STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

INITIAL 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.

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INTRODUCTION

Consolidated Edison Company of New York, Inc. ("Con Edison") and Orange and Rockland Utilities, Inc. ("O&R") (collectively "Companies") submit their initial brief in accordance with the March 20, 2008 Ruling on Staff Motion for Reconsideration and Revising Schedule issued by the Administrative Law Judges ("ALJs"). This initial brief consists of two parts: (1) a suite of programs proposed by Con Edison that it should be authorized to begin implementing this summer and O&R's plans to file by July 1, 2008 proposed programs for Commission approval; and (2) discussion of the four matters listed in the ALJ's order, including specific discussion of the March 2008 Staff Report.[1] The March 20 Ruling stated (at 10) that "any recommendation of a Fast Track proposal will be made in the context of a determination regarding utility participation and with an estimate of overall program cost relative to the size of Fast Track commitments." The Companies agree that any decision made on the Staff March Report should be made in the "context of a determination regarding utility participation" -- this is why Con Edison has filed its proposed programs and O&R is setting forth a plan for filing by July 1, 2008 programs that it would be ready to implement by the end of the summer.

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[1] Case 07-M-0548, DPS Staff Report on Recommendations for the EEPS Proceeding (March 25, 2008) ("Staff's March Report").

PRELIMINARY STATEMENT

The proposed Staff Fast Track has not been justified and should not be authorized in the absence of a Commission decision to begin a long-term plan to achieve the State's EEPS goal that provides for a more substantial role for the State's utilities. Staff's March Report continues the errors of: (1) putting off for the future crucial issues such as when utility programs can be implemented and the governance structure that should be in place for each service territory to develop a long-term plan; and (2) requesting for the short term primarily that existing NYSERDA programs be expanded without thoroughly considering the need for such expansion, even if such expansion is justified, no consideration has been given to whether NYSERDA has any needs for funds particularly given the State's proposal to provide NYSERDA with virtually all of the funds that result from the auction of greenhouse gas emission allowances.

The Commission has recognized that utilities will need to play an increased role in energy efficiency to help the State to achieve its ambitious energy efficiency goal. In the recent Con Edison Electric Rate Order,[2] the Commission stated (at 158) that with respect to "the EEPS proceeding, our assessment is that it is likely the proceeding will result in substantial utility involvement in delivering efficiency programs." Consistent with this, the Companies believe that planning for this utility involvement should begin sooner rather than later, which is why they had developed and submitted on January 11, 2008 a recommendation as to governance structure along with other parties ("January 11 Recommendation"), so that partnerships could be formed for New York City and each service territory that can engage various stakeholders, with the ultimate objective of achieving the EEPS goal.

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

In addition, in this brief, Con Edison is presenting a suite of programs that are ready for approval and O&R describes its implementation plan for filing programs by July 1, 2008 in accordance with a schedule that has previously been approved by the Commission. The Con Edison programs present a better overall package for the Commission to approve because its programs have been developed to take advantage of the Company's customer relationships, have a sector-by-sector approach specifically geared to its service territory, and are geared toward the Company's overall system planning. This stands in sharp contrast to NYSERDA's report, after ten years of energy efficiency program implementation, that it has been unable to effectively penetrate the Con Edison area market and that it needs to hire a consultant to determine a plan.

The Commission should accordingly not adopt the Staff Proposed Fast Track for the Companies' service territories and approve the Con Edison programs and O&R plans as they are set forth herein. The Commission should also put in place a governance structure that will begin planning and encouraging building of infrastructure for the future achievement of EEPS goals by adopting at a minimum the January 11 Recommendation as it applies to New York City and the stakeholder review process agreed to by the parties in Case 06-E-1433 O&R's electric rate proceeding.

DISCUSSION

I. Con Edison Programs and O&R Plans.

A. Justification

The Commission stated in the Electric Rate Order that "it is likely the [EEPS] proceeding will result in substantial utility involvement in delivering efficiency programs." The Commission issued this statement after the ALJs provided (at 7) as follows in their March 20 ruling that parties may propose additional programs in their initial briefs:

> We remind parties that earlier rulings restricted such bridging programs to already existing, proven cost-effective energy efficiency programs that were oversubscribed, or for which there were waiting lists, that were capable of scaling up once additional funding was made available. If proposals stray from those parameters, proponents should explain why they are nonetheless appropriate for expedited consideration.

The Companies believe that their programs and plans are appropriate for "expedited consideration," both because there is an evident need for New York to make greater progress on energy efficiency and because of the Commission's statement in the Electric Rate Order. Con Edison also notes in particular the desire of numerous stakeholders, including the City of New York, that Con Edison begin to implement programs as soon as possible.[3] The Commission should begin authorizing utilities to develop programs now, and not further delay the opportunity for the Commission to review the results from such implementation efforts.

B. Con Edison Proposed Programs

Con Edison has developed a suite of programs using information from its customer systems, market research and analysis sufficient to justify this preliminary suite of programs, and information provided by these proceedings.[4] These programs were developed based upon the Company's close relationships with its customers and are specifically geared toward the Company's system planning efforts. With prompt

[3] *See* March 13, 2008 Letter from Mayor Michael R. Bloomberg to Honorable Garry A. Brown, Chairman of the Public Service Commission; March 14, 2008 Letter from the Campaign for New York's Future (submitted on behalf of nearly forty stakeholders) to Honorable Garry A. Brown.

