conEdison
a conEdison, inc. company

Richard B. Miller
Assistant General Counsel
212-460-3389
millerrich@coned.com

April 18, 2008

VIA OVERNIGHT MAIL

Honorable Jaclyn A. Brilling
Secretary
State of New York
Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 07-M-0548 – Proceeding on Motion of the Commission Regarding An Energy Efficiency Portfolio Standard

Dear Secretary Brilling:

Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. hereby file an original and five copies of their reply brief in accordance with the March 20, 2008 Ruling on Staff Motion for Reconsideration and Revising Schedule issued by the Administrative Law Judges in the above-referenced matter.

Please contact me if you have any questions regarding this matter.

Very truly yours,

Richard B. Miller

cc: Active Parties (via ListServer)

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Case 07-M-0548 – Proceeding on Motion of the Commission Regarding An Energy Efficiency Portfolio Standard

REPLY BRIEF OF CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., AND ORANGE AND ROCKLAND UTILITIES

Consolidated Edison Company
of New York, Inc., and
Orange and Rockland Utilities, Inc.

By their Attorney

Richard B. Miller, Esq.
4 Irving Place, Room 1815-S
New York, New York 10003
(212) 460-3389

April 18, 2008

TABLE OF CONTENTS

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Case 07-M-0548 – Proceeding on Motion of the Commission Regarding An Energy Efficiency Portfolio Standard

REPLY BRIEF OF CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., AND ORANGE AND ROCKLAND UTILITIES

INTRODUCTION

Consolidated Edison Company of New York, Inc. ("Con Edison") and Orange and Rockland Utilities, Inc. ("O&R") (collectively "Companies") submit their reply brief in accordance with the March 20, 2008 Ruling on Staff Motion for Reconsideration and Revising Schedule issued by the Administrative Law Judges ("ALJs").

The Companies maintain that the Commission should reject the Staff proposed Fast Track or bridging programs (which are actually neither, given NYSERDA's concession that it needs time to ramp-up and its request that this proposal be extended by "at least a year"). To the extent that NYSERDA has programs that are oversubscribed, it should use the funds available to it from the Regional Greenhouse Gas Initiative ("RGGI"), which the State Department of Environmental Conservation ("DEC") states should be in the range of $300 million annually.

At the same time, the Commission should authorize Con Edison and O&R to proceed with their plans for cost-effective energy efficiency programs. The Commission has stated that it needs contributions from utilities to attempt to achieve the State's ambitious goal, and Con Edison and O&R are both prepared to move ahead this year to implement programs that will cost-effectively reduce carbon dioxide emissions through customer-directed energy efficiency programs.

Our initial brief showed (at 36-41) that the Companies are uniquely positioned to deliver substantial energy efficiency for their customers. Customers are looking for opportunities for increased efficiency and the initial briefs filed set forth no reasons that would justify additional delay in commencement of utility programs. The Companies request that they be authorized to file their programs, by July 1, 2008, for Commission approval so that they can begin to make their essential contributions toward meeting the 15x15 goal (Con Edison will refile and O&R will file).[1]

DISCUSSION

I. Con Edison Programs and O&R Plans

Con Edison filed its programs and O&R set forth its plans for filing programs in their initial brief. The ALJs subsequently ruled[2] that the Companies' programs and plans cannot be considered as "Fast Track" programs except "to the extent that these proposals are illustrative of the policy rationale for utility participation in the Energy Efficiency Portfolio Standard -- issue (2) on our list -- parties need not comment on or reply to the proposal for Commission approval of these suites of programs and plans." At the same time, the Ruling stated (at 2) that it expects that "the Commission will consider establishing procedures for comment, assessment, and approval of specific energy efficiency programs filed by utilities and others."

---

[1] In their initial brief (at 43), the Companies stated that the Commission should not act prematurely by setting final targets or goals for 2015 and should perform a review of NYSERDA and utility administration of programs in two to three years before setting such targets or goals. The Companies accordingly request that the Commission reject all proposals to set final goals or targets at this time.

[2] Case 07-M-0548, Ruling Concerning Reply Briefs And Utility Energy Efficiency Plans (April 14, 2008).

