", "thereof" or words of like import referring to the Lease, shall mean and be a reference to the Lease as amended hereby.
- 4.2 Except as specifically amended above, the Lease shall continue to be in full force and effect and is hereby in all respects ratified and confirmed.
- 4.3 THIS AMENDMENT NO. 1 SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.
- 4.4 This Amendment No. 1 may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be duly executed as of the date first above written.

HAWKEYE FUNDING, LIMITED PARTNERSHIP

By Hawkeye Funding, Inc.,  
its General Partner

By:

-----  
Name:  
Title:

NEWINGTON ENERGY, L.L.C.

By:

-----  
Name: Michael Madia  
Title: Vice President and Chief Operating Officer

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ANNEX I

EXHIBIT H

SECTION 12(C) PERCENTAGES

DATES	COLUMN I	COLUMN II
- - - - -	- - - - -	- - - - -
- - - - -	- - - - -	- - - - -
- - - - -	- - - - -	- - - - -
- - - - -	- - - - -	- - - - -
07/01/2010	-	-
12/29/2010	10.50%	89.50%
12/30/2010	-	-
06/29/2011	11.00%	89.00%
06/30/2011	-	-
12/29/2011	11.51%	88.49%
12/30/2011	-	-
06/29/2012	12.06%	87.94%
06/30/2012	-	-
12/29/2012	12.63%	87.37%
12/30/2012	-	-
06/29/2013	13.23%	86.77%
06/30/2013	-	-
12/29/2013	13.86%	86.14%
12/30/2013	-	-
06/29/2014	14.52%	85.48%
06/30/2014	-	-
12/29/2014	15.21%	84.79%

12/30/2014  
-  
06/29/2015  
15.94%  
84.06%  
06/30/2015  
-  
12/29/2015  
16.70%  
83.30%  
12/30/2015  
-  
06/29/2016  
17.51%  
82.49%  
06/30/2016  
-  
12/29/2016  
18.35%  
81.65%  
12/30/2016  
-  
06/29/2017  
19.24%  
80.76%  
06/30/2017  
-  
12/29/2017  
20.17%  
79.83%  
12/30/2017  
-  
06/29/2018  
21.15%  
78.85%  
06/30/2018  
-  
12/29/2018  
22.18%  
77.82%  
12/30/2018  
-  
06/29/2019  
23.27%  
76.73%  
06/30/2019  
-  
12/29/2019  
24.41%  
75.59%  
12/30/2019  
-  
06/29/2020  
25.62%  
74.38%  
06/30/2020  
-  
12/29/2020  
26.88%  
73.12%  
12/30/2020  
-  
06/29/2021  
28.22%  
71.78%  
06/30/2021  
-  
12/29/2021  
29.63%  
70.37%  
12/30/2021  
-  
06/29/2022  
31.12%  
68.88%  
06/30/2022  
33.13%  
66.87%





CONSOLIDATED EDISON, INC.

RATIO OF EARNINGS TO FIXED CHARGES  
 TWELVE MONTHS ENDED  
 (Thousands of Dollars)

EXHIBIT 12.1.1

DECEMBER  
 DECEMBER  
 DECEMBER  
 DECEMBER  
 DECEMBER 1998  
 1999 2000 2001  
 2002 -----  
 -----  
 -----  
 -----  
 -----

----- EARNINGS  
 Net Income for  
 Common Stock  
 \$712,742  
 \$700,615  
 \$582,835  
 \$682,242  
 \$646,036  
 Preferred  
 Dividends  
 17,007 13,593  
 13,593 13,593  
 12,458 Income  
 Tax 405,410  
 372,825 307,168  
 442,631 376,417  
 -----  
 -----  
 -----

-----  
 Total Earnings  
 Before Income  
 Tax 1,135,159  
 1,087,033  
 903,596  
 1,138,466  
 1,034,911 FIXED  
 CHARGES\*  
 345,513 357,178  
 431,217 457,554  
 460,279 -----  
 -----  
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----- Total  
 Earnings Before  
 Income Tax and  
 Fixed Charges  
 \$1,480,672  
 \$1,444,211  
 \$1,334,813  
 \$1,596,020  
 \$1,495,190  
 =====  
 =====  
 =====  
 =====  
 =====

\* Fixed Charges  
 Interest on  
 Long-Term Debt  
 \$294,894  
 \$305,879  
 \$351,410  
 \$384,422  
 \$373,060  
 Amortization of  
 Debt Discount,  
 Premium and  
 Expense 13,777

13,514 12,584  
12,526 12,264  
Interest on  
Component of  
Rentals 18,442  
17,720 17,697  
18,783 13,971  
Other Interest  
18,400 20,065  
49,526 41,823  
60,984 -----  
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----- Total  
Fixed Charges  
\$345,513  
\$357,178  
\$431,217  
\$457,554  
\$460,279

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Ratio of  
Earnings to  
Fixed Charges  
4.29 4.04 3.10  
3.49 3.25

CONSOLIDATED EDISON, INC.

COMBINED RATIO  
PERIODS ENDING  
(Thousands of Dollars)

EXHIBIT 12.1.2

DECEMBER  
DECEMBER  
DECEMBER  
DECEMBER  
DECEMBER  
1998 1999  
2000 2001  
2002 -----  
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EARNINGS Net  
Income for  
Common Stock  
\$712,742  
\$700,615  
\$582,835  
\$682,242  
\$646,036  
Preferred  
Dividends  
17,007  
13,593  
13,593  
13,593  
12,458  
Income Tax  
405,410  
372,825  
307,168  
442,631  
376,417 ----  
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Total  
Earnings  
Before  
Income Tax  
1,135,159  
1,087,033  
903,596  
1,138,466  
1,034,911  
FIXED  
CHARGES\*  
345,513  
357,178  
431,217  
457,554  
460,279 ----  
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-----  
-----

Total  
Earnings  
Before  
Income Tax  
and Fixed  
Charges  
\$1,480,672  
\$1,444,211  
\$1,334,813  
\$1,596,020  
\$1,495,190  
=====  
=====

=====  
=====  
=====

\* Fixed  
Charges  
Interest on  
Long-Term  
Debt  
\$294,894  
\$305,879  
\$351,410  
\$384,422  
\$373,060  
Amortization  
of Debt  
Discount,  
Premium and  
Expense  
13,777  
13,514  
12,584  
12,526  
12,264  
Interest on  
Component of  
Rentals  
18,442  
17,720  
17,697  
18,783  
13,971 Other  
Interest  
18,400  
20,065  
49,526  
41,823  
60,984 -----  
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Total Fixed  
Charges  
\$345,513  
\$357,178  
\$431,217  
\$457,554  
\$460,279  
PREFERRED  
STOCK  
DIVIDEND  
REQUIREMENTS  
26,573  
20,595  
20,595  
22,284  
19,166 -----  
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Total Fixed  
Charges +  
Pref Stock  
Div  
Requirements  
\$372,086  
\$377,773  
\$451,813  
\$479,838  
\$479,445  
=====  
=====  
=====  
=====  
=====

Ratio of  
Earnings to  
Fixed

Charges 3.98

3.82 2.95

3.33 3.12

CONSOLIDATED EDISON, INC.

SUBSIDIARIES

1. Consolidated Edison Company of New York, Inc. ("Con Edison of New York"), a New York corporation, all of the common stock of which is owned by Consolidated Edison, Inc. ("Con Edison").

2. Orange and Rockland Utilities, Inc. ("O&R"), a New York corporation, wholly-owned by Con Edison, and O&R's subsidiaries: Rockland Electric Company, a New Jersey corporation, and Pike County Light & Power Company, a Pennsylvania corporation, each of which is wholly-owned by O&R.

Neither Con Edison, Con Edison of New York nor O&R have any significant subsidiaries other than as indicated above. Pursuant to Item 601(b) (21) of Regulation S-K, the names of subsidiaries, which considered in the aggregate as a single subsidiary, would not constitute a "significant subsidiary" (as defined under Rule 1-02(w) of Regulation S-X) as of December 31, 2002 have been omitted.

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in: (i) the Registration Statement on Form S-3 (No. 333-84156) relating to the Con Edison Automatic Dividend Reinvestment and Cash Payment Plan; (ii) the Registration Statement on Form S-8 (No. 333-04463-99) relating to the Con Edison 1996 Stock Option Plan; (iii) the Registration Statement on Form S-8 (No. 333-86820) relating to The Consolidated Edison Stock Purchase Plan; and (iv) the Registration Statements on Form S-3 (Nos. 333-72264 and 333-102005) relating to debt and equity securities of Con Edison of our report dated February 20, 2003 relating to the financial statements and financial statement schedules of Consolidated Edison, Inc. which appears in this Annual Report on Form 10-K.

PricewaterhouseCoopers LLP

New York, NY  
February 27, 2003

## POWER OF ATTORNEY

WHEREAS Consolidated Edison ("Con Edison"), Consolidated Edison Company of New York, Inc. ("Con Edison of New York") and Orange and Rockland Utilities, Inc. ("O&R") each intends to file with the Securities and Exchange Commission, under the Securities Exchange Act of 1934, as amended (the "Act"), its Annual Report on Form 10-K for the fiscal year ended December 31, 2002 (the "Form 10-K") with any and all exhibits and other documents having relation thereto, as prescribed by the Securities and Exchange Commission pursuant to the Act and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

NOW, THEREFORE,

KNOW ALL BY THESE PRESENTS that the undersigned, in his or her capacity as a director and/or officer, as the case may be, of one or more of Con Edison, Con Edison of New York and O&R, as the case may be, does hereby constitute and appoint Joan S. Freilich, Edward J. Rasmussen and Peter A. Irwin, and each of them severally, his or her true and lawful attorneys-in-fact, with power to act with or without the others and with full power of substitution and resubstitution, to execute in his or her name, place and stead, the Form 10-K for the company or companies as to which the undersigned serves in such capacity, and any and all amendments thereto, and all instruments necessary or incidental in connection therewith, and to file or cause to be filed the same with the Securities and Exchange Commission. Each of said attorneys shall have full power and authority to do and perform, in the name and on behalf of the undersigned, in any and all capacities, every act whatsoever necessary or desirable to be done in the premises, as fully to all intents and purposes as the undersigned might or could do in person, the undersigned hereby ratifying and confirming all that said attorneys-in-fact or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 20th day of February, 2003.

/s/ Vincent A. Calarco

Vincent A. Calarco



POWER OF ATTORNEY

WHEREAS Consolidated Edison ("Con Edison"), Consolidated Edison Company of New York, Inc. ("Con Edison of New York") and Orange and Rockland Utilities, Inc. ("O&R") each intends to file with the Securities and Exchange Commission, under the Securities Exchange Act of 1934, as amended (the "Act"), its Annual Report on Form 10-K for the fiscal year ended December 31, 2002 (the "Form 10-K") with any and all exhibits and other documents having relation thereto, as prescribed by the Securities and Exchange Commission pursuant to the Act and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

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IN WITNESS WHEREOF, the undersigned has executed this instrument this 20th day of February, 2003.

/s/ George Campbell, Jr.

George Campbell, Jr.

POWER OF ATTORNEY

WHEREAS Consolidated Edison ("Con Edison"), Consolidated Edison Company of New York, Inc. ("Con Edison of New York") and Orange and Rockland Utilities, Inc. ("O&R") each intends to file with the Securities and Exchange Commission, under the Securities Exchange Act of 1934, as amended (the "Act"), its Annual Report on Form 10-K for the fiscal year ended December 31, 2002 (the "Form 10-K") with any and all exhibits and other documents having relation thereto, as prescribed by the Securities and Exchange Commission pursuant to the Act and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

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IN WITNESS WHEREOF, the undersigned has executed this instrument this 18th day of February, 2003.

/s/ Gordon J. Davis

Gordon J. Davis

POWER OF ATTORNEY

WHEREAS Consolidated Edison ("Con Edison"), Consolidated Edison Company of New York, Inc. ("Con Edison of New York") and Orange and Rockland Utilities, Inc. ("O&R") each intends to file with the Securities and Exchange Commission, under the Securities Exchange Act of 1934, as amended (the "Act"), its Annual Report on Form 10-K for the fiscal year ended December 31, 2002 (the "Form 10-K") with any and all exhibits and other documents having relation thereto, as prescribed by the Securities and Exchange Commission pursuant to the Act and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

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IN WITNESS WHEREOF, the undersigned has executed this instrument this 20th day of February, 2003.

/s/ Michael J. Del Giudice

Michael J. Del Giudice

POWER OF ATTORNEY

WHEREAS Consolidated Edison ("Con Edison"), Consolidated Edison Company of New York, Inc. ("Con Edison of New York") and Orange and Rockland Utilities, Inc. ("O&R") each intends to file with the Securities and Exchange Commission, under the Securities Exchange Act of 1934, as amended (the "Act"), its Annual Report on Form 10-K for the fiscal year ended December 31, 2002 (the "Form 10-K") with any and all exhibits and other documents having relation thereto, as prescribed by the Securities and Exchange Commission pursuant to the Act and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

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KNOW ALL BY THESE PRESENTS that the undersigned, in his or her capacity as a director and/or officer, as the case may be, of one or more of Con Edison, Con Edison of New York and O&R, as the case may be, does hereby constitute and appoint Joan S. Freilich, Edward J. Rasmussen and Peter A. Irwin, and each of them severally, his or her true and lawful attorneys-in-fact, with power to act with or without the others and with full power of substitution and resubstitution, to execute in his or her name, place and stead, the Form 10-K for the company or companies as to which the undersigned serves in such capacity, and any and all amendments thereto, and all instruments necessary or incidental in connection therewith, and to file or cause to be filed the same with the Securities and Exchange Commission. Each of said attorneys shall have full power and authority to do and perform, in the name and on behalf of the undersigned, in any and all capacities, every act whatsoever necessary or desirable to be done in the premises, as fully to all intents and purposes as the undersigned might or could do in person, the undersigned hereby ratifying and confirming all that said attorneys-in-fact or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 24th day of February, 2003.

/s/ Joan S. Freilich

Joan S. Freilich

POWER OF ATTORNEY

WHEREAS Consolidated Edison ("Con Edison"), Consolidated Edison Company of New York, Inc. ("Con Edison of New York") and Orange and Rockland Utilities, Inc. ("O&R") each intends to file with the Securities and Exchange Commission, under the Securities Exchange Act of 1934, as amended (the "Act"), its Annual Report on Form 10-K for the fiscal year ended December 31, 2002 (the "Form 10-K") with any and all exhibits and other documents having relation thereto, as prescribed by the Securities and Exchange Commission pursuant to the Act and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

NOW, THEREFORE,

KNOW ALL BY THESE PRESENTS that the undersigned, in his or her capacity as a director and/or officer, as the case may be, of one or more of Con Edison, Con Edison of New York and O&R, as the case may be, does hereby constitute and appoint Joan S. Freilich, Edward J. Rasmussen and Peter A. Irwin, and each of them severally, his or her true and lawful attorneys-in-fact, with power to act with or without the others and with full power of substitution and resubstitution, to execute in his or her name, place and stead, the Form 10-K for the company or companies as to which the undersigned serves in such capacity, and any and all amendments thereto, and all instruments necessary or incidental in connection therewith, and to file or cause to be filed the same with the Securities and Exchange Commission. Each of said attorneys shall have full power and authority to do and perform, in the name and on behalf of the undersigned, in any and all capacities, every act whatsoever necessary or desirable to be done in the premises, as fully to all intents and purposes as the undersigned might or could do in person, the undersigned hereby ratifying and confirming all that said attorneys-in-fact or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 21st day of February, 2003.