[4] Con Edison devoted significant resources ($125,000 for a consultant and over 4,000 staff hours) to develop its energy efficiency business plan.

Commission action, Con Edison will be able to begin to deliver programs in the summer of 2008.

These programs have been designed to permanently reduce energy usage and demand, lower energy bills, reduce greenhouse gas emissions, and potentially defer the need for peaking capacity within Con Edison's service territory. The proposed energy efficiency programs will be part of its overall plan to achieve at least 500 MW of demand reduction by the year 2015 and provide a significant contribution toward the State's 15 x 15 goal. The programs proposed in this filing are designed to achieve at least 378 MW of demand reduction (with the balance, as noted below, of 137 MW of demand reduction coming from a continuation of the Targeted DSM program, a continuation that Con Edison will propose in an upcoming rate filing). The programs set forth herein consist of 11 residential and commercial programs designed to reduce energy use by 4.4billion kWh and demand by 378 MW by 2015 at an estimated approximate cost over the period of $306 million. The annual cost is estimated to range from approximately $10 million in 2008 to $75 million in 2015, or an estimated average annual cost of $38 million. (A summary table is attached hereto as Attachment A).[5] The costs of these programs will be covered by the approximately $50 million annual reserve that the Commission authorized to be established pursuant to the electric rate case order and that the Company will continue to recover through its Monthly Adjustment Clause.[6] As noted in more detail below, it should not be assumed that this estimated cost will remain the same throughout

[5] The Company has filed its complete business plan for energy efficiency programs with the Department's Records Access Officer. A summary of all program information is attached hereto as Attachment A. The $38 million cost estimate is inclusive of program and administrative costs, and exclusive of any incentive provisions the Commission may authorize. Properly administered programs lead to overall reductions in utility bills.

[6] *See* Electric Rate Order at 160.

the duration of the program. This State has set an extremely ambitious energy efficiency goal and there is no experience to draw upon anywhere with respect to the cost of achieving an energy efficiency goal of this magnitude.

Con Edison has not yet completed its market research (particularly, for example, with respect to end use allocation). The Company believes the programs proposed herein are cost effective and will produce real benefits while also, at the same time, providing information for the Company's ongoing market research efforts and informing additional efforts to achieve the state's 15X15 goal. The Company proposes initially to use for most programs the same rigorous measurement and verification ("M&V") that it uses for its Targeted Program to ensure that both it and the Commission will have confidence in the results (such M&V will not be applicable to all programs, for example the Home Energy Efficiency Kit). Upon the development of protocols for M&V through the EEPS, the Company would follow those protocols.

The selected Energy Efficiency Programs planned for an eight-year period for residential and commercial customers, along with estimated energy, demand and, in some cases, therm savings and the total resource cost ("TRC") benefit-cost ratio (the overall benefit-cost ratio is 2.46), are as follows:

1) Residential Programs

A total of 86.4 MW of demand and 1.1 billion kWh and 27.7 million therms will be saved over the eight year program life through four residential energy efficiency programs.

(a) Appliance Dealer Incentive Program

This program encourages customers to purchase the highest rated ENERGY STAR® household gas and electric appliances (room air conditioners, washers, dryers, refrigerators, freezers and water heaters) by providing incentives to sales staff and store managers for promoting the ENERGY STAR® label and high efficiency home appliances. Estimated demand and energy savings are 13.5 MW and 152.9 million kWh respectively, over the eight-year life of the program. This program is cost-effective, with a TRC benefit-cost ratio of 2.99.

(b) Residential Lighting Program

This program installs ENERGY STAR® approved and rated compact fluorescent lamps (including socket modifiers that accommodate fluorescent lamps only) in both single family and multi-family applications. The primary focus of the program is the installation of these lamps. This is also a cooperative marketing program with dealers and manufacturers. Estimated demand and energy savings are 44.1MW and 804.8 million kWh respectively, over the eight-year life of the program (this program takes into account the recent federal legislation mandating more efficient lighting). This program is cost-effective, with a TRC benefit-cost ratio of 4.56.

(c) Residential Space Heating and Cooling Program

This program is a customer education and incentive program that encourages customers to install ENERGY STAR® rated heating and air conditioning systems, high efficiency gas furnaces, high efficiency air source heat pumps, setback thermostats, and solar attic ventilation fans. Incentives will be provided for distributors and contractors to stock and promote eligible heating and cooling equipment. Incentives will also be provided to retail sales personnel for selling targeted appliances. Estimated demand and energy savings are 18.5 MW and 47.4 million kWh respectively, over the life of the program. In addition, an estimated 6.3 million therms of natural gas are expected to be saved. This program is cost-effective, with a TRC benefit-cost ratio of 3.68.