The Companies accordingly request, as they did in their initial brief, that the Commission reject the Staff Fast Track proposal (at least for the Companies' service territories) and authorize Con Edison and O&R to file their programs and plans by July 1, 2008. The Companies note here that, while they demonstrated in their initial briefs that NYSERDA has failed to effectively penetrate the energy efficiency markets in their service territories, Staff now proposes for the first time in its initial brief (at 6) that the Commission should order NYSERDA to explain how "it will align funds coming from a specific utility service territory . . . with program implementation in the individual utility service territories."[3] But NYSERDA has been unable to achieve this goal in Con Edison's and O&R's service territories despite the Companies' urgings for it to do so since the initiation of the system benefits charge ("SBC") program in 1998.[4] NYSERDA has just begun a study to determine why it has been unable to effectively market its programs in Con Edison's service territory (it has not even planned a study for O&R's service territory, which has received the lowest proportion of SBC funding). If the Commission rejects the Fast Track and instead authorizes the Con Edison and O&R programs and plans, there can be no question how the Companies will align their programs with their service territories, as Staff proposes for NYSERDA.[5]

[3] Staff also requests (at 6) that NYSERDA be required to explain how its funding will align with specific customer classes, but as explained by the Companies in their initial brief (at 29), that claim should be rejected.

[4] *See* Case 05-M-0090, Comments of O&R at 4 (March 4, 2005), pointing out that "O&R contributed 3.57% of statewide funding through December 31, 2003 and 2.78% of the program funds were committed to the service area;" Case 94-E-0952, Comments of Con Edison and O&R on Proposed Extension of System Benefits Charge Program, at 3 (Nov. 20, 2000); Comments of Con Edison on Proposed Plan for Public Benefit Programs Funded by SBC, at 3 (June 12, 1998), where Con Edison stated that NYSERDA's proposed plan "will inequitably benefit some parts of the state at the expense of downstate utility ratepayers."

[5] Con Edison notes in particular that it has already proposed sector specific programs, a strategy that has been endorsed by NYSERDA and Staff. *See* NYSERDA at 6.

Additionally, allowing Con Edison and O&R to move forward with their programs and plans obviates the need for any Fast Track or bridging programs in the Companies' service territories, which by their very definition should be regarded as temporary measures only. But NYSERDA now appears to be acknowledging that it is not capable of ramping up quickly and requests that this Staff proposal be extended by "at least a year." NYSERDA actually ramped down in O&R's service territory between 2004 and 2007. The Companies are ready to proceed with their own proposals to serve their customers -- there is no longer a pressing need to move forward with a "bridging mechanism" focused on NYSERDA programs in their service territories.

The Companies respectfully submit that their proposals are consistent with the Commission's statement in the Con Edison Electric Rate Order[6] -- that "it is likely the [EEPS] proceeding will result in substantial utility involvement in delivering efficiency programs" -- and should be considered expeditiously.

A. Staff Fast Track Proposal Should Be Rejected

The Companies requested in their initial brief that the Commission reject the Staff "Fast Track" proposal (which Staff now calls a "Bridging Proposal") because, among other things, Staff failed to justify its funding request for NYSERDA. The Companies stated that the Commission should first take into account that the State will commence its first auctions this year pursuant to the RGGI, under which the State is currently proposing to auction 100% of allowances to emit carbon dioxide, and then allocate virtually all of the funds from those auctions to NYSERDA for energy efficiency and renewable energy programs.

[6] Case 07-E-0523, Order Establishing Rates For Electric Service, at 158 (March 25, 2008) ("Electric Rate Order").

The Companies estimated that NYSERDA could receive more than $300 million from RGGI auctions, and DEC generally agrees with this estimate. It states in its initial brief (at 3), "We especially call attention to RGGI and its creation of the Energy Efficiency and Clean Energy Technology Account (*See* Proposed Regulations, 21 NYCRR, Part 507.4(e)) with its potential yearly revenues of $300,000,000 and the mandate given to NYSERDA to use the proceeds 'to promote and implement programs for energy efficiency and renewable or non-carbon emitting technologies with significant carbon reduction potential....' This statement of the DEC, the agency promulgating rules for RGGI, refutes the claim of the Independent Power Producers of New York (at 2) that the Commission should not take RGGI into account because final rules have not yet been adopted.