/s/ Ellen V. Futter

Ellen V. Futter

POWER OF ATTORNEY

WHEREAS Consolidated Edison ("Con Edison"), Consolidated Edison Company of New York, Inc. ("Con Edison of New York") and Orange and Rockland Utilities, Inc. ("O&R") each intends to file with the Securities and Exchange Commission, under the Securities Exchange Act of 1934, as amended (the "Act"), its Annual Report on Form 10-K for the fiscal year ended December 31, 2002 (the "Form 10-K") with any and all exhibits and other documents having relation thereto, as prescribed by the Securities and Exchange Commission pursuant to the Act and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

NOW, THEREFORE,

KNOW ALL BY THESE PRESENTS that the undersigned, in his or her capacity as a director and/or officer, as the case may be, of one or more of Con Edison, Con Edison of New York and O&R, as the case may be, does hereby constitute and appoint Joan S. Freilich, Edward J. Rasmussen and Peter A. Irwin, and each of them severally, his or her true and lawful attorneys-in-fact, with power to act with or without the others and with full power of substitution and resubstitution, to execute in his or her name, place and stead, the Form 10-K for the company or companies as to which the undersigned serves in such capacity, and any and all amendments thereto, and all instruments necessary or incidental in connection therewith, and to file or cause to be filed the same with the Securities and Exchange Commission. Each of said attorneys shall have full power and authority to do and perform, in the name and on behalf of the undersigned, in any and all capacities, every act whatsoever necessary or desirable to be done in the premises, as fully to all intents and purposes as the undersigned might or could do in person, the undersigned hereby ratifying and confirming all that said attorneys-in-fact or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 19th day of February, 2003.

/s/ Sally Hernandez-Pinero

Sally Hernandez-Pinero

POWER OF ATTORNEY

WHEREAS Consolidated Edison ("Con Edison"), Consolidated Edison Company of New York, Inc. ("Con Edison of New York") and Orange and Rockland Utilities, Inc. ("O&R") each intends to file with the Securities and Exchange Commission, under the Securities Exchange Act of 1934, as amended (the "Act"), its Annual Report on Form 10-K for the fiscal year ended December 31, 2002 (the "Form 10-K") with any and all exhibits and other documents having relation thereto, as prescribed by the Securities and Exchange Commission pursuant to the Act and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

NOW, THEREFORE,

KNOW ALL BY THESE PRESENTS that the undersigned, in his or her capacity as a director and/or officer, as the case may be, of one or more of Con Edison, Con Edison of New York and O&R, as the case may be, does hereby constitute and appoint Joan S. Freilich, Edward J. Rasmussen and Peter A. Irwin, and each of them severally, his or her true and lawful attorneys-in-fact, with power to act with or without the others and with full power of substitution and resubstitution, to execute in his or her name, place and stead, the Form 10-K for the company or companies as to which the undersigned serves in such capacity, and any and all amendments thereto, and all instruments necessary or incidental in connection therewith, and to file or cause to be filed the same with the Securities and Exchange Commission. Each of said attorneys shall have full power and authority to do and perform, in the name and on behalf of the undersigned, in any and all capacities, every act whatsoever necessary or desirable to be done in the premises, as fully to all intents and purposes as the undersigned might or could do in person, the undersigned hereby ratifying and confirming all that said attorneys-in-fact or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 18th day of February, 2003.

/s/ Peter W. Likins

Peter W. Likins

POWER OF ATTORNEY

WHEREAS Consolidated Edison ("Con Edison"), Consolidated Edison Company of New York, Inc. ("Con Edison of New York") and Orange and Rockland Utilities, Inc. ("O&R") each intends to file with the Securities and Exchange Commission, under the Securities Exchange Act of 1934, as amended (the "Act"), its Annual Report on Form 10-K for the fiscal year ended December 31, 2002 (the "Form 10-K") with any and all exhibits and other documents having relation thereto, as prescribed by the Securities and Exchange Commission pursuant to the Act and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

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IN WITNESS WHEREOF, the undersigned has executed this instrument this 24th day of February, 2003.

/s/ Eugene R. McGrath

Eugene R. McGrath



POWER OF ATTORNEY

WHEREAS Consolidated Edison ("Con Edison"), Consolidated Edison Company of New York, Inc. ("Con Edison of New York") and Orange and Rockland Utilities, Inc. ("O&R") each intends to file with the Securities and Exchange Commission, under the Securities Exchange Act of 1934, as amended (the "Act"), its Annual Report on Form 10-K for the fiscal year ended December 31, 2002 (the "Form 10-K") with any and all exhibits and other documents having relation thereto, as prescribed by the Securities and Exchange Commission pursuant to the Act and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

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IN WITNESS WHEREOF, the undersigned has executed this instrument this 20th day of February, 2003.

/s/ Frederic V. Salerno

Frederic V. Salerno

POWER OF ATTORNEY

WHEREAS Consolidated Edison ("Con Edison"), Consolidated Edison Company of New York, Inc. ("Con Edison of New York") and Orange and Rockland Utilities, Inc. ("O&R") each intends to file with the Securities and Exchange Commission, under the Securities Exchange Act of 1934, as amended (the "Act"), its Annual Report on Form 10-K for the fiscal year ended December 31, 2002 (the "Form 10-K") with any and all exhibits and other documents having relation thereto, as prescribed by the Securities and Exchange Commission pursuant to the Act and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

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IN WITNESS WHEREOF, the undersigned has executed this instrument this 18th day of February, 2003.

/s/ Richard A. Voell

Richard A. Voell

POWER OF ATTORNEY

WHEREAS Consolidated Edison ("Con Edison"), Consolidated Edison Company of New York, Inc. ("Con Edison of New York") and Orange and Rockland Utilities, Inc. ("O&R") each intends to file with the Securities and Exchange Commission, under the Securities Exchange Act of 1934, as amended (the "Act"), its Annual Report on Form 10-K for the fiscal year ended December 31, 2002 (the "Form 10-K") with any and all exhibits and other documents having relation thereto, as prescribed by the Securities and Exchange Commission pursuant to the Act and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

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IN WITNESS WHEREOF, the undersigned has executed this instrument this 24th day of February, 2003.

/s/ Stephen R. Volk

Stephen R. Volk

POWER OF ATTORNEY

WHEREAS Consolidated Edison ("Con Edison"), Consolidated Edison Company of New York, Inc. ("Con Edison of New York") and Orange and Rockland Utilities, Inc. ("O&R") each intends to file with the Securities and Exchange Commission, under the Securities Exchange Act of 1934, as amended (the "Act"), its Annual Report on Form 10-K for the fiscal year ended December 31, 2002 (the "Form 10-K") with any and all exhibits and other documents having relation thereto, as prescribed by the Securities and Exchange Commission pursuant to the Act and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

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IN WITNESS WHEREOF, the undersigned has executed this instrument this 24th day of February, 2003.

/s/ Edward J. Rasmussen

Edward J. Rasmussen

POWER OF ATTORNEY

WHEREAS Consolidated Edison ("Con Edison"), Consolidated Edison Company of New York, Inc. ("Con Edison of New York") and Orange and Rockland Utilities, Inc. ("O&R") each intends to file with the Securities and Exchange Commission, under the Securities Exchange Act of 1934, as amended (the "Act"), its Annual Report on Form 10-K for the fiscal year ended December 31, 2002 (the "Form 10-K") with any and all exhibits and other documents having relation thereto, as prescribed by the Securities and Exchange Commission pursuant to the Act and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

NOW, THEREFORE,

KNOW ALL BY THESE PRESENTS that the undersigned, in his or her capacity as a director and/or officer, as the case may be, of one or more of Con Edison, Con Edison of New York and O&R, as the case may be, does hereby constitute and appoint Joan S. Freilich, Edward J. Rasmussen and Peter A. Irwin, and each of them severally, his or her true and lawful attorneys-in-fact, with power to act with or without the others and with full power of substitution and resubstitution, to execute in his or her name, place and stead, the Form 10-K for the company or companies as to which the undersigned serves in such capacity, and any and all amendments thereto, and all instruments necessary or incidental in connection therewith, and to file or cause to be filed the same with the Securities and Exchange Commission. Each of said attorneys shall have full power and authority to do and perform, in the name and on behalf of the undersigned, in any and all capacities, every act whatsoever necessary or desirable to be done in the premises, as fully to all intents and purposes as the undersigned might or could do in person, the undersigned hereby ratifying and confirming all that said attorneys-in-fact or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 21st day of February, 2003.

/s/ George Strayton

George Strayton

POWER OF ATTORNEY

WHEREAS Consolidated Edison ("Con Edison"), Consolidated Edison Company of New York, Inc. ("Con Edison of New York") and Orange and Rockland Utilities, Inc. ("O&R") each intends to file with the Securities and Exchange Commission, under the Securities Exchange Act of 1934, as amended (the "Act"), its Annual Report on Form 10-K for the fiscal year ended December 31, 2002 (the "Form 10-K") with any and all exhibits and other documents having relation thereto, as prescribed by the Securities and Exchange Commission pursuant to the Act and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

NOW, THEREFORE,

KNOW ALL BY THESE PRESENTS that the undersigned, in his or her capacity as a director and/or officer, as the case may be, of one or more of Con Edison, Con Edison of New York and O&R, as the case may be, does hereby constitute and appoint Joan S. Freilich, Edward J. Rasmussen and Peter A. Irwin, and each of them severally, his or her true and lawful attorneys-in-fact, with power to act with or without the others and with full power of substitution and resubstitution, to execute in his or her name, place and stead, the Form 10-K for the company or companies as to which the undersigned serves in such capacity, and any and all amendments thereto, and all instruments necessary or incidental in connection therewith, and to file or cause to be filed the same with the Securities and Exchange Commission. Each of said attorneys shall have full power and authority to do and perform, in the name and on behalf of the undersigned, in any and all capacities, every act whatsoever necessary or desirable to be done in the premises, as fully to all intents and purposes as the undersigned might or could do in person, the undersigned hereby ratifying and confirming all that said attorneys-in-fact or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 27th day of February, 2003.

/s/ John D. McMahon

John D. McMahon

Certification Required Under Section 906 of the Sarbanes-Oxley Act of 2002

I, Eugene R. McGrath, the Chief Executive Officer of Consolidated Edison, Inc. (the "Company") certify that the Company's Annual Report on Form 10-K for the year ended December 31, 2002, which this statement accompanies, (the "Form 10-K") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) and that the information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Eugene R. McGrath  
-----  
Eugene R. McGrath

Dated: February 27, 2003

Certification Required Under Section 906 of the Sarbanes-Oxley Act of 2002

I, Joan S. Freilich, the Chief Financial Officer of Consolidated Edison, Inc. (the "Company") certify that the Company's Annual Report on Form 10-K for the year ended December 31, 2002, which this statement accompanies, (the "Form 10-K") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) and that the information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Joan S. Freilich  
-----  
Joan S. Freilich

Dated: February 27, 2003



RATIO OF EARNINGS TO FIXED CHARGES  
 TWELVE MONTHS ENDED  
 (Thousands of Dollars)

DECEMBER	DECEMBER	DECEMBER	DECEMBER	DECEMBER
1998	1999	2000	2001	2002
EARNINGS				
Net Income				
\$745,140	\$711,843	\$583,715	\$663,061	\$617,840
Income Tax				
414,235	366,081	289,926	427,168	341,758
Total Earnings Before Income Tax				
1,159,375	1,077,924	873,641	1,090,229	959,598
FIXED CHARGES*				
345,513	340,344	392,347	409,588	408,580
Total Earnings Before Income Tax and Fixed Charges				
\$1,504,888	\$1,418,268	\$1,265,988	\$1,499,817	\$1,368,178
* Fixed Charges Interest on Long-Term Debt				

\$294,894  
\$291,747  
\$318,842  
\$347,260  
\$332,585

Amortization  
of Debt  
Discount,  
Premium and  
Expense

13,777  
13,514  
12,584  
12,527  
12,264

Interest on  
Component  
of Rentals

18,442  
17,720  
17,697  
17,478  
12,373

Other

Interest

18,400  
17,363  
43,224  
32,323

51,358 ----

-----  
-----  
-----  
-----  
-----

Total Fixed  
Charges

\$345,513  
\$340,344  
\$392,347  
\$409,588  
\$408,580

=====  
=====  
=====  
=====  
=====

Ratio of  
Earnings to  
Fixed  
Charges

4.36 4.17  
3.23 3.66  
3.35

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in the Registration Statement on Form S-3 (No. 333-101227) of Consolidated Edison Company of New York, Inc. of our report dated February 20, 2003 relating to the financial statements and financial statement schedule of Consolidated Edison Company of New York, Inc. which appears in this Annual Report on Form 10-K.

PricewaterhouseCoopers LLP

New York, NY  
February 27, 2003

Certification Required Under Section 906 of the Sarbanes-Oxley Act of 2002

I, Eugene R. McGrath, the Chief Executive Officer of Consolidated Edison Company of New York, Inc. (the "Company") certify that the Company's Annual Report on Form 10-K for the year ended December 31, 2002, which this statement accompanies, (the "Form 10-K") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) and that the information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Eugene R. McGrath  
-----  
Eugene R. McGrath

Dated: February 27, 2003

Certification Required Under Section 906 of the Sarbanes-Oxley Act of 2002

I, Joan S. Freilich, the Chief Financial Officer of Consolidated Edison Company of New York, Inc. (the "Company") certify that the Company's Annual Report on Form 10-K for the year ended December 31, 2002, which this statement accompanies, (the "Form 10-K") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) and that the information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Joan S. Freilich  
-----  
Joan S. Freilich

Dated: February 27, 2003

=====

ORANGE AND ROCKLAND UTILITIES, INC.

AND

THE CHASE MANHATTAN BANK,  
TRUSTEE

INDENTURE

DATED AS OF JUNE 15, 2000

PROVIDING FOR THE ISSUANCE OF  
DEBT SECURITIES

=====

CROSS REFERENCE SHEET\*

Between

Provisions of Trust Indenture Act of 1939,  
As Amended.

and

Indenture dated as of June 15, 2000 between  
Orange and Rockland Utilities, Inc.  
and The Chase Manhattan Bank,  
Trustee

SECTION OF ACT -----	SECTION OF INDENTURE -----
310 (a) (1) and (2)	4.04 and 7.08
310 (a) (3) and (4)	Not Applicable
310 (b)	7.07 and 7.09(b)
310 (c)	Not Applicable
311 (a) and (b)	7.12
311 (c)	Not Applicable
312 (a)	5.01 and 5.02 (a)
312 (b) and (c)	5.02 (b) and (c)
313 (a) (1), (2), (3), (5), (6) and (7)	5.04 (a)
313 (a) (6)	Not Applicable
313 (b) (1)	Not Applicable
313 (b) (2)	5.04 (b)
313 (c)	5.04 (c)
313 (d)	5.04 (d)
314 (a)	5.03
314 (b)	Not Applicable
314 (c) (1) and (2)	15.06
314 (c) (3)	Not Applicable
314 (d)	Not Applicable
314 (e)	15.06
314 (f)	Not Applicable
315 (a), (c) and (d)	7.01
315 (b)	6.07
315 (e)	6.08
316 (a) (1)	6.06
316 (a) (2)	Omitted
316 (a) last paragraph	8.04
316 (b)	6.04
317 (a)	6.02
317 (b)	4.05 and 7.05
318 (a)	15.07

\* This Cross Reference Sheet is not part of the Indenture.

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THIS INDENTURE, dated as of June 15, 2000, between ORANGE AND ROCKLAND UTILITIES, INC., a corporation organized and existing under the laws of the State of New York (herein called the "Company"), and THE CHASE MANHATTAN BANK, a banking corporation organized and existing under the laws of the State of New York (herein called the "Trustee"):

WHEREAS, the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance in one or more series from time to time of its unsecured debentures, notes or other evidences of indebtedness (hereinafter called the "Securities") and to provide the general terms and conditions upon which the Securities are to be authenticated, issued and delivered;

WHEREAS, the Trustee has power to enter into this Indenture and to accept and execute the trusts herein created; and

WHEREAS, the Company represents that all acts and things necessary to make the Securities, when executed by the Company and authenticated and delivered by the Trustee as in this Indenture provided, and duly issued by the Company, the valid, binding and legal obligations of the Company will, at the time of such execution, authentication and delivery, have been done and performed; that all acts and things necessary to constitute these presents a valid indenture and agreement according to its terms have been done and performed; that the execution of this Indenture by the Company has in all respects been duly authorized; and that the issue hereunder of the Securities will, at the time of the issue thereof, have in all respects been duly authorized; and the Company, in the exercise of each and every legal right and power in it vested, executes this Indenture and proposes to make, execute, issue and deliver the Securities;

NOW, THEREFORE:

In consideration of the premises, of the purchase and acceptance of the Securities by the holders thereof and of the sum of \$1 duly paid by the Trustee at the execution of these presents, the receipt whereof is hereby acknowledged, the Company covenants and agrees with the Trustee, for the equal and proportionate benefit of the respective holders from time to time of the Securities or of any series thereof, as follows:

#### ARTICLE ONE

#### DEFINITIONS

SECTION 1.01. CERTAIN TERMS DEFINED. The following terms (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section. All other terms used in this Indenture which are defined (either directly or by reference) in the Trust Indenture Act of 1939 (except as herein otherwise expressly provided or unless the context otherwise requires) shall have the meanings so assigned to such terms.