(d) Home Energy Efficiency Kit

This program is a home energy kit that is mailed to customers to implement immediate energy efficiency measures. The kit provides measures to reduce weather infiltration inside the dwelling, compact fluorescent lighting, and water saving devices. Estimated demand and energy savings are 10.2 MW and 51.5 million kWh respectively, over the life of the program. In addition, an estimated 21.5 million therms of natural gas are expected to be saved. This program is cost-effective, with a TRC benefit-cost ratio of 2.58.

2) Commercial Programs

The seven commercial programs will deliver 292.2 MW of demand and 3.3 million MWh of energy over the eight year program life.

(a) Office Building Program

This program focuses on larger office buildings and provides prescriptive rebates for converting T-12 and T-8 lamps to T-5 lamps and for retrofitting to more efficient lamps and ballasts. The program also offers incentives for HVAC system retrofits and for continuous commissioning and retro-commissioning. Estimated demand and energy savings are 155.3 MW and 1.5 billion kWh respectively, over the eight-year life of the program. Commercial customers will also be encouraged to use monitoring and verification tools to support benchmarking and continuous commissioning of existing buildings (the estimated savings set forth above do not include any potential savings from these efforts). This program is cost-effective, with a TRC benefit-cost ratio of 1.91.

(b) Buyback Program

This program provides an incentive for avoided or reduced kWh through the customized investment in energy efficiency measures that cover unique and comprehensive facility operations. The program offers $0.13 per kWh for qualified custom energy efficiency projects proposed by the customer. Estimated demand and energy savings are 50.2 MW and 222 million kWh respectively, over the life of the program. This program is cost-effective, with a TRC benefit-cost ratio of 6.07.

(c) Education and Healthcare Program

This program targets private colleges, universities, schools, hospitals, nursing care, and certain other healthcare facilities. The prescriptive rebates encourage the installation of high efficiency lighting, ballasts, as well as HVAC retrofits, and replacement and continuous commissioning and retro-commissioning programs. Estimated demand and energy savings are 27.2 MW and 419 million kWh respectively, over the eight-year life of the program. This program is cost-effective, with a TRC benefit-cost ratio of 3.09.

(d) Hospitality and Entertainment Program

This program focuses on the hospitality, entertainment and restaurant industries. This program will offer incentives for efficient lighting, efficient HVAC, retro-commissioning and measurement, and verification services. Estimated demand and energy savings are 22.1 MW and 238 million kWh respectively, over the life of the program. This program is cost-effective, with a TRC benefit-cost ratio of 2.26.

(e) Data Centers Program

This program focuses on data centers using an energy buyback rate. Data centers typically require a customized solution at each facility. This program will offer to buy back at $0.13/kWh the energy savings from reduced energy use at data center facilities. Estimated energy and demand savings are 8.8 MW and 145 million kWh respectively, over the life of the program.[7] This program is cost-effective, with a TRC benefit-cost ratio of 3.86.

(f) Freezer Case LED Lighting Program

This is a prescriptive rebate program for replacing incandescent lamp strips with LED strips in refrigerator and freezer cases. These change-outs result in increased energy efficiency, lower heat gain, and reduced motor and compressor operations in refrigerator cases. Estimated demand and energy savings are 2.6 MW and 44 million kWh respectively, over the life of the program. This program is cost-effective, with a total resource cost TRC benefit-cost ratio of 1.96.

(g) Multi-family Program

This program focuses on multi-family buildings specifically addressing common areas such as the outside perimeter lighting, parking garage lighting and ventilation, lighting and space conditioning for entrances, hallways, community kitchens and meeting rooms, elevator motors, central water and heating systems, and stairwell lighting. This program would also be a lead generator for the residential energy efficiency kits and appliance efficiency programs for tenants or property management organizations that make appliance purchasing decisions. This program will offer energy audits and a financial incentive in the form of a "buy back purchase" of estimated energy savings at a rate of $0.13/kWh. Estimated energy and demand savings are 693 million kWh and 26 MW, respectively, over the life of the program. This program is cost-effective, with a TRC benefit-cost ratio of 2.4.

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[7] Con Edison notes that NYSERDA has a market transformation type program for data centers, i.e., for technological innovation and development. PON 1206. This program is compatible with Con Edison's program, which is directly focused on end user reductions.

These Con Edison programs have been designed to achieve both demand and energy savings. For reasons set forth later in this brief, Con Edison must be a leader in energy efficiency if the State is to achieve the goals it has set, and the Company is committed to taking up that role and helping New York achieve these important goals. While the Company supports the Commission's CO_2 reduction and energy efficiency goals, it must be emphasized that it is demand reductions from permanent energy efficiency that allow the Company to defer infrastructure projects to serve peak load. Absent such reductions, programs will be less cost effective and, as Staff recognizes, risk having a detrimental impact on system load factor.

Accordingly, in addition, the Company proposes to reach its 500 MW goal by achieving 137 MW of demand reduction through continuing its Targeted DSM Program to 2015. The Company contracted for 150 MW of demand reductions under the Targeted Program during its 2005-2008 Electric Rate Plan, and it recently received authorization from the Commission to execute contracts for an additional 30 MW of Targeted DSM. Moreover, the Commission has made it clear that it desires that Con Edison continue this program in some form stating (at 96) "that the integration of demand response and energy efficiency into the Company's infrastructure planning should be encouraged to the extent that such measures can economically delay or displace the need for capital expenditures and provide other benefits." Con Edison will propose a continuation of the Targeted Program in its next electric rate filing.