The Companies also objected to the "Fast Track" because Staff proposed programs and structure that predetermine how the State will seek to achieve the 15x15 goal and virtually forecloses utility participation. The Companies' view of the Staff Fast Track proposal is confirmed by NYSERDA's initial brief, which takes the same view of the Staff Proposal. Indeed, NYSERDA requests (at 3- 4) that the Staff "Fast Track" be extended "at least an additional year" and (at 8) that "utility efforts should be steered towards finding efficiencies in the transmission and distribution system."

In other words, while Staff states that it has proposed the Fast Track as temporary or bridging only, NYSERDA conveys the actual substance of its objective in supporting Staff, *i.e.,* that NYSERDA seeks to deliver all energy efficiency programs for the foreseeable future and utilities should have an extremely limited role. Staff appears to be paying lip service to the Commission's pronouncement (Electric Rate Order at 158) that utilities are expected to have a "substantial role" in energy efficiency delivery. Staff's proposal, if accepted, will undermine the Commission's energy efficiency objectives. The Commission should accordingly reject the Fast Track proposal and adopt the governance models that the Companies proposed in their initial briefs.

While Staff states (at 2) that the role of utilities should be increased, Staff continues to propose criteria for utility participation that it did not apply or propose to apply to NYSERDA. Staff proposes (at 22) that utilities should be permitted to implement a specific program "only" if the program does well when evaluated against the following criteria: (1) Cost-effectiveness; (2) Co-benefits, such as benefits to environmental justice communities; (3) Scalability through stable, multi-year funding commitments; (4) a Portfolio Approach that allows flexibility to shift resources if necessary; (5) Fuel Integration by developing programs that address gas and electric simultaneously through a single-point-of-contact whole building approach; (6) Market Acceptance as demonstrated by similarity to programs with an already proven benefit/cost track record (the Companies note that this Staff proposal would explicitly discourage innovative programs); and (7) Customer Outreach and Program Marketing that is well-defined and well-coordinated with community organizations and other market participants (including NYSERDA) along with paid media advertising. While some of these are reasonable program criteria, especially (4), the portfolio approach, Staff does not claim that it has demonstrated this for its proposed Fast Track programs. Moreover, item (6), that a program has to demonstrate "market acceptance" through "similarity" to other programs, seems designed to discourage innovation. Indeed, this item contradicts Staff's proposal (at 23) that the Commission should consider directing NYSERDA and the utilities to develop and submit a new approach to the delivery of SBC-funded energy efficiency programs.

Finally, with respect to its Fast Track proposal, if adopted, Staff proposes (at 37) for its proposed utility programs -- Residential ENERGY STAR® HVAC and Efficient Gas Equipment and Small Commercial/Industrial Direct Installation programs -- that the Commission require submission of implementation plans as compliance filings, within 30 days of the issuance of the order regarding these interim programs. Staff states that if "the utility expects significant differences from the Staff proposed fast track estimates for program budget, or energy savings, or both, these deviations should be explained and justified." Staff has not consulted with the Companies on these programs and does not demonstrate why its proposed programs should be presumed superior. The Companies should accordingly not be required to explain why their proposals differ from the Staff proposal; rather, if the Commission authorizes the Fast Track, it should allow the Companies to file their own programs together with appropriate cost/benefit analyses within 60 days of the Commission's order.[7]

II. Role of Utilities in Achieving the EEPS

Most parties filing initial briefs recognize that utilities have inherent advantages in delivering energy efficiency programs to customers and that utilities will need to play a significant role in the State's attempt to achieve the EEPS goal. Staff, however, makes a number of unsubstantiated claims, including that utility administration of energy efficiency programs is not as efficient as NYSERDA's administration. Staff cites to no statistics in support of this claim, stating only (at 32) that according "to NAESCO, which

[7] The Alliance for Clean Energy agrees. It states (at 5) that prior "to commencing utility administered programs, it would be preferable for utility programs to be more fully articulated – by the utilities themselves and not solely staff[.]"

has direct in-the-field experience, recent utility program initiatives have been more expensive, less transparent, and less productive in obtaining energy savings than comparable NYSERDA programs." Offering no other proof of this assertion, Staff cites only to NAESCO's January 25 filing opposing the New York City partnership, which offered no proof in support of this statement. The Companies, on the other hand, cited specific studies (at 40 n. 37) showing that utility administration of energy efficiency programs has been demonstrated to be more efficient than non-utility administration.[8] And, NAESCO does not repeat this claim in its initial brief, instead calling (at 5) upon the Commission to "immediately" authorize utilities to file their own programs for Commission approval, (Con Edison will refile and O&R will file by July 1).