BOARD OF DIRECTORS:

The term "Board of Directors" shall mean the Board of Directors of the Company or any duly authorized committee of such Board.

BOARD RESOLUTION:

The term "Board Resolution" means a copy of a resolution or resolutions certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

COMPANY:

The term "Company" shall mean the person named as the Company in the first paragraph of this instrument until a successor corporation shall have become such pursuant to Article Eleven of this Indenture, and thereafter "Company" shall mean such successor corporation.

COMPANY ORDER:

The term "Company Order" shall mean the written order, request or instruction of the Company signed on behalf of the Company by its Chairman of

the Board, Vice Chairman, President or a Vice President and by its Treasurer or an Assistant Treasurer or its Secretary or an Assistant Secretary.

**CORPORATION:**

The term "corporation" shall mean any corporation, voluntary association, joint stock company, business trust or other similar organization.

**DEPOSITARY:**

The term "Depositary" shall mean, with respect to the Securities of any series issuable or issued in whole or in part in the form of one or more Global Securities, the person designated as Depositary by the Company pursuant to Section 2.03 until a successor Depositary shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Depositary" shall mean or include each person who is then a Depositary hereunder, and if at any time there is more than one such person, "Depositary" as used with respect to the Securities of any such series shall mean the Depositary with respect to the Securities of that series.

**EVENT OF DEFAULT:**

The term "Event of Default" shall mean any event specified in Section 6.01, continued for the period of time, if any, and after the giving of the notice, if any, therein designated.

**GLOBAL SECURITY:**

The term "Global Security" shall mean a Security evidencing all or part of a series of Securities issued to a Depositary for such series in accordance with Section 2.01.

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**INDENTURE:**

The term "Indenture" shall mean this instrument as originally executed or as it may from time to time be supplemented and amended by one or more indentures supplemental hereto pursuant to Article Ten hereof and shall include the form and terms of particular series of Securities established as contemplated in Section 2.03.

**INTEREST:**

The term "interest", when used with respect to an Original Issue Discount Security which by its terms bears interest only after maturity, shall mean interest payable after maturity.

**INTEREST PAYMENT DATE:**

The term "interest payment date" when used with respect to any Security or any instalment of interest thereon shall mean the date specified in such Security as the fixed date on which such instalment of interest is due and payable.

**OFFICERS' CERTIFICATE:**

The term "Officers' Certificate" shall mean a certificate signed by the Chairman of the Board, Vice Chairman, President or any Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Company.

**OPINION OF COUNSEL:**

The term "Opinion of Counsel" shall mean an opinion in writing signed by legal counsel, who may be an employee of or of counsel to the Company.

**ORIGINAL ISSUE DISCOUNT SECURITY:**

The term "Original Issue Discount Security" shall mean any Security that provides for an amount less than the principal thereof to be due and payable upon a declaration of acceleration of the maturity thereof pursuant to Section 6.01.

**OUTSTANDING:**

The term "outstanding", when used with reference to Securities, shall, subject to the provisions of Section 8.04, mean, as of any particular time, all Securities theretofore authenticated and delivered by the Trustee under this

Indenture, except:

(a) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(b) Securities or portions thereof for the payment or redemption of which moneys, or as provided in Section 12.02 hereof, direct obligations of the United States of America, in the necessary amount shall have been deposited in trust with the Trustee or

- 4 -

with any paying agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own paying agent), provided that if such Securities are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Article Three provided, or provision satisfactory to the Trustee shall have been made for giving such notice); and

(c) Securities which have been paid pursuant to Section 2.07 or in exchange for or in lieu of which other Securities shall have been authenticated and delivered pursuant to Section 2.07;

provided, however, that in determining whether the holders of the requisite principal amount of Outstanding Securities have taken any action, given any request, demand, authorization, direction, notice, consent or waiver hereunder or whether a quorum is present at a meeting of Securityholders, the principal amount of an Original Issue Discount Security that shall be deemed to be Outstanding shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon acceleration of the maturity thereof pursuant to Section 6.01.

PERSON:

The term "person" shall mean an individual, a corporation, a partnership, a trust, an unincorporated organization or a government or any agency or political subdivision thereof.

PRINCIPAL OFFICE OF THE COMPANY:

The term "principal office of the Company" shall mean the principal office of the Company as shall be specified from time to time in a Company Order delivered to the Trustee. Any such Company Order may specify a principal office of the Company for one or more purposes under this Indenture and such Company Order or one or more other Company Orders may specify one or more other principal offices of the Company for one or more other purposes under this Indenture.

RECORD DATE:

The term "record date" shall mean, with respect to any interest payable on any Security on any interest payment date, the close of business on the date specified in such Security or, in the case of defaulted interest, the close of business on any subsequent record date established as provided in Section 2.02 (in each case whether or not such day is a business day).

REGISTERED HOLDER:

The term "registered holder", "Securityholder", "holder" or other similar term shall mean the person or persons in whose name or names a particular Security shall be registered upon the Security Register.

RESPONSIBLE OFFICER:

The term "responsible officer", when used with respect to the Trustee, shall mean any officer of the Trustee assigned by the Trustee to administer its corporate trust matters.

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SECURITYHOLDER:

The term "Securityholder" shall have the meaning specified under the term "registered holder".

SECURITY REGISTER:

The term "Security Register" shall have the meaning specified in Section 2.05.

SUCCESSOR:

The term "Successor" shall have the meaning specified in Section 11.02.

TRUSTEE:

The term "Trustee" shall mean the person named as Trustee in the first paragraph of this instrument and, subject to the provisions of Article Seven of this Indenture, shall also include its successors and assigns, and if at any time there is more than one trustee, "Trustee" as used with respect to the Securities of any series shall mean the trustee with respect to Securities of that series.

TRUST INDENTURE ACT OF 1939:

The term "Trust Indenture Act of 1939" shall mean the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed, except as provided in Section 10.02; PROVIDED, HOWEVER, that in the event the Trust Indenture Act of 1939 is amended after such date, "Trust Indenture Act" means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

VICE PRESIDENT:

The term "Vice President", when used with respect to the Company, shall mean any Vice President, any Senior Vice President, any Executive Vice President and any Senior Executive Vice President of the Company.

ARTICLE TWO

ISSUE, DESCRIPTION, EXECUTION, EXCHANGE AND  
REGISTRATION OF TRANSFER OF SECURITIES

SECTION 2.01. AUTHENTICATION, DELIVERY AND DATING. At any time and from time to time after the execution and delivery of this instrument, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication. The Trustee shall thereupon authenticate and deliver such Securities upon receipt of, and pursuant to, a Company Order, without any further action by the Company. In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities,

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the Trustee shall be entitled to receive, and (subject to Section 7.01) shall be fully protected in relying upon:

(a) a Board Resolution relating thereto and, if applicable, an appropriate record of any action taken pursuant to such resolution, certified by the Secretary or an Assistant Secretary of the Company;

(b) an executed supplemental indenture, if any;

(c) an Officers' Certificate, dated the date such Officers' Certificate is delivered to the Trustee, prepared in accordance with Section 15.06; and

(d) an Opinion of Counsel prepared in accordance with Section 15.06, which shall also state:

(1) that the form and terms of such Securities have been established by or pursuant to one or more Board Resolutions, by a supplemental indenture as permitted by Section 10.01(e), or by both such resolution or resolutions and such supplemental indenture, in conformity with the provisions of this Indenture;

(2) that the supplemental indenture, if any, when executed and delivered by the Company and the Trustee, will constitute a valid and legally binding obligation of the Company; and

(3) that such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding obligations of the Company, enforceable in accordance with their terms, subject, as to enforcement, to

bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting the enforcement of creditors' rights and to general equity principles.

The Trustee shall have the right to decline to authenticate and deliver any Securities under this Section if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

If the Company shall establish pursuant to Section 2.03 that the Securities of a series are to be issued in whole or in part in the form of one or more Global Securities, then the Company shall execute and the Trustee upon receipt of, and pursuant to, a Company Order, shall, in accordance with this Section, authenticate and deliver one or more Global Securities that (i) shall represent and shall be denominated in an amount equal to the aggregate principal amount of the Outstanding Securities of such series to be represented by one or more Global Securities, (ii) shall be registered in the name of the Depository for such Global Security or Global Securities or the nominee of such Depository, and (iii) shall be delivered by the Trustee to such Depository or pursuant to such Depository's instruction.

Each Depository designated pursuant to Section 2.03 for a Global Security must, at the time of its designation and at all times while it serves as Depository, be a clearing agency

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registered under the Securities Exchange Act of 1934, as amended, and any other applicable statute or regulation.

Each Security shall be dated the date of its authentication.

Notwithstanding the provisions of this Section and Section 2.03, if all Securities of a series are not to be originally issued at one time, it shall not be necessary to deliver the Officers' Certificate otherwise required pursuant to Section 2.03 or the Company Order, Board Resolution, Officers' Certificate and Opinion of Counsel otherwise required pursuant to this Section at or prior to the time of authentication of each Security of such series if such documents are delivered at or prior to the authentication upon original issuance of the first Security of such series to be issued. After any such first delivery, any separate request by the Company that the Trustee authenticate Securities of such series for original issue will be deemed to be a certificate by the Company that all conditions precedent provided for in this Indenture relating to the authentication and delivery of such Securities continue to have been compiled with.

SECTION 2.02. FORMS GENERALLY. The Securities of each series shall be issuable in registered form without coupons and shall be in substantially the form as shall be established by or pursuant to one or more Board Resolutions or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements printed, lithographed or engraved thereon as the officers of the Company executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Securities may be listed, or to conform to usage. The Securities shall be issued, except as otherwise provided with respect to any series of Securities pursuant to Section 2.03, in the denomination of \$1,000 and any larger denomination which is an integral multiple of \$1,000 approved by the Company, such approval to be evidenced by the execution thereof.

The person in whose name any Security is registered at the close of business on any record date with respect to any interest payment date shall be entitled to receive the interest payable on such interest payment date, notwithstanding the cancellation of such Security upon any transfer or exchange subsequent to such record date and prior to such interest payment date, unless such Security is redeemed on a date fixed for redemption after such record date and prior to such interest payment date; provided, however, that if and to the extent the Company shall fail to pay on any interest payment date the interest due on such date, such defaulted interest shall be paid to the persons in whose names outstanding Securities are registered at the close of business on the tenth day preceding the date of payment of such defaulted interest or, at the election of the Company, to the persons in whose names outstanding Securities are registered on a subsequent record date established by notice given by mail by or on behalf of the Company to the holders of such Securities not less than

10 days preceding such subsequent record date, which subsequent record date shall precede by at least 10 days the date of payment of such defaulted interest. Such notice shall be given to the persons in whose names such outstanding Securities are registered at the close of business on the fifth business day next preceding the date of the mailing of such notice.

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Except as otherwise provided with respect to any series of Securities pursuant to Section 2.03, interest on the Securities of each series shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

The definitive Securities shall be printed, lithographed or engraved or produced by any combination of these methods on a steel engraved border or steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

The Trustee's certificate of authentication on all Securities shall be in substantially the following form:

This is one of the Securities of the series designated herein issued under the Indenture described herein.

THE CHASE MANHATTAN BANK,  
as Trustee

By  
Authorized Officer

SECTION 2.03. AMOUNT; TERMS OF SERIES. The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is not limited.

The Securities may be issued in one or more series. There shall be established by or pursuant to one or more Board Resolutions, and set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series:

(a) the title of the Securities of the series (which shall distinguish the Securities of the series from the Securities of all other series, except to the extent that additional Securities of an existing series are being issued);

(b) any limit upon the aggregate principal amount of the Securities of the series which may be outstanding under this Indenture (except as otherwise provided in Section 2.07);

(c) the date or dates on which the principal of and premium, if any, on the Securities of the series is payable;

(d) the rate or rates at which the Securities of the series shall bear interest, if any, or the method by which such rate or rates shall be determined, the date or dates from which such interest shall accrue, or the method by which such date or dates shall be determined, the interest payment dates on which any such interest shall be payable and the record dates for the determination of holders to whom interest of any interest payment

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date is payable and the basis of computation of interest (if other than as provided in Section 2.02);

(e) if the amount of payments of the principal of, premium, if any, or interest, if any, on the Securities of the series may be determined with reference to an index, formula, or other method, the manner in which such amounts shall be determined;

(f) the place or places where the principal of, premium, if any, and interest on Securities of the series shall be payable;

(g) the price or prices at which, the period or periods within which and the terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Company;

(h) the obligation, if any, of the Company to redeem, purchase or repay Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a holder thereof and the price or prices at which, the period or periods within which and the terms and conditions upon which Securities of the series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such obligation;

(i) whether the Securities of the series shall be issued in whole or in part in the form of one or more Global Securities and, in such case, the Depositary for such Global Security or Global Securities;

(j) if other than the principal amount thereof, the portion of the principal amount of any Securities which shall be payable upon declaration of acceleration of maturity thereof pursuant to Section 6.01;

(k) if other than denomination of \$1,000 or any integral multiple thereof, the denominations in which Securities of the series shall be issuable;

(l) if the provisions of Section 12.02 are to apply to the Securities of the series, a statement indicating the same;

(m) if the provisions of Section 2.09 are to apply to the Securities of the series, the terms upon which the Company may elect to not pay interest on an interest payment date;

(n) if the provisions of Article Fourteen are to apply to the Securities of the series, a statement indicating the same; and

(o) any other terms of the Securities of the series, including additional covenants of the Company and specific deletions in the Events of Default applicable to the series from those set forth in Section 6.01 (which terms shall not be inconsistent with the provisions of this Indenture or adversely affect the rights of the holders of any other series of Securities then outstanding).

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided by or pursuant to any such Board

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Resolution, and set forth in such Officers' Certificate, or in any such indenture supplemental hereto.

SECTION 2.04. EXECUTION. The Securities shall be signed on behalf of the Company by the Chairman or President or any Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Company, under its corporate seal. Such signatures may be manual or facsimile signatures of the present or any future such authorized officers and may be imprinted or otherwise reproduced on the Securities. The seal of the Company may be in the form of a facsimile thereof and may be impressed, affixed, imprinted or otherwise reproduced on the Securities.

Only such Securities as shall bear thereon a certificate of authentication substantially in the form hereinbefore recited, executed by the Trustee, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee upon any Security executed by the Company shall be conclusive evidence that the Security so authenticated has been duly authenticated and delivered hereunder.

In case any officer of the Company who shall have signed any of the Securities either manually or by facsimile signature shall cease to be such officer before the Securities so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Securities nevertheless may be authenticated and delivered or disposed of as though the person who signed such Securities had not ceased to be such officer of the Company; and any Security may be signed on behalf of the Company by such person as, at the actual date of the execution of such Security, shall be the proper officers of the Company, although at the date of the execution of this Indenture any such person was not such officer.

SECTION 2.05. EXCHANGE, REGISTRATION AND REGISTRATION OF TRANSFER. The Company shall keep, at the office or agency to be maintained by the Company in accordance with Section 4.02, a register or registers (herein sometimes referred to collectively as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of each series of the Securities and for the registration of transfers of



Securities of each series as in this Article provided. The Security Register shall be in written form or convertible into written form without unreasonable delay, and shall be open for inspection by the Trustee at all reasonable times. Subject to the provisions of the last paragraph of this Section 2.05, upon surrender for registration of transfer of any Security of any series at the office or agency maintained in accordance with Section 4.02, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of the same series and of like tenor, or any authorized denominations and of a like aggregate principal amount and maturity.

At the option of the holder thereof, Securities of any series (except a Global Security) may be exchanged for other Securities of the same series and of like tenor, of any authorized denominations and of a like aggregate principal amount and maturity, upon surrender of the Securities to be exchanged at the office or agency maintained in accordance with Section 4.02. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the holder making the exchange is entitled to receive.