The Company requests that the approval process for these programs be as follows: The Commission would issue an order as expeditiously as possible authorizing the Company to implement such programs. The Company would then hold meetings with the proposed New York City partnership and, other stakeholders as appropriate, during a 45-day period following the issuance of the order. The Company would then file a final implementation plan with Staff within 60 days of the Commission order. As occurred with the implementation plan for the Company's targeted program under the prior rate plan, this implementation plan would be subject to Staff review. In addition, it is possible that during this 45-day period, the Company may decide to refine its proposed programs or implement additional programs, including some of the programs listed in the Staff Fast Track Proposal that, as the Company describes herein, should be implemented by Con Edison.[8] Con Edison would also further refine these programs after completing market research and gathering additional information from program delivery.[9]

In addition to the programs described above, Con Edison has been approached by a third-party vendor who has identified a project that can potentially deliver large-scale energy efficiency to the people of New York City. The purpose of this proposed large-scale energy efficiency project for New York City is to carry out a campaign that will potentially transform the way the City's residents view, use, and purchase compact fluorescent light bulbs (CFLs) through a focused effort to distribute approximately five million CFLs in New York City and Westchester in less than two weeks.

Con Edison believes that this vendor-driven program, implemented effectively, could provide a substantial jump start to the major efficiency efforts that are needed to

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[8] The Company will integrate these programs with the gas efficiency programs that it plans to implement. The Company will file its recommendation on gas efficiency programs when it files its gas efficiency collaborative report on April 15, 2008. The Company expects that the Commission will issue an order on that report by this summer and that this will allow the Company to integrate the gas programs with these programs to the extent feasible.

[9] The Electric Rate Order (at 158) authorized Con Edison to spend $2 million on energy efficiency with a minimum of $250,000 used for market research. The $2 million in funding will be used for staffing and developing cost effective energy efficient programs, with approximately $500,000 to $700,000 allocated directly to market research.

fulfill New York State's 15X15 policy goal. This program will only serve to jump start other efforts if (i) it is undertaken quickly and as a broad and unique effort by various stakeholders in New York City, and (ii) funding for the program (estimated to be between $13 million and $15 million) is in addition to funding for other programs proposed by Con Edison. If the Commission is interested in having Con Edison proceed with this program, then the Company would be prepared to file an implementation plan for such program within 10 days of a Commission order authorizing the Company to proceed with the program.

C. O&R Plan

O&R has previously requested authority to spend certain unexpended funds previously earmarked for Company-run demand side management on a market potential study for its service territory and on hiring two new staff positions to begin rebuilding its energy efficiency expertise and assist with the energy efficiency planning efforts (Case 06-E-1433). The market potential study will include a demographic profile of the Company's customers, their energy efficiency profile and an energy efficiency plan design.

In the Commission Order Setting Permanent Rates issued October 18, 2007,[10] the Commission approved the Company's expenditures of between $150,000 and $200,000 for its Market Potential Study and $140,000 to $160,000 to hire new staff. The Company reviewed the scope of work for its market potential study with interested parties in the proceeding, received input, and amended the work scope based on the comments

[10] Case 06-E-1433 and Case 06-E-1547, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric Service and Petition of Orange and Rockland Utilities, Inc., Regarding Disposition of Property Tax Benefits from the Towns of Haverstraw and Orangetown.

received. Staff and NYSERDA agreed to the Study's design and supported an increase in the funding based on the bid of $350,000.

On January 16, 2008,[11] the Commission concluded that "energy efficiency potential studies lay an indispensable foundation for the design of strategic, comprehensive, and cost-effective energy efficiency programs, no less on a regional or market level than on a statewide level." The Commission approved the requested increase in funding for the Study from $200,000 to $350,000 and concluded that the Study should be completed without delay or uncertainty.

The Company's consultant, with the assistance of the Company, is proceeding with the market potential study. Taking into consideration the prior rulings by the Commission,[12] the agreement of the parties in Case 06-E-1433 on scheduling, and the status of the EEPS Proceeding, O&R plans on completing its market potential study, collaborating with interested parties on the design of energy efficiency programs and submitting to the Commission by or before July 1, 2008, an energy efficiency plan for programs to be implemented by Company upon approval of the Commission. O&R will comply with any interim direction from the Commission with regard to the most appropriate forum in which to file its plan, but currently it has committed to filing it in Case 06-E-1433. The Company expects that it will be in a position to begin implementing energy efficiency programs by the end of the summer if the Commission expeditiously issues an order on its filing.

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[11] Case 06-E-1433, Order Concerning Proposed Revenue Decoupling Mechanism and Energy Efficiency Programs.

[12] In the January 16, 2008 Order, the Commission also concluded that the commencement of new energy efficiency programs should be deferred until the completion of the Market Potential Study and collaboration of the parties in designing energy efficiency programs.

