

**PROCEEDING ON THE MOTION OF THE COMMISSION AS TO THE  
CHARGES RULES AND REGULATIONS OF CONSOLIDATED EDISON  
COMPANY OF NEW YORK, INC. FOR ELECTRIC SERVICE  
CASE 08-E-0539**

**DIRECT TESTIMONY OF  
RONALD J. LIBERTY AND FRANK W. RADIGAN  
ON BEHALF OF  
COUNTY OF WESTCHESTER**

**SEPTEMBER 8, 2008**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

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

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

4

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

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

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

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

9

10 **Q. MR. LIBERTY, WOULD YOU PLEASE SUMMARIZE YOUR**  
11 **EDUCATION AND BUSINESS EXPERIENCE?**

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

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

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

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

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

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

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

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

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

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

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

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

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

22

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

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

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

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

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

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

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

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

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

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

23

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

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

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

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

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



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

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

## 11 12 **RETURN ON EQUITY**

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

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

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

## 11

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

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

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

23

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

11  
12 **Q. ARE YOU STATING THAT THE COMPANY SHOULD NOT FORECAST**  
13 **O&M EXPENSES AND REVENUES?**

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

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

3

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

4

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

14

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

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

14  
15 **Q. WHAT DO YOU PROPOSE?**

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

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

## 7 **DEPRECIATION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17  
18 This approach also makes the reserve deficiency on Transmission and  
19 Distribution account reverse and become a surplus. This surplus should be  
20 amortized over ten years. When applied to all T&D accounts, this  
21 recommendation will decrease rate year revenue requirement by \$70 million.  
22  
23

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

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

16

17 **CAPITAL PROGRAM**

18 **Q. HAVE YOU REVIEWED THE COMPANY'S CAPITAL**  
19 **CONSTRUCTION PROGRAM PRESENTED IN THIS CASE?**

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

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

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

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

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

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

3  
4 In this case, the Company has once again proposed an enormous construction  
5 program that, when coupled with many other elements in its filing, amounts to a  
6 burdensome rate increase for its customers. And this comes on top of a very large  
7 increase in the last case. While the Company has claimed to have “mitigated” the  
8 increase by cutting its construction program, there is little evidence that those  
9 “cuts” were made solely to reduce rate impacts or that they were sufficient to  
10 provide a better balance between supplying adequate (not perfect) service with  
11 having reasonable rate levels.

12  
13 In this case we still believe that the overall rate increase being proposed is too  
14 high and produces unreasonable rates. In order to keep a proper balance between  
15 spending levels and rate levels, it is necessary to reduce spending and that  
16 includes the capital program. We propose that the capital construction program  
17 be reduced by \$273 million.

18  
19 **Q. PLEASE DESCRIBE HOW YOU DEVELOPED THAT AMOUNT AND**  
20 **HOW THAT REDUCTION WILL IMPACT THE REVENUE**  
21 **REQUIREMENT IN THIS CASE.**

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

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

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

11

12 The adjusted amounts from each program are as follows:

13

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

14

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

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

19

20

21

1 **REVENUE ALLOCATION**

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

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

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

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

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

23

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

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

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

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

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<sup>2</sup> Ibid.

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

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

1 **TRANSMISSION CONGESTION REVENUES**

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

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

11

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

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

21

22

23

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

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

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

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

10

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

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

17

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

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

21

22

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

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

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

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

19  
20 **Q. PLEASE QUANTIFY THE TRANSMISSION CONGESTION REVENUES**  
21 **IN THIS CASE.**

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

1           2) Con Edison has another set of Residual TCCs that it also sells at auction in the  
2           ISO. These Residual TCCs generated \$44 million in revenues in 2006; and  
3           3) Con Edison receives congestion revenues for the TCCs that were assigned by  
4           NYPA to Con Edison. Con Edison reimburses NYPA for its congestion costs  
5           with these revenues. In 2006, Con Edison received \$83 million in revenues from  
6           these TCCs.

7

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

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

16

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

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

22

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

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

6

7 **WESTCHESTER COUNTY RATES**

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

10 A. In many ways the Con Edison electric system is two systems in one. The system  
11 has 130,500 miles of cable but three-quarters of that cable, or 94,000 miles of it,  
12 are underground. In Westchester County there is 94,250 miles of cable but only  
13 7,069 miles of underground cable or 7.5% of the total. Service to this  
14 underground system is done through manholes and Con Edison has 264,000 in  
15 service. Only 11,369 or only 4.3% of the total manholes are in Westchester and  
16 95.7% in NYC. In contrast, the overhead system is comprised of 207,500 poles  
17 and 93,212 or 45% of them are located in Westchester. These values reflect the  
18 different characteristics of the service areas of NYC and Westchester.  
19 Furthermore, the demographics are markedly different. The following table  
20 illustrates the population densities for various areas and show that Westchester is  
21 quite different from the Company's NYC area and similar to other nearby  
22 counties:

23

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

1

2 While one would normally think that a higher density of customers would result  
3 in cost savings, statistics seem to indicate the opposite. Con Edison has the  
4 highest electric rates of any investor owned utility in the continental United  
5 States. Orange & Rockland has a service territory that is similar to Westchester  
6 and has significantly lower rates. For example, a 500 kWh electric bill in  
7 Westchester County for July 2007 is \$106.60 using the MSC applicable in the  
8 County. A comparable bill in Orange and Rockland is \$92.19. The difference is  
9 \$14.41 or 15% higher in Westchester. A 250 kW commercial bill in Westchester  
10 for the same period would be \$16,528.27 compared to a similar bill in Orange and  
11 Rockland of \$12,476.62. The difference is \$4051.65 or 32% higher in  
12 Westchester. While we do not expect that rates in Westchester will exactly match  
13 those in O&R's area, this comparison indicates a probability that costs to serve  
14 may be lower in Westchester than they are in NYC.

15

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

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

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

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

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

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

22

1 As Westchester reads PlaNYC 2030 it is clear that New York City wants those  
2 who use certain congested facilities to pay for them. The City wants a modern  
3 electric infrastructure and it wants to reap the rewards of the utility investment  
4 through increased property taxes. We take no issue with that philosophy.  
5 However, Westchester endorses the concept that what New York City wants, New  
6 York City should pay for. Another matter is the ratemaking treatment of certain  
7 steam generating plants located in the City. Some parties have expressed concern  
8 that the electric department may be helping to support parts of the steam system.  
9 However, until those issues are resolved, the cost to serve Westchester should not  
10 be impacted by these matters that affect only NYC.

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

22

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

6

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

8   **A.    Yes it does.**