Staff also ignores NYSERDA's lack of success in the Con Edison and O&R service territories. For example, Staff claims (at 2-3) that NYSERDA is the "only entity" that has demonstrated "the ability to work on local, regional, and national levels and to develop effective relationships with market participants and service providers."[9] Simply put, Staff claims that NYSERDA has succeeded on the "local" level when even NYSERDA now concedes that it has not been successful in Con Edison's service territory and NYSERDA's last two program reports not only demonstrate lack of success in O&R's service territory, but an actual decline in ability to penetrate the service

[8] See National Action Plan for Energy Efficiency – Table 6-3, at 6-8 & 6-9, available at http://www.epa.gov/solar/pdf/napee/napee_report.pdf). In addition, a February 1, 2008 report prepared for the Connecticut Energy Advisory Board found (at 8) that Connecticut investor owned utilities "have some of the lowest program administrator costs per lifetime kWh saved as compared to other program administrators in the Northeast." Connecticut Electric Conservation Programs Study, Prepared for the Connecticut Energy Advisory Board, Final Report (Feb. 1, 2008). It also found (at 4) that NYSERDA administers the second most expensive energy efficiency program among the States surveyed. Here is an additional cite for footnote 8: Connecticut Electric Conservation Programs Study, Prepared for the Connecticut Energy Advisory Board, Final Report (Feb. 1, 2008).

[9] Staff similarly claims (at 20) "that NYSERDA has a tremendous institutional understanding of how to successfully leverage resources through alliances with trade allies, manufacturers, educational institutions, and third party service providers on a statewide, regional, and national basis." Here, too, Staff ignores the evidence that NYSERDA has not effectively penetrated the Con Edison and O&R service territories.

territory. Moreover, in making the claim that NYSERDA is the "only entity," Staff also ignores Con Edison's and O&R's success in administering energy efficiency programs in the 1990s until the Commission decided to take this function away from utilities in order to encourage the nascent competitive market. More recently, Con Edison has successfully worked with market participants and service providers in the implementation of its targeted program.

Staff also claims (at 19) that "NYSERDA's current program portfolio is comprehensive and there could be a debilitating effect on both new and existing programs if those programs are competing for customer enrollment with similar programs offered by different program administrators." NYSERDA, however, does not have a fully active presence in the Con Edison and O&R territories. Indeed, New York City (at 9-10) notes NYSERDA's lack of attention and focus for the downstate market (stating that only about 8-10 of NYSERDA's 275 employees are located in New York City). It accordingly makes sense to allow these two utilities to initiate their own programs. Given NYSERDA'S lack of presence in their service territories, turning over more responsibility to Con Edison and O&R would not be a "radical" change in administrative responsibilities, as Staff also claims (at 21).

III. Utility Shareholder Incentives

Staff (at 23-31) presents a discussion of utility incentives that would be based on program budgets and include penalties even where the utilities have achieved energy efficiency gains. The Companies believe that the Staff proposal is premature in the absence of the Commission's determining the utilities' role, let alone which programs utilities would be authorized to administer. In addition, Staff proposes that utility incentives be based on a percentage of the program budget, and that (at 30) utility performance rewards should be based on a percentage not greater than 12 percent of program budgets. The Companies object because this Staff proposal is contrary to the principle the Companies proposed, that the utility return on energy efficiency should be equivalent to its supply side return, which provides them with an incentive to maximize program cost-effectiveness. The Companies are prepared to make a specific proposal in the filings they propose to make by July 1, 2008.

The Companies also note in particular their objection to the Staff proposal (at 29) that the "incentive plan would be applied to programs on an individual basis and not applied to an entire program portfolio as a group." This proposal is contrary to Staff's other proposal (at 22) that the utilities should have program flexibility. It would discourage utilities from experimenting with innovative programs where the chance of success has not been verified by actual results, because, under Staff's proposal, utilities could be subject to a penalty for not achieving a goal in a single program.