D. Cost Recovery and Incentives

The Companies will present details of cost recovery and incentives when they file their implementation plans. Con Edison does not expect, however, that its programs will have any material incremental customer impacts because the Commission decided in the recent electric rate order to have Con Edison collect $50 million annually for the purpose of funding energy efficiency programs, an amount that should cover program costs in the near term. This $50 million annual amount will be collected through the Company's Monthly Adjustment Clause.

The Companies believe that it is in the best interest of the State to authorize utility implementation now, but the Commission should also implement a policy in favor of utility incentives if it provides such authorization. Such incentives should clearly provide utilities with a return on the benefits produced by energy efficiency investments that is equivalent to the return provided by supply side investments. Adoption of this principle would be consistent with the goal of aligning customer and shareholder interests in having the utility pursue energy efficiency as an important sustainable line of business equivalent to distribution or transmission, for example. The Commission should also signal to utilities that they desire utility participation by declaring a policy in favor of utility incentives that conclusively provides that utilities should receive a return on the benefits produced by energy efficiency investment that is equivalent to their supply side return.

This principle is consistent with the Energy Policy Act of 1992, which requires state utility regulatory commissions to consider the following standard:

> The rates allowed to be charged by a State regulated electric utility shall be such that the utility's investment in and expenditures for energy conservation, energy efficiency resources, and other demand

> side management measures are at least as profitable, giving appropriate consideration to income lost from reduced sales due to investments in and expenditures for conservation and efficiency, as its investments in and expenditures for construction of new generation, transmission, and distribution equipment.

16 U.S.C. § 2621(d) (8); *see also* 15 U.S.C. § 3203(b) (4).

This principle is also supported by the Lawrence Berkeley National Laboratory report on energy efficiency incentives: "The primary analytic issue is determining earnings comparable to those that would have been earned through the acquisition of resources in lieu of DSM."[13]

Finally, customers would receive substantial benefits under any scenario where utilities received a reasonable return on the net benefits produced. As recently explained by the California Commission:

> More importantly, in considering what is fair to ratepayers, we observe that ratepayers "invest" in both supply-side and energy efficiency resources, irrespective of who puts up the initial capital. The only difference is that for steel-in- the-ground investments (generation, transmission, and distribution) ratepayers have to pay not only the cost of the facilities, but also the financing costs (debt service, return-on-equity, and associated taxes) to compensate those that put up the initial capital. In contrast, since energy efficiency expenditures are expensed and reflected in rates immediately, energy efficiency saves ratepayers substantial financing costs. Those cost savings are magnified because a dollar of energy efficiency can displace far more than a dollar of supply-side investment to meet the same amount of kWh, kW and therm energy needs.14

Con Edison proposes that if the Commission authorizes its programs and this principle, then it would include with its implementation plan filings (proposed to be within 60 days of a Commission order) an incentive proposal that would conform to this

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[13] S. Stoft, J. Eto and S. Kit, DSM Shareholder Incentives: Current Designs and Economic Theory, p. 22 (Energy & Environment Division, Lawrence Berkeley Laboratory, University of California, Berkeley, January 1995).

[14] CPUC Decision 07-09-043 at 11.

principle. O&R would include its incentive proposal in its proposed July 1 filing. If the Commission adopts this principle, the Companies would include in such filings a proposal to aggregate for mass market customers carbon credits and when such credits are able to be monetized, credit the value to such ratepayers. The Companies would also propose that large commercial and industrial customers may retain their credit to use as they see fit.

II. Responses to ALJ Items

1) the updated Staff Fast Track suite of programs to be filed March 25, 2008, as well as the Staff presentation at the March 5, 2008 Technical Conference, the NYSERDA Fast Track proposal, and any other Fast Track proposals that have previously been submitted

(a) The Commission Should Reject the Fast Track Proposal

(i) Funding is not justified and Staff has failed to take the availability of RGGI funds into account

Staff does not justify the funding that it requests for the Fast Track programs. Most of the Fast Track Programs are expansions of programs already in place that are currently being administered by NYSERDA. The principal claim for increasing funds for these programs is that they are oversubscribed and require additional funding.[15] But no evidence has been produced demonstrating that these programs are oversubscribed, and, in particular, there is no evidence that the programs are oversubscribed in the Companies' service territory.

Indeed, if programs were oversubscribed in Con Edison's service territory, then NYSERDA should have been able to spend all of the $112 million for programs that it was allocated incremental to system benefit charge ("SBC") for the system-wide program

[15] *See* March Staff Report at 1.

("SWP") that it was authorized to implement in Con Edison's service territory under the 2005-2008 Con Edison rate plan. NYSERDA, however, was able to encumber (*i.e.*, enter into contracts) only approximately $68 million and spend approximately $21 million.[16]

With regard to O&R's service territory, NYSERDA has acknowledged, and Staff has concurred, that a number of programs that should be optimally designed for the Company's primarily residential customer base, i.e., EmPower New York℠, Home Performance with ENERGY STAR® BPI Contractor Training, Energy $mart Students, and Residential Building Performance are actually undersubscribed in the service territory and that the Company's customers are underserved in these programs.