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Notwithstanding any other provision of this Section, unless and until it is exchanged in whole or in part for Securities in definitive form, a Global Security representing all or a portion of the Securities of a series may not be transferred except as a whole by the Depository for such series to a nominee of such Depository or by a nominee of such Depository to such Depository or another nominee of such Depository or by such Depository or any such nominee to a successor Depository for such series or a nominee of such successor Depository.

If at any time the Depository for the Securities of a series notifies the Company that it is unwilling or unable to continue as Depository for the Securities of such series or if at any time the Depository for the Securities of such series shall no longer be eligible under Section 2.01, the Company shall appoint a successor Depository with respect to the Securities of such series. If a successor Depository for the Securities of such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, the Company's election pursuant to Section 2.03(i) shall no longer be effective with respect to the Securities of such series and the Company will execute, and the Trustee, upon receipt of, and pursuant to a Company Order will authenticate and deliver Securities of such series in definitive form in an aggregate principal amount equal to the principal amount of the Global Security or Global Securities representing such series in exchange for such Global Security or Global Securities.

The Company may at any time in its sole discretion determine that the Securities of any series issued in the form of one or more Global Securities shall no longer be represented by such Global Security or Global Securities. In such event the Company will execute, and the Trustee, upon receipt of, and pursuant to, a Company Order will authenticate and deliver Securities of such series in definitive form and in aggregate principal amount equal to the principal amount of the Global Security or Global Securities representing such series in exchange for such Global Security or Global Securities.

If specified by the Company pursuant to Section 2.03 with respect to a series of Securities, the Depository for such series of Securities may surrender a Global Security for such series of Securities in exchange in whole or in part for Securities of such series in definitive form on such terms as are acceptable to the Company and such Depository. Thereupon, the Company shall execute, and the Trustee shall authenticate and deliver, without service charge,

(i) to each person specified by such Depository a new Security or Securities of the same series, in definitive form, of any authorized denomination as requested by such person in aggregate principal amount equal to and in exchange for such person's beneficial interest in the Global Security; and

(ii) to such Depository a new Global Security in a denomination equal to the difference, if any, between the principal amount of the surrendered Global Security and the aggregate principal amount of Securities delivered to holders thereof pursuant to the immediately preceding clause (i) of this Section.

Upon exchange of a Global Security for Securities in definitive form, such Global Security shall be cancelled by the Trustee. Securities issued in exchange for a Global Security pursuant to this Section shall be registered in such names and in such authorized denominations

as the Depository for such Global Security shall instruct the Trustee. The Trustee shall deliver such Securities to the persons in whose names such Securities are so registered.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such registration or transfer or exchange.

All Securities presented or surrendered for registration of transfer, exchange or payment shall (if so required by the Company or the Trustee) be duly endorsed by, or be accompanied by a written instrument or instruments of transfer, in form satisfactory to the Company and the Trustee, duly executed by the registered holder or by his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto.

The Company shall not be required (a) to issue, register the transfer of or exchange Securities of any series for a period of 15 days next preceding any selection of Securities of such series to be redeemed, or (b) to register the transfer of or exchange any Security or portion thereof called or selected for redemption.

SECTION 2.06. TEMPORARY SECURITIES. Pending the preparation of definitive Securities of any series, the Company may execute and the Trustee shall authenticate and deliver temporary Securities of such series (printed, lithographed or typewritten) of any authorized denomination, and substantially in the form of the definitive Securities of such series, but with such omission, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Company. Temporary Securities may be issued without a recital of specific redemption prices and may contain such reference to any provisions of this Indenture as may be appropriate. Every temporary Security shall be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Securities of such series. Without unnecessary delay the Company will execute and will furnish definitive Securities of each series and thereupon any or all temporary Securities of such series may be surrendered in exchange therefor, at the principal office of the Company, and, subject to Section 2.05 hereof, the Company shall execute and the Trustee shall authenticate and deliver in exchange for such temporary Securities an equal aggregate principal amount of definitive Securities of such series of authorized denominations. Until so exchanged, the temporary Securities shall be entitled to the same benefits under this Indenture, and shall be subject to the same provisions hereof (except as provided in this Section), as definitive Securities of such series authenticated and delivered hereunder.

SECTION 2.07. MUTILATED, DESTROYED, LOST AND STOLEN SECURITIES. In case any temporary or definitive Security shall become mutilated or be destroyed, lost or stolen, the Company in the case of a mutilated Security shall, and in the case of a destroyed, lost or stolen Security in its discretion may, execute, and upon the Company's request the Trustee shall authenticate and deliver, a new Security of the same series and bearing a number not contemporaneously outstanding, in exchange and in substitution for the mutilated Security, or in lieu of and in substitution for the Security so destroyed, lost or stolen. The applicant for a

substitute Security shall first furnish to the Company and to the Trustee such security or indemnity as may be required by them to save each of them harmless, and, in every case of destruction, loss or theft, the applicant shall also first furnish to the Company and to the Trustee evidence to their satisfaction of the destruction, loss or theft of such Security and of the ownership thereof. The Trustee may authenticate any such substitute Security and deliver the same upon the written request or authorization of the Company. Upon the issue of any substitute Security, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith. If any Security that has become, or is about to become, due and payable is mutilated, or is destroyed, lost or stolen, the Company may, instead of issuing a substitute Security, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Security) if the applicant for such payment shall furnish to the Company and to the Trustee such security or indemnity as they may require to

save each of them harmless, and, in case of destruction, loss or theft, evidence to the satisfaction of the Company and the Trustee of the destruction, loss or theft of such Security and of the ownership thereof.

Every substitute Security issued pursuant to this Section shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be found at any time, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of the same series duly issued hereunder. All Securities shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities, and shall preclude any and all other rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

SECTION 2.08. CANCELLATION OF SURRENDERED SECURITIES; DESTRUCTION THEREOF. All Securities surrendered for the purpose of payment, redemption, exchange or registration of transfer or for credit against any sinking fund payment, shall, if surrendered to the Company or any paying agent, promptly be delivered to the Trustee for cancellation, or, if surrendered to the Trustee, shall be cancelled by it, and no Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. Upon the request of the Company, the Trustee shall deliver to the Company cancelled Securities held by the Trustee, or, in the absence of such request, the Trustee may destroy the same and deliver a certificate of such destruction to the Company. If the Company shall acquire any of the Securities, however, such acquisition shall not operate as a satisfaction of the indebtedness represented by such Securities unless and until the same are surrendered to the Trustee for cancellation.

SECTION 2.09. EXTENSION OF INTEREST PAYMENT PERIOD. With respect to Securities of any series as to which, pursuant to Section 2.03(m), it has been established that this Section 2.09 applies, subject to such terms as may be established pursuant to Section 2.03(m), the Company may at any time and from time to time, so long as the Company is not in default in the payment of interest on such Securities as and when the same shall become due and payable, elect to not pay interest on an interest payment date, and such election shall not be an Event of Default with respect to the Securities of any series.

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### ARTICLE THREE

#### REDEMPTION OF SECURITIES AND SINKING FUNDS

SECTION 3.01. APPLICABILITY OF RIGHT OF REDEMPTION. Redemption of Securities (other than pursuant to a sinking fund or analogous provision) permitted by the terms of any series of Securities shall be made in accordance with such terms and Sections 3.02 and 3.03; provided, however, that if any such terms of a series of Securities shall conflict with any provision of this Article, the terms of such series shall govern.

SECTION 3.02. ELECTION TO REDEEM; NOTICE OF REDEMPTION; PARTIAL REDEMPTION. The election of the Company to redeem any Securities of any series shall be evidenced by or pursuant to a Board Resolution. In case the Company shall desire to exercise such right to redeem all, or, as the case may be, any part of the Securities of any series in accordance with the right reserved so to do, it shall give notice of such redemption to holders of the Securities to be redeemed as hereinafter in this Section provided.

Notice of redemption to the holders of Securities to be redeemed as a whole or in part shall be given by mailing of a notice of such redemption not less than 30 nor more than 60 days prior to the date fixed for redemption to the registered holders of Securities to be redeemed in whole or in part at their last addresses as they shall appear upon the Security Register. Such mailing shall be by first-class mail postage prepaid. The notice if mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the registered holder receives the notice. In any case, the failure to give such notice by mail, or any defect in such notice, to the registered holder of any Security designated for redemption in whole or in part shall not affect the validity of the proceedings for redemption of any other Security.

Each such notice of redemption shall specify the date fixed for redemption and the price at which Securities are to be redeemed, shall state that the conditions precedent to such redemption, if any, have occurred and describe the same, and shall state that payment of the redemption price of the Securities to be redeemed, together with accrued interest thereon to the date fixed for redemption (except that if such redemption date is an interest payment

date, the interest due on such date with respect to a particular Security shall be payable to the holder of such Security on the record date for such interest payment date), will be made at the office or agency to be maintained by the Company in accordance with Section 4.02 upon presentation and surrender of such Securities and that from and after said date interest thereon will cease to accrue. If less than all the Securities of a series are to be redeemed, the notice to each registered holder of Securities to be redeemed shall identify such registered holder's Securities to be redeemed as a whole or in part. In case any Security is to be redeemed in part only (which part shall be \$1.00 or a multiple of \$1.00), the notice which relates to such Securities shall state the portion of the principal amount to be redeemed, and that on and after the redemption date, upon surrender of such Security, a new Security or Securities of the same series in principal amount equal to the unredeemed portion thereof will be issued. No Security of a denomination of \$1,000 principal amount may be redeemed in part.

To the extent that the Securities of any series have different terms, the Company shall designate the Securities to be redeemed if less than all of the series is to be redeemed. If less than all the Securities of a series having the same terms are to be redeemed, the Company

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shall give the Trustee, not less than 45 days (or such lesser number of days as the Trustee shall approve) prior to the date fixed by the Company for the redemption of Securities, written notice of the aggregate amount of the Securities to be redeemed, and thereupon the Trustee shall select, in such manner as in its sole discretion it shall deem appropriate and fair, the Securities of such series or portions thereof to be redeemed, and shall thereafter promptly notify the Company and any paying agent in writing of the Securities of such series or portions thereof to be redeemed.

Any notice of redemption to be mailed by the Company pursuant to this Section may be mailed, at the Company's direction, by the Trustee in the name and at the expense of the Company.

SECTION 3.03. PAYMENT OF SECURITIES CALLED FOR REDEMPTION. If notice of redemption shall have been given in the manner provided in Section 3.02, the Securities or portions of Securities specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption (except that if such redemption date is an interest payment date the interest due on such date shall be payable to the holder of such Security on the record date for such interest payment date), and on and after such date of redemption (unless the Company shall default in the payment of such Securities or portions thereof at the redemption price, together with interest accrued thereon to the date fixed for redemption) interest on the Securities or portions of Securities so called for redemption shall cease to accrue, and such Securities and portions of Securities shall be deemed not to be outstanding hereunder and shall not be entitled to any benefit under this Indenture except to receive payment of the redemption price, together with accrued interest thereon to the date fixed for redemption. On presentation and surrender of such Securities on or after said date at said place of payment in said notice specified, the said Securities or specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together (subject to the right of the holder on the record date if such redemption date is an interest payment date) with interest accrued thereon to the date fixed for redemption.

Upon presentation and surrender of any Security which is to be redeemed in part only, the Company shall execute and the Trustee shall authenticate and deliver to the holder thereof, at the expense of the Company, a new Security or Securities of the same series of authorized denominations in principal amount equal to the unredeemed portion of the Security so surrendered.

SECTION 3.04. APPLICABILITY OF SINKING FUND. Redemption of Securities permitted or required pursuant to a sinking fund for the retirement of Securities of a series by the terms of such series of Securities shall be made in accordance with such terms of such series of Securities and this Article; provided, however, that if any such terms of a series of Securities shall conflict with any provision of this Article, the terms of such series shall govern.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "mandatory sinking fund payment", and any payment in excess of such minimum amount provided for the by terms of Securities of any series is herein referred to as an "optional sinking fund payment." If provided for by the terms of Securities of any series, the cash amount of any mandatory sinking fund payment may be subject to

SECTION 3.05. SATISFACTION OF MANDATORY SINKING FUND PAYMENTS WITH SECURITIES. Subject to Section 3.06, in lieu of making all or any part of any mandatory sinking fund payment with respect to any Securities of a series in cash, the Company may at its option (a) deliver to the Trustee Securities of that series theretofore purchased or otherwise acquired by the Company, or (b) receive credit for the principal amount of Securities of that series which have been previously delivered to the Trustee by the Company or redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities; provided that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the redemption price specified in such Securities for redemption through operation of the sinking fund and the cash amount of such mandatory sinking fund payment shall be reduced accordingly.

SECTION 3.06. REDEMPTION OF SECURITIES FOR SINKING FUNDS. Not less than 60 days prior to each sinking fund payment date for any series of Securities, the Company will deliver to the Trustee a Company Order specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied through delivery and/or crediting of Securities of that series pursuant to Section 3.05 (which Securities will, if not previously delivered, accompany such Company Order) and whether the Company intends to exercise its right to make a permitted optional sinking fund payment with respect to such series. Such Company Order shall be irrevocable, and upon its delivery the Company shall be obligated to make the cash payment or payments therein referred to, if any, prior to such sinking fund payment date. In the case of the failure of the Company to deliver such Company Order, the sinking fund payment due with respect to the next sinking fund payment date for that series of Securities shall be paid entirely in cash and shall be sufficient to redeem the principal amount of such Securities subject to a mandatory sinking fund payment without the option to deliver or credit Securities as provided in Section 3.05 and without the right to make any optional sinking fund payment with respect to such series.

Any sinking fund payment or payments (mandatory or optional) made in cash, plus any unused balance of any preceding sinking fund payments made in cash, which shall equal or exceed \$100,000 (or a lesser sum if the Company shall so request) with respect to the Securities of any particular series shall be applied by the Trustee, a paying agent or the Company, if it acts as its own paying agent, on the sinking fund payment date next following the date of such payment to the redemption of such Securities at the redemption price specified in such Securities for operation of the sinking fund, together with accrued interest to the sinking fund payment date. Any sinking fund moneys not so applied or allocated to the redemption of Securities shall be added to the next cash sinking fund payment received by the Trustee, such paying agent or the Company for such series and, together with such payment, shall be applied in accordance with the provisions of this Section. Any and all sinking fund moneys with respect to the Securities of any particular series held by the Trustee, such paying agent or the Company on the last sinking fund payment date with respect to Securities of such series and not held for the payment or redemption of particular Securities shall be applied by the Trustee, such paying agent or the Company, together with other moneys, if necessary, to be deposited sufficient for the purpose, to the payment of principal of such Securities at maturity.

Not more than 60 days and not less than 45 days prior to each sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund

payment date in accordance with Section 3.02. The Company shall cause notice of the redemption thereof to be given not less than 30 nor more than 60 days prior to the sinking fund payment date in the manner provided in Section 3.02, except that the notice of redemption shall also state that the Securities of such series are being redeemed by operation of the sinking fund and the sinking fund payment date. Such notice having been duly given, the redemption of such Securities shall be made on the sinking fund payment date upon the terms and in the manner stated in Section 3.03.

SECTION 4.01. PAYMENT OF PRINCIPAL, PREMIUM, IF ANY, AND INTEREST. The Company covenants and agrees for the benefit of each series of Securities that it will duly and punctually pay or cause to be paid the principal of and premium, if any, and interest, if any, on each of the Securities of that series at the times and places and in the manner provided herein and in the Securities of that series.

SECTION 4.02. OFFICE OR AGENCY FOR CERTAIN PURPOSES. The Company will maintain an office or agency (or offices or agencies) where the Securities may be presented for registration of transfer and exchange as in this Indenture provided, and where notices and demands to or upon the Company in respect of the Securities or of this Indenture may be served and where the Securities may be presented for payment. The principal office of the Company shall be such office or agency unless the Company shall maintain some other office or agency for such purposes and shall give the Trustee and the registered holders of the Securities written notice of the location thereof.

SECTION 4.03. MAINTENANCE OF CORPORATE EXISTENCE. The Company will preserve its corporate existence, but this covenant shall not require the Company to continue its corporate existence in the event of a consolidation or merger of the Company in accordance with the provisions of Article Eleven hereof as a result of which the Company shall lose its corporate identity, or in the event of a sale or conveyance of the property of the Company as an entirety or substantially as an entirety in accordance with the provisions of said Article Eleven.