NYSERDA suggests (at 7) that utilities should not be provided with any incentives, claiming that they "may play a deleterious role in program design and implementation, by creating a structural incentive to pursue programs that will allow quick MWh reduction claims at the expense of sustainable, enduring achievements."[10] The Companies respectfully suggest that a government agency with pre-determined goals will be subject to the same kind of pressure to produce short-term success that may potentially be at the expense of long-term efforts. This is why the general division of labor proposed by the Companies makes sense – the Companies would be more focused on resource acquisition while NYSERDA would be able to focus on market

[10] The Companies note that NYSERDA does not allege that the incentives Con Edison receives for its targeted program affected the program design.

transformation efforts and not be subject to short-term goals that could cause it to deviate from its long-term market transformation mission. As proposed in the January 11, 2008 recommendation as to governance structure that the Companies submitted together with other parties ("January 11 Recommendation"), utilities and NYSERDA would each file programs with the Commission consistent with their missions, and the Commission would then resolve how much of energy efficiency should be obtained through customer-oriented activities and how much should be obtained through market transformation activities. Thus, what the Companies are proposing is not at all like what is occurring in California, where the utilities have almost exclusive responsibility for energy efficiency programs. Finally, the Companies note that their focused customer efforts can be crucial in changing customer attitudes toward energy efficiency and enabling more long-term market transformation.[11]

NYSERDA also claims (at 7) that many "current efficiency programs are designed to foster development of a competitive industry for energy efficiency services" and that utility incentives could interfere with that goal. This claim is flawed for two reasons. First, it assumes that utilities would not continue to contract with energy service companies where appropriate. To date, Con Edison has issued RFPs under its targeted program and it has worked well with ESCOs under that program. And while fostering the competitive energy efficiency services industry is an important goal, the Commission would not have initiated the EEPS proceeding if the Commission thought that were the only goal. NYSERDA has been fostering the competitive market for ten years under the

[11] E.g., Process Evaluation of SDG&E's 2006-2008 Non-Residential Energy Efficiency Programs , Volume III, KEMA Inc. for CALMAC, at 9-19 (March 15, 2008).

SBC program – if those efforts had been effective at capturing all energy efficiency opportunities, the Commission would not have seen the need for this proceeding.

Staff also proposes (at 31) that utilities should be subject to penalties although it does not claim a penalty is necessary to motivate utilities to achieve greater energy efficiency. Moreover, the Commission has recognized that incentives can stand alone. For instance, it authorized utilities to receive incentives for achieving customer migration and retention in retail access programs without subjecting those companies to penalties and the same principle should apply here. First, promoting energy efficiency to customers, like promoting retail access service to customers, is not one of the Company's statutory responsibilities under the Public Service Law. While the Commission offered incentives to utilities to promote retail access service to their customers, the Commission did not attempt to impose penalties on utilities for failing to switch some threshold number of customers to retail access service. The Commission should recognize that, just as it is ultimately the customer's decision whether or not to switch to a competitive service provider, it is also ultimately the customer's decision whether or not to implement energy efficiency measures. The Company can educate customers as to the benefits and provide an incentive to the customer, but the customer must ultimately decide to make the change. The Commission should not penalize a utility for results that are not fully under its control and depend ultimately on customer decisions.

Finally, the Commission has a fully effective remedy if it believes that a utility is not producing sufficient benefits through its energy efficiency program. The Commission can, within the bounds of due process, put the utility out of the energy efficiency business by refusing to authorize rate recovery for such programs. This is a real possibility in New York given the NYSERDA option as an alternative.

IV. New Staff Proposals

Staff makes a number of new proposals in its initial brief that were either partially described or not mentioned in Staff's March Report.[12] These new Staff proposals should have been presented in the report and should not be considered now. The Companies provide responses to those Staff proposals here.

A. DASNY and On-Bill Financing

Staff requests that the Commission direct "the utilities to work with the Dormitory Authority of the State of New York (DASNY) and other interested parties to design an on-bill financing mechanism for not-for-profit and public entities that are eligible for tax exempt financing, which should be filed with the Commission within 60 days of the issuance of the Commission order." In the Staff's March Proposal, Staff stated only that it was recommending a collaborative on on-bill financing (without mentioning DASNY), and then transformed that vague proposal into a request to the utilities to work with DASNY to come up with a proposal within 60 days.