Additional funding for NYSERDA's programs on a Fast Track basis should not be countenanced unless and until it can be demonstrated that the Companies' customers are obtaining their fair share of the current funding levels. To date, however, while Con Edison has provided 50% of SBC funds to NYSERDA, it has received approximately 40% in return.[17] NYSERDA is supposed to seek to achieve regional parity in its allocation of SBC funds, and it should have been able to do so if programs were oversubscribed in Con Edison's service territory. For O&R, to date, the Company has provided 3.3% of SBC funds to NYSERDA, while its customers have received approximately 2% of SBC expenditures in return, meaning that O&R's customers

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[16] *See* NYSERDA System-wide Demand reduction Program Bi-monthly Report for the Period Ending January 15, 2008. This report also shows that NYSERDA has been unable to achieve energy efficiency in Con Edison's service territory. While NYSERDA had projected in its implementation plan that 46 percent of the MW it would achieve would be energy efficiency, to date 28 percent of what it has contracted for is energy efficiency.

[17] New York Energy Smartsm Program Evaluation and Status Report -Year Ending December 31, 2007 - Report to the System Benefits Charge Advisory Group, Final Report at 2-5-6 (March 2008) ("March 2008 Energy Smart Report").

received approximately 60% of the SBC benefits when compared to their contributions.[18] In fact, on a percentage of expenditures basis, O&R's customers fared the worst in the State for residential programs, C&I programs and low-income programs provided by NYSERDA.[19]

Even if there were a need to expand NYSERDA's programs in the Companies' service territories, evidence has not been provided that NYSERDA is in need of additional funding to expand its programs. First, the State will commence this year its first auctions under the Regional Greenhouse Gas Initiative ("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. If the State adopts this rule, no additional money should be allocated for energy efficiency to NYSERDA until it provides this proceeding with an estimate of the revenues that it expects to receive from the RGGI auctions and its plans for expenditures of those funds. The first RGGI allowance sales yielded a price of $7.00/ton.[20] Given that New York State carbon emissions will be in the range of 50 to 60 million tons, NYSERDA would most likely receive over $300 million annually with an auction price in that range. This amount would be in addition to the $175 annually in SBC funds that NYSERDA already collects.

There should be no need for NYSERDA to receive additional ratepayer money to fund energy efficiency programs if NYSERDA will be receiving over $300 million, and possibly substantially more than that, annually from the RGGI auctions. Indeed, the

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[18] *Id*. At 2-3 to 2-6.
[19] *Id*. At 2-3 to 2-11.
[20] *See* "RGGI auction rules fire starting pistol on allowance price run-up," available at http://www.carbon-financeonline.com/index.cfm?section=americas&action=view&id=11117.

Commission should also be opening a proceeding on the continued need for SBC collections if NYSERDA is allocated all of the RGGI auction revenues as the State proposes. If the SBC collections were to continue, between SBC and RGGI, NYSERDA will receive approximately $500 million annually and potentially significantly more than that.

Second, as discussed above, the Commission has already allocated to NYSERDA funds incremental to SBC for Con Edison's service territory. Under the most current Con Edison rate order, NYSERDA was authorized to encumber up to $5 million each quarter with respect to the remaining unencumbered funds. There is simply no justification at this time for allocating NYSERDA additional money to spend in Con Edison's service territory.

(ii) Fast Track is otherwise not justified

In the March 2008 Staff Report, Staff reproposed a suite of "Fast Track" programs that are similar to the programs it had previously submitted in this proceeding. Staff (at 12) states that it "has been cognizant of the need to retain flexibility and ensure that decision making for the long-term energy efficiency planning process will not be hampered because of actions taken to implement the fast track programs." But while it denominates these programs as "Fast Track" or "bridging" programs, Staff has nevertheless proposed programs and a structure that predetermines how the State will seek to achieve the 15x15 goal and virtually forecloses utility participation.

Staff includes a chart with its filing that purports to show achievement of the entire 15x15 goal through Staff's Fast Track proposal. (Attachment 1, p. 2). Moreover, this revised Staff Proposal (at 23) still views utilities only as entities that will have primarily the role of recruiting "customers within their respective service territories into the NYSERDA administered fast track commercial and industrial energy efficiency programs to meet EEPS program goals."[21] Staff recommends that only two out of its eleven proposed Fast Track programs be implemented by utilities.

Staff's proposed Fast Track or bridging period increases the risk of achieving the State's CO_2 reduction and energy efficiency goals if a long term structure is not put into place from the outset that has all potential program administrators ("PAs") implementing programs. In other words, the bridging period should be used for: (i) implementation of programs that can be put in place quickly by PAs who will deliver such programs in the future; (ii) development of infrastructure to support the State's long-term efficiency goals; and (iii) learning and testing to ensure that programs and measures are developed to encourage cost-effective participation. Without such testing, including experience with utility programs, the Commission will not have sufficient information to evaluate administration of programs delivered pursuant to the EEPS. Therefore, given the Commission's intent to consider the contributions of utilities toward the EEPS, this contribution should begin now. Put another way, diversity and flexibility will be an essential risk management tool for the Commission to achieve the EEPS goal in the most cost-effective manner.