SECTION 4.04. APPOINTMENTS TO FILL VACANCIES IN TRUSTEE'S OFFICE. The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.09, a Trustee, so that there shall at all times be a Trustee hereunder.

SECTION 4.05. PROVISIONS AS TO PAYING AGENT. (a) If the Company shall act as its own paying agent with respect to any series of Securities, it will, on or before each due date of the principal of or premium, if any, or interest, if any, on the Securities of that series, set aside, segregate and hold in trust for the benefit of the holders of such Securities or of the Trustee, as the case may be, a sum sufficient to pay such principal or premium, if any, or interest so becoming due and will notify the Trustee of any failure to take such action and of any failure by the Company (or by any other obligor on the Securities of that series) to make any payment of the

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principal of or premium, if any, or interest on the Securities of such series when the same shall be due and payable.

(b) Whenever the Company shall have one or more paying agents, other than the Company, for any series of Securities, it will, on or before each due date of the principal of or premium, if any, or interest, if any, on any Securities of that series, deposit with a paying agent a sum sufficient to pay the principal and premium, if any, or interest so becoming due, such sum to be held in trust for the benefit of the holders of such Securities, and (unless such paying agent is the Trustee) the Company will notify the Trustee of such action or the failure to take such action.

(c) If the Company shall appoint a paying agent other than the Trustee or the Company with respect to any series of Securities, it will cause such paying agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to this Section that such agent will:

(1) hold all sums held by it as such agent for the payment of the principal of or premium, if any, or interest on the Securities of such series (whether such sums have been paid to it by the Company or by any other obligor on the Securities of such series) in trust for the benefit of the holders of the Securities of such series or of the Trustee, as the case may be;

(2) give the Trustee notice of any default by the Company (or by any other obligor on the Securities of such series) in the making of any payment of the principal of or premium, if any, or interest on the Securities of such series when the same shall be due and payable; and

(3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such paying agent.

(d) Anything in this Section to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by it, or by any paying agent hereunder, as required by this Section, such sums to be held by the Trustee upon the trusts herein contained.

(e) Anything in this Section to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section is subject to Sections 12.04 and 12.05.

SECTION 4.06. ANNUAL OFFICERS' CERTIFICATE TO TRUSTEE. The Company will deliver to the Trustee prior to November 1 in each year, an Officers' Certificate stating that in the course of the performance by the signers of their duties as officers of the Company they would normally obtain knowledge of any default by the Company in the performance of any covenants contained in Sections 4.03 and 11.02, stating whether or not they have obtained knowledge of any such default and, if so, specifying each such default of which the signers have knowledge and the nature thereof.

SECTION 4.07. REPORTS TO BE FURNISHED SECURITYHOLDERS. The Company will transmit or cause to be transmitted to the Securityholders, as soon as practicable after the mailing

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of such material to its stockholders, copies of all annual financial reports distributed to its stockholders generally. Reports pursuant to this Section shall be transmitted by mail to all registered holders of Securities, as the names and addresses of such holders appear upon the Security Register.

SECTION 4.08. RESTRICTION ON SECURED INDEBTEDNESS FOR BORROWED MONEY. For so long as any securities issued under the Indenture, dated as of March 1, 1990, between the Company and The Bank of New York, as trustee, as supplemented and amended, are entitled to the benefit of Section 4.07 thereunder, the Company will not (a) issue any bonds under its First Mortgage, dated as of May 1, 1928, as supplemented and amended (the "First Mortgage"), except to replace any mutilated, destroyed, lost or stolen bonds or coupons or to effect exchanges and transfers of outstanding bonds, or (b) create, issue, incur or assume any other indebtedness for borrowed money secured by a mortgage or other lien on, or security interest in, any property or properties of the Issuer (other than (i) the properties expressly excepted from the lien of the First Mortgage, and (ii) any property that is acquired by the Company, whether pursuant to merger, consolidation or otherwise, subject to a mortgage, lien or security interest, and any additions, improvements and betterments thereto to the extent that the governing instrument provides that the same are covered by said mortgage, lien or security interest). For the purposes of this Section 4.08, (1) the terms "property" and "properties" include, without limitation, every form of property interest, real, personal or mixed, tangible or intangible, and (2) the term "indebtedness for borrowed money" means indebtedness evidenced by a bond, note or other comparable written obligation representing borrowed money, and does not, in any event, include any lease or installment sale agreement (or any obligation in the nature of or having the characteristics of a lease or installment sale agreement), whether or not capitalized for financial reporting or any other purpose.

In case any properties are subjected to a mortgage, lien or security interest in contravention of the foregoing provisions of this Section 4.08, the Company will make or cause to be made provision whereby the Securities will be secured equally and ratably with all other obligations secured by such mortgage, lien or security interest, and in any such case the Securities shall have the benefit, to the full extent permitted under applicable law, of an equitable lien on such properties.

SECTION 4.09. FURTHER ASSURANCES. From time to time whenever reasonably demanded by the Trustee, the Company will make, execute and deliver or cause to be made, executed and delivered any and all such further and other instruments and assurances as may be reasonably necessary or proper to carry out the intention or facilitate the performance of the terms of this Indenture.

#### ARTICLE FIVE

#### SECURITYHOLDERS' LISTS, COMMUNICATIONS TO SECURITYHOLDERS, AND REPORTS BY THE COMPANY AND THE TRUSTEE

SECTION 5.01. COMPANY TO FURNISH TRUSTEE INFORMATION AS TO NAMES AND ADDRESSES OF SECURITYHOLDERS. The Company shall furnish or cause to be furnished to the Trustee:

(a) on June 15 and December 15 in each year (beginning with December 15, 2000), a list in such form as the Trustee may reasonably require of the names and addresses of the holders of each series of Securities as of a date not more than 15 days prior to the time such list is furnished, and

(b) at such other times as the Trustee may request in writing within 30 days after receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished, provided that, if and so long as the Trustee is the sole Security registrar, no such list need be furnished.

SECTION 5.02. PRESERVATION OF INFORMATION; COMMUNICATIONS TO SECURITYHOLDERS. (a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of the holders of each series of Securities received by it in the capacity of Security registrar and the names and addresses of holders of each series of Securities contained in the most recent list furnished to it under Section 5.01. The Trustee may destroy any such list upon receipt of a new list so furnished.

(b) The rights of Securityholders to communicate with other Securityholders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and privileges of the Trustee, shall be as provided by the Trust Indenture Act of 1939.

(c) Each and every holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any paying agent or other agent of either of them shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the holders of Securities made pursuant to the Trust Indenture Act of 1939, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made pursuant to the Trust Indenture Act of 1939.

SECTION 5.03. REPORTS BY COMPANY. The Company shall file with the Trustee and the Securities and Exchange Commission, and transmit to Securityholders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act of 1939 at the times and in the manner provided pursuant to such Act; PROVIDED that any such information, documents or reports required to be filed with said Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, shall be filed with the Trustee within 15 days after the same is so required to be filed with said Commission. Delivery of any information, documents and reports by the Company to the Trustee pursuant to the provisions of this Section 5.03 is for informational purposes only and the Trustee's receipt of same shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

SECTION 5.04. REPORTS BY TRUSTEE. (a) The Trustee shall transmit to Securityholders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act of 1939 at the times and in the manner provided pursuant thereto. If required by Section 313(a) of the Trust Indenture Act of 1939, the Trustee shall, within sixty days after each October 15 following the execution and delivery of this

instrument deliver to Securityholders a brief report, dated as of such October 15, which complies with the provisions of such Section 313(a).

(b) A copy of each such report shall, at the time of such transmission to Securityholders, be filed by the Trustee with each stock exchange upon which any Securities are listed and also with the Securities and Exchange Commission. If the Company lists the Securities of any series on any stock exchange, it will promptly so notify the Trustee.

#### ARTICLE SIX

##### REMEDIES OF THE TRUSTEE AND SECURITYHOLDERS ON EVENT OF DEFAULT

SECTION 6.01. EVENTS OF DEFAULT DEFINED; ACCELERATION OF MATURITY; WAIVER OF DEFAULT. In case one or more of the following shall have occurred and be continuing with respect to the Securities of any series, it shall be an event of default of such series (unless it is specifically deleted in a supplemental



indenture or Board Resolution under which such series of Securities is issued or has been modified in any such supplemental indenture), that is to say:

(a) default in the payment of any instalment of interest upon any Security of such series as and when the same shall become due and payable, and continuance of such default for a period of 30 days; or

(b) default in the payment of the principal of or premium, if any, on any Security of such series as and when the same shall become due and payable either at maturity, upon redemption, by declaration or otherwise; or

(c) failure on the part of the Company duly to observe or perform any other of the covenants or agreements on the part of the Company contained in the Securities of such series or in this Indenture (other than a covenant or agreement which has been expressly included in the Securities or in this Indenture solely for the benefit of a series of Securities other than that series) for a period of 60 days after the date on which written notice of such failure, requiring the Company to remedy the same and stating that such notice is a "Notice of Default" hereunder, shall have been given to the Company by the Trustee, or to the Company and the Trustee by the holders of a least 25% in aggregate principal amount of the Securities of such series at the time outstanding; or

(d) if a decree or order for relief shall be entered by a court of competent jurisdiction in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or other similar law nor or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or of a major part of its property, or ordering the winding up or liquidation of the Company's affairs, and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days; or

(e) if the Company shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law nor or hereafter in effect, or the Company shall consent to the entry by order of a court of competent jurisdiction of a decree or order

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in respect of the Company in an involuntary case or proceeding under any applicable bankruptcy, insolvency or other similar law nor or hereafter in effect or to the commencement of any bankruptcy or insolvency proceeding against the Company; or

(f) if the Company shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of it or of a major part of its property; or

(g) the occurrence of any other Event of Default with respect to Securities of such series as provided in a supplemental indenture applicable to such series of Securities pursuant to Section 10.01(d);

then and in each and every such case, unless the principal of the Securities of such series shall have already become due and payable, either the Trustee or the holders of not less than 25% in aggregate principal amount of the Securities of such series then outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by Securityholders), may declare the principal of all the Securities of such series to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Securities of such series contained to the contrary notwithstanding. This provision, however, is subject to the condition that if, at any time after the principal of the Securities of such series shall have been so declared due and payable, and before any sale of property under any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured instalments of interest upon all the Securities of such series and the principal of and premium, if any, on any and all Securities of such series which shall have become due otherwise than by declaration (with interest on overdue instalments of interest, to the extent legally enforceable under applicable law, and on such principal of and premium, if any, on each Security of such series at the rate borne by such Security to the date of such payment or deposit) and the expenses of the Trustee, and reasonable compensation to the Trustee, its agents, attorneys and counsel, and any and all defaults under this Indenture, other than the nonpayment of principal on Securities of such series which shall have become due by declaration, shall have been remedied -- then, and in every such case the

holders of a majority in aggregate principal amount of the Securities of such series then outstanding, by written notice to the Company and to the Trustee, may on behalf of the holders of all of the Securities of such series waive all defaults and rescind and annul such declaration and its consequences; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this Indenture for the holders of Securities of any series and such proceedings shall have been discontinued or abandoned because of such rescission or annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Trustee and the holders of the Securities of such series shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Trustee and the holders of the Securities of such series shall continue as though no such proceedings had been taken.

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The Company and the Trustee may, to the extent provided in Section 10.01, enter into one or more indentures supplemental hereto with respect to any series of the Securities which may provide for additional, different or fewer Events of Default with respect to such series of Securities.

SECTION 6.02. COLLECTION OF INDEBTEDNESS BY TRUSTEE; TRUSTEE MAY PROVE DEBT. The Company covenants that (1) in case default shall be made in the payment of any installment of interest on any of the Securities, as and when the same shall become due and payable, and such default shall have continued for a period of 30 days, or (2) in case default shall be made in the payment of the principal of or premium, if any, on any of the Securities when and as the same shall have become due and payable, whether upon maturity of the Securities or upon redemption or upon declaration or otherwise -- then, upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of holders of such Securities, the whole amount that then shall have become due and payable on such Securities for principal and premium, if any, and interest, with interest upon the overdue principal and premium, if any, of each such Security and (to the extent legally enforceable under applicable law) upon installments of interest, at the rate borne by such Security; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and any expenses or liabilities incurred by the Trustee hereunder other than through its negligence or bad faith.

In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity against the Company or other obligor on such Securities for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Company or such other obligor upon such Securities and collect in the manner provided by law out of the property of the Company or such other obligor upon such Securities, wherever situated, the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor upon the Securities of any series under Title 11 of the United States Code or any other applicable Federal or state bankruptcy, insolvency or other similar law relative to the Company or such other obligor, its creditors or its property, or in case a receiver or trustee shall have been appointed for its property or in case of any other judicial proceedings relative to the Company or other obligor upon the Securities of any series, its creditors or its property, the Trustee, irrespective of whether the principal of the Securities of any series shall then be due and payable as therein expressed, upon redemption or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to this Section, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal, premium, if any, and interest owing and unpaid in respect of the Securities of any series, and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and of the Securityholders of any series allowed in any judicial proceeding relative to the Company or other obligor upon the Securities of any series, its creditors, or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of its charges and expenses; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the Securityholders to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such

payments directly to the Securityholders, to pay to the Trustee any amount due it for compensation and expenses, including counsel fees incurred by it up to the date of such distribution.

All rights of action and of asserting claims under this Indenture, or under any of the Securities of any series, may be enforced by the Trustee without the possession of any of the Securities of such series, or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Securities of such series. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party), the Trustee shall be held to represent all the holders of the Securities of a series, and it shall not be necessary to make any holders of the Securities of such series parties to any such proceedings.

In case of an Event of Default hereunder with respect to Securities of a particular series, the Trustee may, but unless first requested so to do by the holders of at least a majority in aggregate principal amount of the Securities of such series at the time outstanding and furnished with reasonable indemnity against all costs, expenses and liabilities shall not (subject to the provisions of Section 7.01) be under any obligation to, proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either by suit in equity or by action at law or by proceedings in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of the holder of any Security any plan of reorganization, arrangement, adjustment or composition affecting the Securities of any series or the rights of any holder thereof, or to authorize the Trustee to vote in respect of the claim of any holder of any Security in any such proceeding.

SECTION 6.03. APPLICATION OF PROCEEDS. Any moneys collected by the Trustee with respect to a series of Securities pursuant to Section 6.02 shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such moneys:

FIRST: To the payment of all costs and expenses in connection with the collection of such moneys, and all amounts payable to the Trustee under Section 7.06;

SECOND: To the payment of the entire amounts then due and unpaid upon the Securities in respect of which or for the benefit of which such moneys shall have been collected, without any preference or priority, ratably according to the amounts due and payable upon such Securities upon presentation of the several Securities and notation of such payment thereon, if partly paid, and upon surrender thereof, if fully paid.

Any surplus then remaining shall be paid to the Company or to such other person as shall be entitled to receive it.

SECTION 6.04. LIMITATIONS ON SUITS BY SECURITYHOLDERS. No holder of any Security of any series shall have any right by virtue or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of default and of the continuance thereof with respect to the Securities of that series, and unless also the holders of not less than 25% in aggregate principal amount of the Securities of that series then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity, shall have failed to institute any such action, suit or proceeding and no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 6.06, it being understood and intended, and being expressly covenanted by the holder of every Security of such series with every other holder of Securities of such series and

the Trustee, that no one or more holders of Securities of such series shall have any right in any manner whatever by virtue or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of the holders of any other of such Securities or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Securities of such series. For the protection and enforcement of this Section, each and every Securityholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture, however, the right of any holder of any Security to receive payment of the principal of and premium, if any, and interest on such Security, on or after the respective due dates expressed in such Security, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder.

SECTION 6.05. POWERS AND REMEDIES CUMULATIVE; DELAY OR OMISSION NOT WAIVER. All powers and remedies given by this Article to the Trustee or to the holders of Securities of any series shall, to the extent permitted by law and subject to Section 6.04, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or such Securityholders by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this indenture, and no delay or omission of the Trustee or of any holder of the Securities of any series to exercise any right or power accruing upon any default occurring and continuing as aforesaid, shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and, subject to Section 6.04, every power and remedy given by this Article or by law to the Trustee or to such Securityholders may be exercised from time to time, and as often as shall be deemed expedient by the Trustee or by such Securityholders.