The Companies vigorously object to this Staff request. The Companies had previously filed comments with the Commission as part of a Joint Utilities filing stating their objection to the DASNY proposal,[13] but Staff did not discuss these objections in its initial brief. The Joint Utilities pointed out in that filing (at 2) that, at a minimum, "the DASNY proposal would require an extended period of time before it could be

[12] Case 07-M-0548, DPS Staff Report on Recommendations for the EEPS Proceeding (March 25, 2008) ("Staff's March Report").
[13] November 26, 2007 Letter from Joint Utilities to Secretary Brilling re: Proposed Rule Makings Published in NYS Register on October 10, 2007 (SAPA I.D. Nos. PSC-41-07-00015-P, PSC-41-07-00016-P and PSC-41-07-00018-P).

implemented by utilities due to the extensive programming and testing of utility billing systems that would be required." The Joint Utilities also pointed out (at 2) that their

> business models, processes and billing system designs are simply not set up to handle the proposed customized customer billing. Costs for program implementation are likely to be significant and other utility customers and utility shareholders should not be held responsible for such expenses. In addition, prior to implementation of such a proposal, utilities would have to determine if control protocols would be necessary to ensure compliance with the requirements of the Sarbanes-Oxley Act of 2002.

Moreover, the Companies would like to make it clear that to the extent that they are willing to explore on-bill financing, as they stated in their initial brief, it would be because they are willing to do it on their own. The Companies object to performing this as a service for DASNY or any third party lender. While the Companies believe that DASNY has never made its proposal clear, it appears that DASNY has made two different proposals: (1) the utility would be the administrative and collection entity for energy efficiency loans awarded by DASNY, *i.e.*, the utility would in effect purchase these loans from DASNY without compensation for expenses ror credit or other risks and then collect payments on the loan through bill charges -- with any failure to pay recovered from ratepayers generally ("Financing Proposal"); or (2) the utility would act as the billing agent for DASNY, *i.e.*, the utility would not "purchase" the loan but instead act as billing agent by agreeing to collect the loan charges on behalf of DASNY ("Billing Proposal").

First, it appears that DASNY is impermissibly seeking to shift risk from DASNY to the utilities. Utilities should not be required to implement proposals that expose their customers and shareholders to risk for no compensation. The Financing Proposal imposes extraneous tariff-based charges on customer bills and exposes both customers and shareholders to new financial liabilities without providing any compensation. DASNY also assumes that the utility could induce customers to pay loan installments by threatening to terminate electric service to a non-paying customer-borrower. This raises two questions: whether the utility would have the authority to terminate service for non-payment of loan installments, and if service may be terminated, whether the utility could mitigate its loss in some way, such as making the successor customer at the location liable for payment of any outstanding loan balance.[14]

DASNY's contradictory statements about its proposed program require investigation. DASNY states that it makes this proposal because it will "help DASNY serve institutions with less financial strength." DASNY - Interest of DASNY in this Proceeding, Attachment A, Attachment 1 at 3. DASNY further explains that implementation of the Financing Proposal "would allow participation by most, if not all, DASNY clients, and not just the lowest risk customers to whom capital providers are interested in making funds available." *Id.* at 5. But DASNY states that the Commission should allow utilities and their customers to take on this obligation because "DASNY's client constituency is unlikely to default on their utility bills." *Id.*

If the risk of default is low, then DASNY should be willing to take on this obligation itself. As DASNY itself states, it has the ability to make energy efficiency investments more attractive to its clients: "DASNY believes that its up-front involvement in Green Projects, such as by providing customers with technical expertise evaluating

---

[14] To the extent financing under this scheme would be extended to residential customers, the Commission would have to reconcile the proposal with the limits of the Home Energy Fair Practices Act, Pub. Serv. L. §32(2) (a), which authorizes the termination of service only for the customer's "[failure] to pay charges for any service rendered during the preceding twelve months." A third-party loan for energy efficiency purposes is unlikely to be viewed as "service rendered" by the utility, and a loan for a period longer than 12 months would run afoul of the time limitation in the law.

proposals and overseeing installations, will help reduce some of the perceived risks associated with Green Projects and thereby make them more attractive to the institutions served by DASNY." *Id.* at 3.