Staff states that it believes (at 22) that a consistent statewide theme is required for energy efficiency programs, but this belief is contradicted by NYSERDA's own experience. Indeed, after years of being unable to fix the inequity between downstate and upstate, NYSERDA has finally contracted for a report to determine why it has been unable to penetrate the downstate market. Significantly, the March 2008 Energy Smart

[21] The Companies note that all benefit/cost testing for the Staff Programs is done at the statewide level (Staff Attachment 2 at 2), as opposed to programs based upon avoided costs in each utility service territory.
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Report found (at 2-33) that there are differences between downstate and upstate that justify separate programs for those areas:

> …initial evidence suggests that, compared to the rest of the State, residential and commercial/industrial end users in NYC/Westchester have different motivations for participating in energy efficiency and demand response programs. For example, NYSERDA staff members reported that based on their program experiences, they think that businesses and residents upstate tend to be motivated by “saving money,” but in NYC, greenhouse gas reduction and being “green” seem to be prime motivators. Businesses and residents in NYC are also motivated by grid stability and reliability issues, as the electricity grid is more vulnerable in NYC than the rest of the State. In examining motivations for participation in NYSERDA programs, the evaluation will also look at the synergies that could be developed between NYSERDA programs and other policies and programs.
>
> With respect to the second objective of assessing how NYSERDA can work better with the market actors and trade allies in the NYC/Westchester area, NYSERDA staff have cited a number of key differences in this market, compared to the rest of the State, that are important to investigate. For example, this evaluation will explore why there are comparatively fewer energy service companies operating in
>
> NYC/Westchester and why building owners and operators may be wary of performance-based contracting. Contractor territoriality and specialization issues and how contractors divide labor by task, geography, and role will also examined, including issues such as the use of a particular union shop for some projects and the need for contractors to undergo training and licensing to install energy-efficient measures.

NYSERDA has not even done a study for O&R’s service territory even though it has been unable to successfully market most of its programs in that service territory and the Company’s customers have fared worst in the State for funding of programs.

Utilities know their own customers the best (as discussed in more detail herein in response to item (2) in the March 20 ruling, *infra)*. Maximization of energy efficiency resource acquisition will require, as opposed to Statewide market transformation efforts, the utilities working closely with their customers. For those efforts, utilities should collect and use customer money for their own service territories only, and there will be no service territory parity issues to resolve, which NYSERDA has been unable to resolve to date and would require a significant effort. It makes more sense from this point forward to allow utilities to tailor their programs to their service territories.

(b) Companies' Comments if Commission Decides to Proceed with the Staff Fast Track in Some Form

To the extent that the Commission authorizes NYSERDA to proceed with Staff's proposed Fast Track programs with ratepayer funds, the Companies believe that only the following programs should be authorized: (1) Residential New Building Construction – Single and One to Four Unit Multi-family Housing; (2) Flex Tech Including Industrial Process Improvements (except that the Companies believe that they should ultimately take over this program); and (3) Appliance and Equipment Standards and Building Codes. The program by program justifications for this approach are set forth in the attached table. **(**Attached hereto as Attachment B).

Staff's Proposed Governance Structure - Staff's proposed structure is designed to delay utility implementation -- it proposes micromanaging of utility programs. Indeed, Staff proposes virtually insurmountable hurdles for new programs if proposed by utilities. With respect to programs proposed by entities other than NYSERDA (but this appears to apply to utilities only), Staff first states (at 5) that "we see programs being implemented as soon as a *compelling* case has been made that they will fit into the overall portfolio framework and will enhance the statewide effort to achieve the EEPS goals." (Emphasis added). Staff (at 6) explains:

> New programs should be compared with the fast track proposals and be able to demonstrate that they possess clear advantages. To bring some order to consideration of program proposals, we support the creation of a body to examine how proposals fit into the overall

> context of the EEPS framework using a structure along the lines of the entity described by Assemblyman Hevesi at the March 5, 2008 Technical Conference.

This proposal contains numerous flaws. First, the proposal creates a presumption that only the Staff-proposed Fast Track proposals should be implemented – thereby negating the very analysis that the EEPS proceeding was designed to undertake, *i.e.*, what is the best governance model for actually reaching the State's energy efficiency goal.[22] Thus, while the Commission states that there will likely be "substantial utility involvement in delivery energy efficiency programs," Staff proposes that such involvement should be authorized only if utilities can demonstrate that their programs have "clear advantages" over Staff's proposed programs. Again, if the Commission were convinced that the current NYSERDA programs were adequate to reach the State's energy efficiency goals, this proceeding would have never been commenced. The only "clear advantage" that the Commission should be considering at this stage, is the clear advantage of providing other potential PAs with the opportunity to begin implementing programs, targeting areas of demonstrated need, and then using the information obtained from these programs to compare to the efficacy of existing NYSERDA programs. Moreover, Staff does not state how a "new" program that a utility is proposing to implement could or should "be compared" with a program that is already being implemented. The better way to move ahead, as proposed in the January 11 Recommendation, is to allow potential PAs to implement programs, subject them to the

[22] Staff states (at 2) that it is drawing this line to avoid "overlap," which Staff believes would be inefficient. But some overlap between administrators at the outset may not be detrimental because (i) it would be valuable for comparative purposes; and (ii) it would allow service territories to be benefited that are not adequately served by the existing NYSERDA programs.

same kind of measurement, verification and evaluation, and then determine the best path going forward based upon actual program performance.