SECTION 6.06. CONTROL BY SECURITYHOLDERS; WAIVER OF DEFAULT. The holders of a majority in aggregate principal amount of the Securities of any series at the time outstanding shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee with respect to Securities of such series; provided, however, that such direction shall not be otherwise than in accordance with law and the provisions of this Indenture; and provided further, that nothing in this Indenture shall impair the right of the Trustee to take any action deemed proper by

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the Trustee and which is not inconsistent with such direction by such Securityholders. The holders of at least a majority in aggregate principal amount of the Securities of any series at the time outstanding may on behalf of the holders of all of the Securities of such series waive any past default hereunder with respect to the Securities of such series and its consequences, except a default in the payment of the principal of or premium, if any, or interest on any of the Securities of such series. In the case of any such waiver, the Company, the Trustee and the holders of the Securities of such series shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

SECTION 6.07. TRUSTEE TO GIVE NOTICE OF DEFAULTS KNOWN TO IT, BUT MAY WITHHOLD IN CERTAIN CIRCUMSTANCES. The Trustee shall, within 90 days after the occurrence of a default with respect to the Securities of any series, give to the Securityholders of such series, in the manner and to the extent required to do so by the Trust Indenture Act of 1939, notice of all defaults known to the Trustee, unless such defaults shall have been cured before the giving of such notice (the term "defaults" for the purposes of this Section being hereby defined to be the events specified in Sections 6.01(a), (b), (c), (d), (e), (f) and (g) with respect to Securities of such series not including periods of grace, if any, provided for therein and irrespective of the giving of them written notice specified in subparagraph (c) of Section 6.01); provided, however, that in case of any default of the character specified in subparagraph (c) of Section 6.01 no such notice shall be given until at least sixty (60) days after the occurrence thereof; and provided further, that, except in the case of default in the payment of the principal of or premium, if any, or interest on any of the Securities of such series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or responsible officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Securityholders of such series.

SECTION 6.08. RIGHT OF COURT TO REQUIRE FILING OF UNDERTAKING TO PAY

COSTS. All parties to this Indenture agree, and each holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any Securityholder, or group of Securityholders, holding in the aggregate more than 10% in principal amount of the Securities of any series outstanding, or to any suit instituted by any Securityholder of any series for the enforcement of the payment of the principal of or premium, if any, or interest on any Security of such series, on or after the due dates expressed in such Security.

## ARTICLE SEVEN

### CONCERNING THE TRUSTEE

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SECTION 7.01. DUTIES AND RESPONSIBILITIES OF TRUSTEE. With respect to the holders of any series of Securities issued hereunder, the Trustee, prior to the occurrence of an Event of Default with respect to the Securities of that series and after the curing or waiving of all Events of Default which may have occurred with respect to such series, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee. In case an Event of Default with respect to Securities of any series has occurred (which has not been cured or waived) the Trustee shall exercise such of the rights and powers vested in it by this Indenture with respect to such series and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(a) prior to the occurrence of an Event of Default with respect to the Securities of any series and after the curing or waiving of all such Events of Default with respect to such series which may have occurred:

(1) the duties and obligations of the Trustee with respect to the Securities of that series shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture;

(b) the Trustee shall not be liable for any error of judgment made in good faith by a responsible officer or officers of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the registered holders given as provided in Section 6.06 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers if there is reasonable ground for believing that the repayment of such funds or liability is not reasonably assured to it.

SECTION 7.02. CERTAIN RIGHTS OF TRUSTEE. Except as otherwise provided in Section 7.01:

(a) the Trustee may rely and shall be protected in acting, or refraining from acting, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture Security, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced to the Trustee by a Company Order (unless other evidence in respect thereof be herein specifically prescribed); and any resolution of the Board of Directors shall be sufficiently evidenced to the Trustee by a Board Resolution;

(c) the Trustee may consult with counsel and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Securityholders, pursuant to the provisions of this Indenture, unless such Securityholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which may be incurred by the Trustee in complying with such request, order or direction;

(e) whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee and such certificate, in the absence of bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture in good faith and in reliance thereon;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, appraisal, bond, debenture Securityholder, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys, and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed by it with due care hereunder;

(h) the Trustee shall not be charged with knowledge of any Event of Default with respect to the Securities of any series for which it is acting as Trustee unless either (1) a Responsible Officer of the Trustee shall have actual knowledge of the Event of Default or (2) written notice of such Event of Default shall have been given to the Trustee by the Company, any other obligor on such Securities or by any holder of such Securities; and

(i) the rights, privileges, protections, immunities and benefits given to the Trustee hereunder, including, without limitation, its rights to compensation, reimbursement and indemnification under Section 7.06, are hereby extended and also made applicable to, and shall be enforceable by, the Trustee in each of its other capacities hereunder.

SECTION 7.03. TRUSTEE NOT RESPONSIBLE FOR RECITALS, ETC. The recitals contained herein and in the Securities, except the Trustee's certificate of authentication and the representation as to the power of the Trustee to enter

into this Indenture and accept and execute the trusts hereby created, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Company of any of the Securities or of the proceeds of such Securities.

SECTION 7.04. TRUSTEE AND OTHERS MAY HOLD SECURITIES. Subject to Sections 7.07 and 7.12, the Trustee or any paying agent or Security registrar or any other agent of the Company or the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Company or other obligor on the Securities with the same rights it would have if it were not Trustee, paying agent, Security registrar or such other agent.

SECTION 7.05. MONEYS HELD BY TRUSTEE OR PAYING AGENT. Subject to Sections 12.04 and 12.05, all moneys received by the Trustee or any paying agent shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but any paying agent that is a bank need not segregate such moneys from other funds except to the extent required by law and shall not be invested. Neither the Trustee nor any paying agent shall be under any liability for interest on any moneys received by it hereunder except such as it may agree with the Company to pay thereon. So long as no Event of Default with respect to Securities of any series, other than an Event of Default under subparagraph (c) of Section 6.01, shall have occurred and be continuing, all interest allowed on any such moneys shall be paid from time to time upon the written order of the Company, signed by its President, or any Vice President or its Treasurer or an Assistant Treasurer.

SECTION 7.06. COMPENSATION OF TRUSTEE AND ITS LIEN. The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), and, except as herein otherwise expressly provided, the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all persons not regularly in its employ) except any such

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expense, disbursement or advance as may arise from its negligence or bad faith. If any property other than cash shall at any time be subject to the lien of this Indenture, the Trustee, if and to the extent authorized by a receivership or bankruptcy court of competent jurisdiction or by the supplemental instrument subjecting such property to such lien, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other prior liens or encumbrances thereon. The Company also covenants and agrees to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on the part of the Trustee, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending itself against any claim or liability in the premises. The obligations of the Company under this Section shall constitute additional indebtedness hereunder. Such additional indebtedness shall be secured by a lien prior to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the holders of particular Securities. "Trustee" for purposes of this Section shall include (i) the Trustee in each of its other capacities hereunder and (ii) any predecessor Trustee; provided, however, that the negligence, willful misconduct or bad faith of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 6.01, the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any bankruptcy law.

The provisions of this Section 7.06 shall survive the termination for any reason of this Indenture.

SECTION 7.07. DISQUALIFICATION; CONFLICTING INTERESTS. If the Trustee shall have or acquire any conflicting interest within the meaning of the Trust Indenture Act of 1939, it shall either eliminate such conflicting interest or resign to the extent, in the manner and with the effect, and subject to the conditions, provided in the Trust Indenture Act of 1939 and this Indenture. To the extent permitted by such Act, the Trustee shall not be deemed to have a conflicting interest by virtue of being a trustee (i) under this Indenture with

respect to Securities of more than one series. Nothing herein shall prevent the Trustee from filing with the Securities and Exchange Commission the application referred to in the second to last paragraph of Section 310(b) of the Trust Indenture Act of 1939.

SECTION 7.08. PERSONS ELIGIBLE FOR APPOINTMENT AS TRUSTEE. The Trustee hereunder shall at all times be a corporation organized and doing business under the laws of the United States or any State or territory thereof or of the District of Columbia authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, subject to supervision or examination by Federal, state, territorial, or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with this Section, the Trustee shall resign immediately in the manner and with the effect specified in Section 7.09.

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SECTION 7.09. RESIGNATION AND REMOVAL OF TRUSTEE; APPOINTMENT OF SUCCESSOR. (a) The Trustee, or any trustee or trustees hereafter appointed, may at any time resign with respect to any one or more or all series of Securities by giving written notice to the Company and by mailing notice of such resignation, to the holders of Securities of that or those series at their last addresses as they shall appear on the Security Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee or trustees with respect to the applicable series by written instrument executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed with respect to a particular series and have accepted appointment within 30 days after the mailing of such notice of resignation, the resigning trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or any Securityholder who has been a bona fide holder of a Security or Securities of the applicable series for at least 6 months may, subject to Section 6.08, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) If at any time:

(1) the Trustee shall fail to comply with Section 7.07(a) after written request therefor by the Company or by any Securityholder who has been a bona fide holder of a Security or Securities for at least 6 months, or

(2) the Trustee shall cease to be eligible under Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Securityholder, or

(3) the Trustee shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case, the Company may remove the Trustee with respect to the applicable series of Securities, and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors of the Company, one copy of which instrument shall be delivered to the trustee so removed and one copy to the successor trustee, or, subject to Section 6.08, any Securityholder who has been a bona fide holder of a Security or Securities of any such series for at least 6 months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee with respect to such series. Such court may thereupon after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee with respect to such series.

(c) The holders of a majority in aggregate principal amount of the Securities of any series at the time outstanding may at any time remove the Trustee with respect to that series and appoint with respect to such series a successor trustee by delivering to the trustee so removed, to the successor trustee so appointed and to the Company, the evidence provided for in Section 8.01 of the action taken by the Securityholders.



(d) Any resignation or removal of the Trustee and any appointment of a successor trustee pursuant to this Section shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.10.

SECTION 7.10. ACCEPTANCE OF APPOINTMENT BY SUCCESSOR TRUSTEE. Any successor trustee appointed under Section 7.09 shall execute, acknowledge and deliver to the Company and to its predecessor trustee with respect to any or all applicable series an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, duties and obligations with respect to such series of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights, powers and trusts with respect to such series of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to Section 7.06.

In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the predecessor Trustee and each successor Trustee with respect to the Securities of any applicable series shall execute and deliver an indenture supplemental hereto which shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the predecessor Trustee with respect to the Securities of any series as to which the predecessor Trustee is not retiring shall continue to be vested in the predecessor Trustee, and shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee.

No successor Trustee with respect to any series of Securities shall accept appointment as provided in this Section unless at the time of such acceptance such successor Trustee shall with respect to such series be qualified under Section 7.07 and eligible under Section 7.08.

Upon acceptance of appointment by a successor Trustee with respect to the Securities of any series, the Company shall mail notice of the succession of such Trustee hereunder to the holders of Securities of such series at their last addresses as they shall appear on the Security Register. If the Company fails to mail such notice within 10 days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Company.

SECTION 7.11. MERGER, CONVERSION OR CONSOLIDATION OF TRUSTEE. Any person into which the Trustee may be merged or converted or with which it may be consolidated, or any person resulting from any merger, conversion or consolidation to which the Trustee shall be a

party, or any person succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such person shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

SECTION 7.12. PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY. If the Trustee shall be or become a creditor of the Company or any other obligor upon the Securities (other than by reason of a relationship described in Section 311(b) of the Trust Indenture Act of 1939), the Trustee shall be subject to any and all applicable provisions of the Trust Indenture Act of 1939 regarding the collection of claims against the Company or such other obligor. For purposes of Section 311(b) of the Trust Indenture Act of 1939:

(a) The term "cash transaction" shall mean any transaction in

which full payment for goods or securities sold is made within 7 days after delivery of the goods or securities in currency or in checks or other orders drawn upon banks or bankers and payable upon demand.

(b) The term "self-liquidating paper" shall mean any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred by the Company for the purpose of financing the purchase, processing, manufacture, shipment, storage or sale of goods, wares or merchandise and which is secured by documents evidencing title to, possession of, or a lien upon, the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares or merchandise previously constituting the security, provided the security is received by the Trustee simultaneously with the creation of the creditor relationship with the Company arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation.

## ARTICLE EIGHT

### CONCERNING THE SECURITYHOLDERS

SECTION 8.01. EVIDENCE OF ACTION TAKEN BY SECURITYHOLDERS. Whenever in this Indenture it is provided that the holders of a specified percentage or a majority in aggregate principal amount of the Securities or of any series of Securities may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action) the fact that at the time of taking any such action the holders of such specified percentage or majority have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Securityholders in person or by agent or proxy appointed in writing, or (b) by the record of the holders of Securities voting in favor thereof at any meeting of Securityholders duly called and held in accordance with the provisions of Article Nine, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Securityholders.

SECTION 8.02. PROOF OF EXECUTION OF INSTRUMENTS AND OF HOLDING OF SECURITIES. Subject to the provisions of Sections 7.01, 7.02 and 9.05, proof of the execution of

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any instrument by a Securityholder or his agent or proxy and proof of the holding by any person of any of the Securities shall be sufficient if made in the following manner:

The fact and date of the execution by any such person of any instrument may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in any State within the United States, that the person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer. Where such execution is by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and the date of the execution of any such instrument may also be proved in any other manner which the Trustee may deem sufficient.

The ownership of Securities may be proved by the Security Register or by a certificate of the Security registrar.

The Trustee may require such additional proof, if any, of any material referred to in this Section as it shall deem necessary.

The record of any Securityholders' meeting shall be proved as provided in Section 9.06.

SECTION 8.03. REGISTERED HOLDERS OF SECURITIES MAY BE TREATED AS OWNERS. The Company, the Trustee, any paying agent, and any Security registrar may deem and treat the person in whose name any Security shall be registered upon the Security Register as the absolute owner of such Security (whether or not such Security shall be overdue and notwithstanding any notice of ownership or writing thereon made by anyone other than the Security registrar) for the purpose of receiving payment thereof or on account thereof and of interest thereon as herein provided and for all other purposes, and neither the Company nor the Trustee nor any paying agent nor any Security registrar shall be affected by any notice to the contrary. All such payments so made to any such registered holder for the time being, or upon his order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Security.

SECTION 8.04. SECURITIES OWNED BY COMPANY DEEMED NOT OUTSTANDING. In determining whether the holders of the requisite aggregate principal amount of Securities have concurred in any direction, consent or waiver under this Indenture, Securities which are owned by the Company or any other obligor on the Securities or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities shall be disregarded and deemed not to be outstanding for the purpose of any such determination, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only Securities which the Trustee knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as outstanding for the purposes of this Section, if the pledgee shall establish to the satisfaction of the Trustee that the pledgee has the right to vote such Securities and that the pledgee is not a person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. Subject to the provisions of Section 7.01, in case of a dispute as to such right, any decision by the Trustee, taken upon the advice of counsel, shall be full protection to the Trustee.

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SECTION 8.05. RIGHT OF REVOCATION OF ACTION TAKEN. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Securities or of any series of Securities specified in this Indenture in connection with such action, any holder of a Security the serial number of which is shown by the evidence to be included in the Securities the holders of which have consented to such action may, by filing written notice with the Trustee at its principal office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Security. Except as aforesaid, any such action taken by the holder of any Security shall be conclusive and binding upon such holder and upon all future holders and owners of such Security, and of any Security issued in exchange therefor or in place thereof, irrespective of whether or not any notation in regard thereto is made upon such Security or any Security issued in exchange therefor or in place thereof. Any action taken by the holders of the percentage in aggregate principal amount of the Securities specified in this Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the holders of all the Securities.

## ARTICLE NINE

### SECURITYHOLDERS' MEETINGS

SECTION 9.01. PURPOSES FOR WHICH SECURITYHOLDERS' MEETINGS MAY BE CALLED. A meeting of Securityholders may be called at any time and from time to time pursuant to this Article for any of the following purposes:

(1) to give any notice to the Company or to the Trustee, or to give any directions to the Trustee, or to waive or to consent to the waiving of any default hereunder and its consequences, or to take any other action authorized to be taken by Securityholders pursuant to Article Six;

(2) to remove the Trustee and appoint a successor trustee pursuant to Article Seven;

(3) to consent to the execution of an indenture or indentures supplemental hereto pursuant to Section 10.02; or

(4) to take any other action authorized to be taken by or on behalf of the holders of any specified aggregate principal amount of the Securities under any other provision of this Indenture or under applicable law.