The Financing Proposal also inappropriately shifts credit risk to electric customers from DASNY. Those two groups differ. The DASNY mission statement makes clear that its purpose is low-cost financing and the risks it entails:

> The Dormitory Authority of the State of New York will be the public finance and construction partner of choice, providing our customers with low cost, quality sources of capital and facilities delivered on time by a responsive, innovative team of professionals.

This is an organization that exists solely to provide access to the tax exempt markets. It does so by issuing bonds on behalf of qualifying entities for qualifying projects or through tax-exempt leasing programs. No need or policy justification has been demonstrated for shifting the risk of loan default from DASNY to the utilities and their customers. In other words, the utility should not have to take on an obligation that DASNY is fully empowered to assume.

DASNY claims that its Billing Proposal is similar to the SBC surcharge and utility consolidated billing of ESCO supply charges -- but it varies in important ways from both. The SBC surcharge is a tariff-based charge placed on each kilowatt-hour sold and is unaffected by customer turnover. ESCO supply charges are not utility charges, are not part of the tariff, and are included on consolidated bills issued by utilities pursuant to Commission directive. Utilities are protected to some extent by Commission specific waivers, granted in Company rate cases, of rules on termination of service for non-utility charges and risk mitigation through the application of a discount to the receivables utilities must purchase. Implementation of consolidated billing required a timeconsuming and expensive effort to develop business process and information technology ("IT") specifications, including development and testing of the electronic data interchange transactions by which the ESCO provides billing information to the utility. DASNY has not recommended or outlined such a process, nor has it identified how the cost of the utility IT modifications required should be recovered. DASNY receivables have more similarity to mortgages (where a total sum is paid in installments and a departing customer must pay off the loan when he leaves) than energy commodity (where each month's consumption is purchased as the energy is used, and a departing customer owes only for its billed costs to the date of last usage). Utility processes are not structured to collect unbilled funds based on third-party arrangements similar to mortgages.

DASNY does not allege any material benefits from implementation of the Billing Proposal. It states only that this proposal would "help our clients appreciate the economic benefits of Green Projects because their utility bills will likely be less than they were before." DASNY Letter, Attachment 1 at 7. As discussed above, DASNY has the ability to demonstrate the economic benefits of an energy efficiency project without placing the financing charge on the utility bill.[15]

[15] As the Companies discussed in their initial briefs (at 43), there are alternatives to the DASNY proposal that can achieve the same goals. They noted that New York State formerly had a requirement (the Home Insulation and Conservation Act, Pub. Serv. L. Art. VII-A) that utilities have a "home conservation plan" that could, but was not required to, include utility-based financing. Utilities could provide for direct financing or for an arrangement with lending institutions to buy down the interest rate on consumer loans intended for conservation investments. The law expressly allowed the utility's recovery of the "just and reasonable costs of carrying out" the requirements of HIECA. The Companies remain willing to explore a program along these lines and/or on-bill financing if there are interested customer parties but this cannot be done in an expedited manner.

B. Transmission and Distribution Efficiency Improvements

Staff requests (at 7) that the Commission direct "the utilities to develop a common study protocol, with Staff's facilitation, to identify and reduce, to the extent practicable, transmission and distribution system inefficiencies in the context of attainment of EEPS goals, and require each electric utility to undertake, or take part in, such a study, with results reported to the Commission within 6 months of a Commission order." This Staff request does not discuss the Working Group IV recommendation, which states ""Potential reductions in delivery losses need be studied, but they must be studied by each utility for its service territory, and the study should include both transmission and distribution losses as individual components, to the extent practicable and possible, because they can be interrelated. A potential scope of work for the studies should be developed. If it is desired that the studies be done on a more accelerated basis, a mechanism for utility cost recovery needs to be implemented."

The Companies would be willing to develop a scope of work for such a study that would set forth a timeline for completion and the need for any incremental cost recovery for consultants and provide it to Staff within 90 days of a Commission order. The Companies note that such a study would probably have to be performed in two phases – one to determine the areas of potential improvement and the second to determine the cost-effectiveness of such improvements.