SECTION 9.02. CALL OF MEETINGS BY TRUSTEE. The Trustee may at any time call a meeting of Securityholders of any series to be held at any such time and at such place in the Borough of Manhattan, The City of New York, as the Trustee shall determine. Notice of every meeting of Securityholders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be mailed by the Trustee, first-class postage prepaid, not less than 20 nor more than 180 days prior to the date fixed for the meeting, to the holders of Securities of such series at their last addresses as they shall appear upon the Security Register.

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SECTION 9.03. COMPANY AND SECURITYHOLDERS MAY CALL MEETING. In case

the Company, pursuant to a resolution of its Board of Directors, or the holders of at least 10% in aggregate principal amount of the Securities of any series then outstanding, shall have requested the Trustee to call a meeting of Securityholders of such series, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have made the mailing of the notice of such meeting within 20 days after receipt of such request, then the Company or the holders of such Securities in the amount above specified may determine the time and the place in said Borough of Manhattan for such meeting and may call such meeting to take any action authorized in Section 9.01, by mailing notice thereof as provided in Section 9.02.

SECTION 9.04. PERSONS ENTITLED TO VOTE AT MEETING. To be entitled to vote at any meeting of Securityholders of a series a person shall be (a) a registered holder of one or more Securities of such series or (b) a person appointed by an instrument in writing as proxy for the holder or holders of such Securities by a registered holder of one or more such Securities. The only persons who shall be entitled to be present or to speak at any meeting of Securityholders shall be the persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

SECTION 9.05. DETERMINATION OF VOTING RIGHTS; CONDUCT AND ADJOURNMENT OF MEETING. Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Securityholders, in regard to proof of the holding of Securities and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 8.02 or other proof. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 8.02 and the appointment of any proxy shall be proved in the manner specified in said Section 8.02 or by having the signature of the person executing the proxy witnessed or guaranteed by any bank, banker, trust company or firm satisfactory to the Trustee.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Securityholders as provided in Section 9.03, in which case the Company or the Securityholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the holders of a majority in principal amount of the Securities represented at the meeting and entitled to vote.

Subject to the provisions of Section 8.04, at any meeting any Securityholder of a series or proxy shall be entitled to one vote for each \$1,000 principal amount of Securities of such series held or represented by him (in the case of Original Issue Discount Securities, such principal amount is the amount that would be due and payable upon the acceleration of the maturity thereof pursuant to Section 6.01) provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Securities of such series held by him or instruments in writing as aforesaid duly designating him as the person to vote on behalf of other Securityholders of such

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series. Any meeting of Securityholders duly called pursuant to Section 9.02 or 9.03 may be adjourned from time to time, and the meeting may be held as so adjourned without further notice.

At any meeting, the presence of persons holding or representing Securities in an aggregate principal amount sufficient to take action upon the business for the transaction of which such meeting was called shall be necessary to constitute a quorum; but, if less than a quorum be present, the persons holding or representing a majority of the Securities represented at the meeting may adjourn such meeting with the same effect, for all intents and purposes, as though a quorum had been present.

SECTION 9.06. COUNTING VOTE AND RECORDING ACTION OF MEETING. The vote upon any resolution submitted to any meeting of Securityholders of a series shall be by written ballots on which shall be subscribed the signatures of the holders of Securities of such series or of their representatives by proxy and

the serial number or numbers of the Securities of such series held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Securityholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Sections 9.02 and 9.03. The record shall show the serial numbers of the Securities voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

## ARTICLE TEN

### SUPPLEMENTAL INDENTURES

SECTION 10.01. SUPPLEMENTAL INDENTURES WITHOUT CONSENT OF SECURITYHOLDERS. The Company, when authorized by a resolution of its Board of Directors, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act of 1939 as it shall be in force at the date of execution of such indenture or indentures) for one or more of the following purposes:

(a) to evidence the succession of another corporation to the Company, or successive successions, and the assumption by the Successor of the covenants, agreements and obligations of the Company pursuant to Article Eleven;

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(b) to add to the covenants and agreements of the Company such further covenants, agreements, restrictions or conditions for the protection of the holders of the Securities of all or any series as its Board of Directors and the Trustee shall consider to be for the protection of the holders of Securities of such series (and if such covenants, agreements, restrictions or conditions are to be for the benefit of less than all series of Securities, stating that such covenants, agreements, restrictions or conditions are expressly being included for the benefit of such series), and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, agreements, restrictions or conditions a default or an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; provided, however, that in respect of any such additional covenant, agreement, restriction or condition such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default or may limit the right of the holders of Securities to waive such default;

(c) to add, delete or modify any Events of Default with respect to all or any series of the Securities, the form and terms of which are being established pursuant to such supplemental indenture as permitted in Sections 2.01, 2.02 and 2.03 (and, if any such event of default is applicable to fewer than all such series of the Securities, specifying the series to which such event of default is applicable), and to specify the rights and remedies of the Trustee and the holders of such Securities in connection therewith;

(d) to prohibit the authentication and delivery of additional series of Securities, to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any other provisions contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture as shall not be inconsistent with the provisions of this Indenture or any supplemental indenture and shall not adversely affect the interests of the holders of the Securities;

(e) to establish the form and terms of the Securities of any series as permitted in Sections 2.01, 2.02 and 2.03, or to authorize the issuance of additional Securities of a series previously authorized or to add to the conditions, limitations or restrictions on the authorized amount, terms of purposes of issue, authentication or delivery of the Securities of any series, as herein set forth, or other conditions, limitations or restrictions thereafter to be observed; and

(f) to evidence and provide for the acceptance of appointment hereunder by a successor trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one trustee, pursuant to the requirements of Section 7.10.

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained but the Trustee shall not be obligated to enter into any such

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supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section shall be executed by the Company and the Trustee and shall not require the consent of the holders of any of the Securities at the time outstanding, notwithstanding Section 10.02.

SECTION 10.02. SUPPLEMENTAL INDENTURES WITH CONSENT OF SECURITYHOLDERS. With the consent (evidenced as provided in Section 8.01) of the holders of not less than a majority in aggregate principal amount of the Securities of any series at the time outstanding, the Company, when authorized by a resolution of its Board of Directors, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act of 1939 as it shall be in force at the date of execution of such indenture or indentures) for the purpose, with respect to Securities of such series, of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the holders of the Securities of such series; provided, however, that no such supplemental indenture shall (i) extend the fixed maturity, or the earlier optional date of maturity, if any, of any Security, or reduce the principal amount thereof or the premium thereon, if any, or reduce the rate or extend the time of payment of interest thereon, or make the principal thereof or premium, if any, or interest thereon payable in any coin or currency other than that provided in such Security without the consent of the holder of each Security so affected, or (ii) reduce the principal amount of Securities of any series, the holders of which are required to consent to any such supplemental indenture, without the consent of the holders of all Securities of such series then outstanding.

Upon the request of the Company, accompanied by a Board Resolution authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of the Securityholders as aforesaid, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion but shall not be obligated to enter into such supplemental indenture.

A supplemental indenture which changes or eliminates any provision of this Indenture or of any series of Securities which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of holders of Securities of such series with respect to such provision, shall be deemed not to affect the rights under this Indenture of the holders of Securities of any other series.

It shall not be necessary for the consent of the Securityholders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Promptly after the execution by the Company and the Trustee of any supplemental indenture under this Section, the Company shall mail a notice, setting forth in general terms the substance of such supplemental indenture, to the holders of Securities at their last addresses as they shall appear on the Security Register. Any failure of the Company to mail such notice, or

any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

SECTION 10.03. EFFECT OF SUPPLEMENTAL INDENTURES. Upon the execution of any supplemental indenture pursuant to the provisions of this Article, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the holders of Securities shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 10.04. NOTATION ON SECURITIES IN RESPECT OF SUPPLEMENTAL INDENTURES. Securities authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article or after any action taken at a Securityholders' meeting pursuant to the provisions of Article Nine may, and if required by the Trustee shall, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture or as to any such action. If the Company and the Trustee shall so determine, new Securities of any series so modified as to conform, in the opinion of the Company and the Trustee, to any modification of this Indenture contained in any such supplemental indenture may be prepared by the Company, authenticated by the Trustee and delivered in exchange for the Securities of such series then outstanding.

SECTION 10.05. OPINION OF COUNSEL TO BE GIVEN TRUSTEE. The Trustee, subject to Sections 7.01 and 7.02, may receive an Opinion of Counsel as conclusive evidence that any such supplemental indenture is authorized by the terms of this Indenture and that it is proper for the Trustee under the provisions of this Article to join in the execution thereof.

#### ARTICLE ELEVEN

#### CONSOLIDATION, MERGER AND SALE

SECTION 11.01. COMPANY MAY CONSOLIDATE OR MERGE, ETC. Subject to the provisions of Section 11.02, nothing contained in this Indenture shall prevent any consolidation of the Company with or the merger of the Company into any other corporation, or any merger of any other corporation into the Company, or successive consolidations or mergers to which the Company or its successor or successors shall be a party or parties, or shall prevent any sale, transfer or lease of the properties of the Company as an entirety or substantially as an entirety to any other corporation lawfully entitled to acquire the same.

SECTION 11.02. CONDITIONS TO CONSOLIDATION OR MERGER, ETC. The Company covenants and agrees that it will not consolidate with or merge into any other corporation, or sell, transfer or lease its properties as an entirety or substantially as an entirety to any person unless, and the Company covenants and agrees that any such consolidation, merger, sale, transfer or lease shall be upon the conditions that (i) the successor corporation formed by or surviving any such consolidation or merger or the person to which such sale, transfer or lease shall have been made ("the Successor") shall be a corporation organized and existing under the laws of the

United States of America or a state thereof, (ii) the due and punctual payment of the principal of and premium, if any, and interest on the Securities according to their tenor, and the due and punctual performance and observance of all the terms, covenants and conditions of this Indenture, the Securities and all indentures supplemental hereto to be performed or observed by the Company shall, by an indenture supplemental hereto, executed and delivered to the Trustee, be expressly assumed by the Successor, as fully and effectually as if such Successor had been an original party hereto, and (iii) immediately after such merger, consolidation, sale, transfer or lease, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing.

The Successor, other than a Successor by reason of a lease of the Company's properties, upon executing such indenture supplemental hereto, in form satisfactory to the Trustee, shall succeed to and be substituted for the Company with the same effect as if it had been an original party hereto, thus relieving the Company of all liabilities hereunder and under the Securities, and the Successor shall possess and from time to time may exercise each and every power

hereunder of the Company, and may execute and deliver Securities hereunder, either in the name of the Company or the Successor, and any act or proceeding required by this Indenture to be done or performed by any board or officer of the Company may be done or performed with like force and effect by the like board or officer of the Successor.

SECTION 11.03. DOCUMENTS AND OPINION TO BE FURNISHED TO THE TRUSTEE.

The Company covenants and agrees that if it shall consolidate with or merge into any other corporation or if it shall sell, transfer or lease its properties, as an entirety or substantially as an entirety, the Company will promptly furnish to the Trustee:

(1) A certificate signed by the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Successor stating that the covenants of the Company contained in Section 11.02 have been complied with;

(2) An executed counterpart of any instrument or instruments executed by the Company or the Successor in the performance of such covenants; and

(3) An Opinion of Counsel stating that in the opinion of such counsel such covenants have been complied with and that any instrument or instruments executed by the Company or the Successor in the performance of such covenants comply with the requirements of such covenants.

Each certificate, instrument and opinion furnished to the Trustee pursuant to the provisions of this Section shall conform to the requirements of Section 15.06.

Subject to the provisions of Sections 7.01 and 7.02, the Trustee may receive an Opinion of Counsel conforming to the requirements of Section 15.06 as conclusive evidence that any such consolidation, merger, sale, transfer or lease, any such assumption and any such supplemental indenture or other instrument or instruments comply with the provisions of this Article.

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ARTICLE TWELVE

SATISFACTION AND DISCHARGE OF INDENTURE;  
DEFEASANCE; UNCLAIMED MONEYS

SECTION 12.01. SATISFACTION AND DISCHARGE OF INDENTURE. If (a) the Company shall deliver to the Trustee for cancellation all outstanding Securities, or (b) all outstanding Securities not delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption and the Company shall deposit with the Trustee as trust funds the entire amount sufficient to pay at maturity or upon redemption all such Securities not delivered to the Trustee for cancellation, including principal and premium, if any, and interest due or to become due to such date of maturity or redemption, and if in either case the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Indenture shall cease to be of further effect, and the Trustee, on demand of the Company and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture. The Company agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee without negligence or bad faith in connection with this Indenture or the Securities.

SECTION 12.02. DEFEASANCE. Provided that the same has been duly authorized with respect to Securities of a particular series pursuant to Section 2.03(1), if, at any time after the date hereof, the Company shall deposit with the Trustee, in trust for the benefit of the holders thereof, (i) funds sufficient to pay, or (ii) such amount of direct noncallable obligations of, or noncallable obligations the payment of principal of and interest on which is fully guaranteed by, the United States of America, or to the payment of which obligations or guarantees the full faith and credit of the United States of America is pledged, as will, or will together with the income thereon without consideration of any reinvestment thereof, be sufficient to pay all sums due for principal of, premium, if any, and interest on the Securities of such series, as they shall become due from time to time, and shall pay all costs, charges and expenses incurred or to be incurred by the Trustee in relation thereto or in carrying out the provisions of this Indenture, this Indenture shall cease to be of further effect with respect to Securities of such series (except as to (i) rights of registration of transfer, substitution and exchange of Securities of such series, (ii) rights of holders to receive payments of, principal of,



premium, if any, and interest on the Securities of such series as they shall become due from time to time and other rights, duties and obligations of Securityholders as beneficiaries hereof with respect to the amounts so deposited with the Trustee, and (iii) the rights, obligations and immunities of the Trustee hereunder (for which purposes the Securities of such series shall be deemed outstanding)), and the Trustee, on the written request of the Company, accompanied by the Officers' Certificate and Opinion of Counsel required by Section 15.06, shall execute and deliver to the Company such instruments as shall be requisite to evidence the satisfaction thereof with respect to Securities of such series.

SECTION 12.03. APPLICATION BY TRUSTEE OF FUNDS DEPOSITED FOR PAYMENT OF SECURITIES. All moneys deposited with the Trustee pursuant to Sections 12.01 and 12.02, or received by the Trustee in respect of obligations deposited with the Trustee pursuant to Section 12.02 shall be held in trust and applied by it to the payment, either directly or through any paying agent (including the Company acting as its own paying agent), to the holders of the particular

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Securities, for the payment of which such moneys have been deposited with the Trustee, of all sums due and to become due thereon for principal, premium, if any, and interest.

SECTION 12.04. REPAYMENT OF MONEYS HELD BY PAYING AGENT. In connection with the satisfaction and discharge of this Indenture all moneys then held by any paying agent, other than the Trustee, under this Indenture shall, upon and in accordance with demand of the Company, be paid to the Trustee and thereupon such paying agent shall be released from all further liability with respect to such moneys.

SECTION 12.05. RETURN OF UNCLAIMED MONEYS. Any moneys deposited with the Trustee or any paying agent not applied but remaining unclaimed by the holders of Securities for 2 years after the date upon which the principal of and premium, if any, or interest on such Securities shall have become due and payable shall be repaid to the Company by the Trustee or such paying agent on written demand; and the holder of any of the Securities entitled to receive such payment shall thereafter look only to the Company for the payment thereof and all liability of the Trustee or any such paying agent with respect to such moneys shall thereupon cease. In the absence of any such Company Order, the Trustee or any such paying agent shall from time to time deliver such unclaimed funds to, or as directed by, the pertinent escheat authority, as identified by the Trustee or such paying agent in its sole discretion, pursuant to and in accordance with applicable unclaimed property laws, rules or regulations. Any such delivery shall be in accordance with the customary practices and procedures of the Trustee or such paying agent and the escheat authority and, upon any such delivery, all liability of the Trustee and such paying agent with respect to such unclaimed funds shall thereupon cease.

#### ARTICLE THIRTEEN

##### IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

SECTION 13.01. PERSONAL IMMUNITY FROM LIABILITY OF INCORPORATORS, STOCKHOLDERS, ETC. No recourse under or upon any obligation, covenant or agreement of this Indenture or any indenture supplemental hereto, or of any Security, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator or against any past, present or future stockholder, officer or member of the Board of Directors, as such, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability and any and all such claims being hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Securities.

#### ARTICLE FOURTEEN

##### SUBORDINATION

SECTION 14.01. SECURITIES SUBORDINATED TO SENIOR DEBT. With respect to Securities of any series as to which, pursuant to Section 2.03(n), it has been established that this

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Article Fourteen applies (herein called the "Subordinated Securities"), the

Company covenants and agrees, and each holder of Subordinated Securities, by his acceptance thereof, likewise covenants and agrees, that the indebtedness represented by the Subordinated Securities and the payment of the principal of, premium, if any, and interest on each and all of the Subordinated Securities are hereby expressly subordinate and junior to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of all Senior Indebtedness. "Senior Indebtedness" means all indebtedness of the Company for the repayment of money borrowed (whether or not represented by bonds, debentures, notes or other securities) other than the indebtedness evidenced by the Subordinated Securities and any indebtedness subordinated to, or subordinated on parity with, the Subordinated Securities. "Senior Indebtedness" does not include customer deposits or other amounts securing obligations of others to the Company.

SECTION 14.02. EVENTS OF SUBORDINATION. In the event (a) of any distribution of assets of the Company upon any dissolution, winding up, liquidation or reorganization of the Company, whether in bankruptcy, insolvency, reorganization or receivership proceedings or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Company or otherwise, except a distribution in connection with a consolidation, merger or sale, transfer or lease of the properties of the Company which complies with the requirements of Section 11.02, or (b) the principal of any Senior Indebtedness shall have been declared due and payable by reason of an event of default with respect thereto and such event of default shall not have been rescinded, then:

(1) in the circumstance described in the foregoing clause (a) the holders of all Senior Indebtedness, and in the circumstance described in the foregoing clause (b) the holders of all Senior Indebtedness outstanding at the time the principal of such Senior Indebtedness shall have been so declared due and payable, shall first be entitled to receive payment of the full amount due thereon in respect of principal, premium, if any, and interest, or provision shall be made for such amount in money or money's worth, before the holders of any of the Subordinated Securities are entitled to receive any payment on account of the principal of, premium, if any, or interest on the indebtedness evidenced by the Subordinated Securities;

(2) any payment by, or distribution of assets of, the Company of any kind or character, whether in cash, property or securities (other than securities of the Company as reorganized or readjusted or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in this Article with respect to the Subordinated Securities, to the payment of all Senior Indebtedness, provided that the rights of the holders of the Senior Indebtedness are not altered by such reorganization or readjustment), to which the holders of any of the Subordinated Securities or the Trustee would be entitled except for the provisions of this Article shall be paid or delivered by the person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of such Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, ratably according to the aggregate amounts remaining unpaid on account of such Senior Indebtedness held or represented by

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each, to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid after giving effect to any concurrent payment or distribution (or provision therefor) to the holders of such Senior Indebtedness, before any payment or distribution is made to the holders of the indebtedness evidenced by the Subordinated Securities or to the Trustee under this Indenture; and

(3) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, the Company of any kind or character, whether in cash, property or securities (other than securities of the Company as reorganized or readjusted or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in this Article with respect to the Subordinated Securities, to the payment of all Senior Indebtedness, provided that the rights of the holders of Senior Indebtedness are not altered by such reorganization or readjustment), shall be received by the Trustee or the holders of any of the Subordinated Securities before all Senior Indebtedness is paid in full, such payment or

distribution shall be paid over to the holders of such Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, ratably as aforesaid, for application to the payment of all Senior Indebtedness remaining unpaid until all such Senior Indebtedness shall have been paid in full, after giving effect to any concurrent payment or distribution (or provision therefor) to the holders of such Senior Indebtedness.

SECTION 14.03. SUBROGATION. Subject to the payment in full of all Senior Indebtedness, the holders of the Subordinated Securities shall be subrogated to the rights of the holders of such Senior Indebtedness to receive payments or distribution of cash, property or securities of the Company applicable to such Senior Indebtedness until all amounts owing on the Subordinated Securities shall be paid in full, and, as among the Company, its creditors other than holders of such Senior Indebtedness, and the holders of the Subordinated Securities, no such payment or distribution made to the holders of Senior Indebtedness by virtue of this article which otherwise would have been made to the holders of the Subordinated Securities shall be deemed to be a payment by the Company on account of such Senior Indebtedness, it being understood that the provisions of this Article are and are intended solely for the purpose of defining the relative rights of the holders of the Subordinated Securities, on the one hand, and the holders of Senior Indebtedness, on the other hand.

SECTION 14.04. OBLIGATION OF COMPANY UNCONDITIONAL. Nothing contained in this Article or elsewhere in this Indenture or in the Subordinated Securities is intended to or shall impair, as among the Company, its creditors other than the holders of Senior Indebtedness, and the holders of the Subordinated Securities the obligation of the Company, which is absolute and unconditional to pay to the holders of the Subordinated Securities the principal of, premium, if any, and interest on the Subordinated Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the holders of the Subordinated Securities and creditors of the Company other than the holders of Senior Indebtedness, nor shall anything herein or therein prevent the Trustee or the holder of any Subordinated Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of

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Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

Upon any payment or distribution of assets of the Company referred to in this Article, the Trustee and the holders of the Subordinated Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which any such dissolution, winding up, liquidation or reorganization proceeding affecting the affairs of the Company is pending or upon a certificate of the trustee in bankruptcy, receiver, assignee for the benefit of creditors, liquidating trustee or agent or other Person making any payment or distribution, delivered to the Trustee or to the holders of the Subordinated Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount paid or distributed thereon and all other facts pertinent thereto or to this Article. In the event that the Trustee determines, in good faith, that further evidence is required with respect to the right of any person as a holder of Senior Indebtedness to participate in any payment or distribution pursuant to this Section, the Trustee may request such person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, as to the extent to which such Person is entitled to participate in such payment or distribution, and as to other facts pertinent to the right of such Person under this Section, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

SECTION 14.05. PAYMENTS ON SUBORDINATED SECURITIES PERMITTED. Nothing contained in this Article or elsewhere in this Indenture, or in any of the Subordinated Securities, shall affect the obligation of the Company to make, or prevent the Company from making, payments of the principal of, premium, if any, or interest on the Subordinated Securities in accordance with the provision hereof and thereof, or shall prevent the Trustee or any paying agent of the Company from applying any moneys deposited with it hereunder to the payment of the principal of, premium, if any, or interest on the Subordinated Securities, in each case except as otherwise provided in this Article.

SECTION 14.06. EFFECTUATION OF SUBORDINATION BY TRUSTEE. Each holder of Subordinated Securities, by his acceptance thereof, authorizes and directs the Trustee in his behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article and appoints the Trustee his attorney-in-fact for any and all such purposes.

SECTION 14.07. KNOWLEDGE OF TRUSTEE. Notwithstanding the provisions of this Article or any other provisions of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment of moneys to or by the Trustee, or the taking of any other action by the Trustee (and shall not be liable for making such payment or taking such action), unless and until a responsible officer of the Trustee having responsibility for the administration of the trust established by this Indenture shall have received written notice thereof from the Company, any holder of Subordinated Securities, any paying agent of the Company or any holder or representative of any class of Senior Indebtedness, and, prior to the receipt of any such written notice, the Trustee shall be entitled in all respects to assume that no such facts exist; provided that, if prior to the third business day preceding the date upon which by the terms hereof any monies become payable for any purpose (including, without limitation, the payment of either the principal of or interest on

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any Subordinated Security), or the date of the execution of an instrument pursuant to Section 12.02 acknowledging satisfaction and discharge of this Indenture, a responsible officer of the Trustee shall not have received with respect to such monies or to such funds or obligations deposited pursuant to Section 12.02, the notice provided for in this Section 14.07, then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such monies or such funds or obligations and apply the same to the purpose for which they were received and shall not be affected by any notice to the contrary which may be received by it on or after such date.

SECTION 14.08. TRUSTEE'S RELATION TO SENIOR INDEBTEDNESS. The Trustee shall be entitled to all the rights set forth in this Article with respect to any Senior Indebtedness at the time held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in Section 7.12 or elsewhere in this Indenture shall deprive the Trustee of any of its rights as such holder. Nothing in this Article shall apply to claims of or payments to the Trustee under or pursuant to Section 7.06.

With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article, and no implied covenants or obligations with respect to the holders of Senior Indebtedness shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness, and the Trustee shall not be liable to any holder of Senior Indebtedness, if it shall mistakenly pay over or deliver to holders of Subordinated Securities, the Company or any other Person monies or assets to which any holder of Senior Indebtedness shall be entitled by virtue of this Article or otherwise.

SECTION 14.09. RIGHTS OF HOLDERS OF SENIOR INDEBTEDNESS NOT IMPAIRED. No right of any present or future holder of any Senior Indebtedness to enforce the subordination herein shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

## ARTICLE FIFTEEN

### MISCELLANEOUS PROVISIONS

SECTION 15.01. SUCCESSORS. All the covenants, stipulations, promises and agreements in this Indenture contained by or in behalf of the Company shall bind its successors and assigns, whether so expressed or not.

SECTION 15.02. BENEFITS OF INDENTURE RESTRICTED TO PARTIES AND SECURITYHOLDERS. Nothing in this Indenture or in the Securities, expressed or implied, shall give or be construed to give to any person, other than the Company, the Trustee and the Securityholders, any legal or equitable right, remedy or claim under or in respect of this Indenture.

SECTION 15.03. PAYMENTS DUE ON SUNDAYS AND HOLIDAYS. In any case where the date of maturity of principal of or interest on any Securities or the date fixed for redemption of any Securities shall be a Sunday or legal holiday or a day on which banking institutions in the City of New York are authorized by law to close, then payment of interest or principal and premium, if any, may be made on the next succeeding business day with the same force and effect as if made on the date of maturity or the date fixed for redemption and no interest shall accrue for the period after such date.

SECTION 15.04. NOTICES AND DEMANDS ON COMPANY AND TRUSTEE. Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the holders of Securities on the Company shall be in writing and shall be deemed to have been sufficiently given or served, for all purposes, if given or served at, or sent by registered mail to, the principal office of the Company (until another address is filed in writing by the Company with the Trustee). Any notice, direction, request or demand by any Securityholder to or upon the Trustee shall be in writing and shall be deemed to have been sufficiently given or made, for all purposes, if given or made at, or sent by registered mail to, the office of the Trustee located at 450 West 33rd Street, New York, New York 10001, Attention: Capital Markets Fiduciary Services, or at any other address previously furnished in writing to the Company by the Trustee. Any notice required or permitted to be mailed to a Securityholder by the Company or the Trustee pursuant to the provisions of this Indenture shall be in writing and shall be deemed to be properly mailed by being deposited, first class mail postage prepaid, in a post office letter box in the United States addressed to such Securityholder at the address of such holder as shown on the Security Register.

SECTION 15.05. LAW OF NEW YORK TO GOVERN. This Indenture and each Security shall be deemed to be a contract made under the law of the State of New York, and for all purposes shall be construed in accordance with the law of said State.

SECTION 15.06. OFFICERS' CERTIFICATES AND OPINIONS OF COUNSEL; STATEMENTS TO BE CONTAINED THEREIN. Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent have been complied with, except that in the case of any such application or demand as to which the furnishing of such documents is specifically required by any provision of this Indenture relative to such particular application or demand, no additional certificate or opinion need be furnished.

Each certificate or opinion provided for in this Indenture, and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture, shall include (1) a statement that the person making such certificate or opinion has read such covenant or condition and the definitions herein relating thereto; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

SECTION 15.07. CONFLICT OF ANY PROVISION OF INDENTURE WITH TRUST INDENTURE ACT OF 1939. If and to the extent that any provision of this Indenture (or any provision of the terms of a series of Securities) limits, qualifies or conflicts with another provision included in this Indenture which is required to be included in this Indenture by any of sections 310 to 317, inclusive, of the Trust Indenture Act of 1939, such required provision shall control.

SECTION 15.08. COUNTERPARTS. This Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument.

SECTION 15.09. SEVERABILITY. If any provision of this Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy or for any other reason, such circumstances shall not have the effect of rendering the

provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

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IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed and their respective corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

ORANGE AND ROCKLAND UTILITIES, INC.

By  
Hyman Schoenblum  
Vice President and Chief Financial Officer

[CORPORATE SEAL]  
ATTEST:

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[Title]

THE CHASE MANHATTAN BANK,  
Trustee

By  
James P. Freeman  
Vice President

[CORPORATE SEAL]  
ATTEST:

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[Title]

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STATE OF NEW YORK )  
                          ) ss.  
COUNTY OF NEW YORK )

On the 15th day of June, 2000 before me personally came Hyman Schoenblum, to me known, who, being by me duly sworn, did depose and say that he is a Vice President and Chief Financial Officer of ORANGE AND ROCKLAND UTILITIES, INC., one of the corporations described in and which executed the above instrument; that he knows the corporate seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation; and that he signed his name thereto by like authority.

[NOTORIAL SEAL]

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Peter J. Barrett  
Notary Public, State of New York  
No. 4973207  
Qualified in Westchester County  
Commission Expires: October 15, 2000

STATE OF NEW YORK )  
                          ) ss.  
COUNTY OF NEW YORK )

On the 15th day of June, 2000 before me personally came James P. Freeman, to me known, who, being by me duly sworn, did depose and say that he is a Vice President of THE CHASE MANHATTAN BANK, one of the corporations described in and which executed the above instrument; that he knows the corporate seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation; and that he signed his name thereto by like authority.

[NOTORIAL SEAL]

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Peter J. Barrett  
Notary Public, State of New York  
No. 4973207  
Qualified in Westchester County  
Commission Expires: October 15, 2000

RATIO OF EARNINGS TO FIXED CHARGES  
 Twelve Months Ended  
 (Thousands of Dollars)

	December 2000	December 2001	December 2002	December 1998	December 1999
-----					
----- EARNINGS Net Income \$44,968 \$14,726					
	\$39,069	\$40,182	\$44,896	Federal Income & State Tax	24,877
	40,101	24,654	25,937	24,574	Total Earnings Before Federal
				and State Income Tax	69,845 54,827 63,723 66,119 69,470
FIXED CHARGES*	36,973	35,454	27,141	26,373	30,118 -----
----- Total					
Earnings Before Federal and State Income Tax and Fixed					
Charges	\$106,818	\$90,281	\$90,864	\$92,492	\$99,588
=====					
* Fixed Charges Interest on Long-Term Debt	23,867	26,326			
	21,873	21,855	21,218	Amortization of Debt Discount,	
				Premium and Expense	1,138 1,208 1,060 994 961
Component on lease Payment	2,505	2,583	1,257	1,305	1,598
Other Interest	9,463	5,337	2,951	3,213	7,302 -----
----- Total Fixed					
Charges	36,973	35,454	27,141	27,367	31,079
=====					
Ratio of Earnings to Fixed Charges	2.89	2.55	3.35	3.38	
		3.20			
=====					



Certification Required Under Section 906 of the Sarbanes-Oxley Act of 2002

I, John D. McMahon, the Chief Executive Officer of Orange and Rockland Utilities, Inc. (the "Company") certify that the Company's Annual Report on Form 10-K for the year ended December 31, 2002, which this statement accompanies, (the "Form 10-K") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) and that the information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ John D. McMahon  
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John D. McMahon

Dated: February 27, 2003

Certification Required Under Section 906 of the Sarbanes-Oxley Act of 2002

I, Edward J. Rasmussen, the Chief Financial Officer of Orange and Rockland Utilities, Inc. (the "Company") certify that the Company's Annual Report on Form 10-K for the year ended December 31, 2002, which this statement accompanies, (the "Form 10-K") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) and that the information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Edward J. Rasmussen  
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Edward J. Rasmussen

Dated: February 27, 2003