C. Marketing of NYSERDA Programs

Perhaps recognizing that NYSERDA has been deficient in at least some utility service territories, Staff (at 23) requests that the Commission should consider directing NYSERDA and the utilities to develop and submit a new approach to the delivery of SBC-funded energy efficiency programs that give the utilities specific responsibility for achieving program participation targets within their service territories. In particular, Staff requests that the Commission direct "NYSERDA and the utilities to engage in discussions that could result in a redefinition of the role those utilities have in the delivery of System Benefit Charge funded energy efficiency programs and that would increase the utilities' role in achieving service territory specific program goals and provide their initial recommendations to the Commission within 90 days of an order." The Companies object to such responsibility and such discussions unless the Commission also provides that NYSERDA should consider turning over the responsibility for the funds associated with SBC programs to utilities, who could then determine whether they would proceed with the NYSERDA program or develop a better program. Utilities should not be held responsible for achievements unless they are actually given responsibility for designing and administering some portion of the SBC programs, *i.e.*, they should not be held responsible where they only have a marketing or other advisory role.

D. Staff RFP

Staff requests (at 36) that the Commission authorize "now a competitive solicitation framework (RFP), administered by Staff, for obtaining commercial retrofit energy efficiency resources that would allow utilities, utility subsidiaries and other parties to participate." Staff provides no precedent for this offer to allow it to depart from its oversight role and engage in program administration, effectively making it a program administrator for ratepayer funds that should be subject to the Commission's regulatory oversight. The Commission should not adopt this proposal.

E. Evaluation and Reporting Task Force

Staff requests (at 7) that the Commission establish the proposed Evaluation and Reporting Task Force ("ERTF"); set out its responsibilities and designate membership. Staff (at 42) then provides further detail as follows:

> Staff recommends further exploration of issues addressed by Working Group 3, including the establishment of the ERTF. Staff's vision for the ERTF is that it would be a collaborative body designed to serve a variety of functions including developing evaluation and reporting protocols, reviewing evaluation plans and reports and coordinating statewide evaluation studies. We recognize that the ERTF will have responsibilities that require a significant investment of time and technical resources. To aid in this process, administrators of fast track programs will be required to contribute a small percentage of their program budget (probably less than one percent) to the ERTF. These funds will be made available to the ERTF to hire consultants to primarily assist in assessing the technical merit of the plans and evaluations. Additional funds may be requested to fund evaluation work that may be more effectively conducted on statewide basis (e.g., methods for estimating free ridership, baseline studies).

The Companies generally support the concept of a statewide task force that would establish statewide protocols for monitoring, verification and evaluation. The Companies believe that each program administrator should have membership on the task force and that therefore each utility should be a member.

F. Natural Gas

Staff (at 7 n. 4) recommends that the Commission hold in abeyance approving any additional gas programs coming out of rate proceedings until critical policy issues have been decided in this proceeding. Staff does not explain "such critical policy issues." Indeed, last year, the Commission ordered expedited consideration and expansion of Con Edison's gas efficiency program because of the desire to move quickly.[16] That program

[16] Case 03-G-1671, Order Establishing Gas Efficiency Program for 2007-08 Heating Season (May 16, 2007).

ends on October 1, 2008, the first year of Con Edison's gas rate plan. The Commission's order approving the gas rate plan provided that Con Edison would coordinate with a gas efficiency collaborative and propose gas efficiency programs for rate years 2 and 3.[17] Con Edison and the collaborative devoted significant work in developing a collaborative report that Con Edison filed with the Commission on April 15, 2008. That report should be given due consideration.

CONCLUSION

In accordance with their initial and reply briefs filed in this proceeding, the Companies request: (1) that Con Edison and O&R be authorized to file their programs by July 1, 2008 for Commission approval; (2) that the Staff Fast Track Proposal be rejected and the Commission instead adopt the governance structures the Companies proposed in their initial briefs; and (3) to the extent that the Commission authorizes the Staff Proposal, that it do so in accordance with the comments filed by the Companies.

Dated: New York, New York
April 18, 2008

Respectfully submitted,

Consolidated Edison Company
of New York, Inc., and
Orange and Rockland Utilities, Inc.

By their Attorney

Richard B. Miller, Esq.
4 Irving Place, Room 1815-S
New York, New York 10003
(212) 460-3389

[17] Case 06-G-1332, Order Adopting In Part The Terms And Conditions Of The Parties' Joint Proposal, at 24 (Sept. 25, 2007).