Staff concludes, prior to the completion of any of its own studies, [23] that it already has enough information to authorize expansion of certain NYSERDA programs, but that conclusion has to be viewed as suspect given that it is universally agreed, as reflected in Staff's March Proposal (at 19) that NYSERDA's current measurement verification and evaluation ("MV&E") budget is inadequate and should be *more than doubled*. Indeed, the Commission has stated that the accuracy of the NYSERDA results cannot be relied upon. In ruling on a Con Edison request for revenues lost as a result of NYSERDA's programs under the Company's current electric rate plan, the Commission stated the "data to be provided by NYSERDA appears to be based primarily on estimates, rather than actual measured and verified results for each measure. As such, the data is unlikely to provide sufficiently accurate information on the actual reduction in sales due to the system-wide program and is inadequate for calculating lost revenues."[24] But if the data from the NYSERDA programs is inadequate and not sufficiently accurate to justify lost revenue recovery, how does the Commission evaluate the NYSERDA programs in order to compare these programs to utility programs?[25]

Second, Staff's proposal creates a bureaucratic hurdle for new programs that does not exist for its Fast Track programs. Staff states that these new programs must demonstrate how they fit into the overall portfolio by having them reviewed by an entity

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[23] The response to comments section in the Final EIS notes (at 4) that "As appropriate, and as necessary, updated studies are ongoing or will be undertaken."

[24] Case 04-E-0572, Memorandum Order, at 5 (July 24, 2005). NYSERDA also testified in a recent O&R electric rate case that its M&V was inadequate to provide an accurate accounting of its achievements. Testimony of NYSERDA witness Ms. Villeneuve in Case 06-E-1433, pp. 1294, 1300.

[25] Indeed, the forecasts in the March 2008 Staff Report as to what can be achieved under Staff's Fast Track proposal must also be viewed as suspect given that they are based on existing data.

similar to that described by Assemblyman Hevesi.[26] In other words, first some yet to be defined entity will have to be formed, that entity will then "review" those proposals, and then the proposals will still have to be submitted to the Commission for approval. This is a recipe for delay only, which means that for the foreseeable future programs would be implemented by NYSERDA only. This would deprive the Commission of the opportunity to review the results of programs actually implemented that have been subject to the same MV&E. It cannot seriously be contended that pre-implementation review of programs by a large amorphous body is a better basis for decision-making than the Commission's review of real world results.

Accordingly, the Commission should reject Staff's proposed governance structure that would create unnecessary hurdles for the implementation of utility programs. For Con Edison, the Commission should adopt the governance structure – the New York City partnership structure -- proposed in the January 11 Recommendation. O&R will consult with the stakeholders in its service territory prior to filing its programs on July 1, 2008 and will continue to evaluate the need for a governance structure similar to the New York City Partnership model.

Additional Issues Raised by the Staff Proposal - The March 2008 Staff Report contains a number of recommendations concerning implementation that it describes (at 14) as "Issues Pertinent to Bridge Programs." As with the entire Staff Fast Track proposal, the Companies disagree that these are issues that can be considered pertinent to

[26] Staff never specifically discusses the Assemblyman Hevesi proposal, but the Companies do not believe that is will allow for expeditious and flexible implementation of energy efficiency programs. It appears to contemplate a Statewide "oversight" board that will make recommendations to the Commission, instead of the program administrators as set forth in the January 11 Recommendation.

bridge or fast track only and comments on these proposal in that light in the numbered order in which they are set forth by Staff.

(i) Compliance Filings

Staff's proposal for compliance filings and collaboratives is unclear. First, Staff recommends (at 13) that the utilities file as compliance filings implementation plans for the two programs proposed by Staff as utility interim programs, the Residential ENERGY STAR® HVAC and Efficient Gas Equipment and small commercial/industrial direct installation programs. According to Staff, this compliance filing should address projected savings and costs and should include tariff filings that provide for collection of an EEPS surcharge. Staff then recommends that the utilities hold collaboratives concerning these proposed programs, with a 30-day period for collaborative discussions followed by 30 days to prepare an *additional* compliance filing describing how each program will be implemented. Staff states only that this collaborative should be developed "along the lines of the entity described by Assemblyman Hevesi at the March 5, 2008 Technical Conference," and provides no detail. Moreover, while Staff also proposes a collaborative process for NYSERDA, the purpose of that collaborative process is also not clear as Staff does not require NYSERDA to make any compliance filings. Indeed, if Staff believes that these NYSERDA programs are ready for implementation, then it is unclear why a collaborative is even necessary.

The Companies request that this collaborative process be rejected and that instead the Commission should authorize the governance structures as described above for Con Edison and O&R. If, however, the Commission adopts this Staff proposal, it should require the same filing from NYSERDA and utilities within 60 days of the issuance of a Commission order (such filing to include a description of the steps taken to consult with stakeholders if there is no collaborative in place) and should request other program administrators also file for the Commission's information implementation filings for their respective programs.

(ii) DHCR Protection of SBC Funds

The March 20 Ruling provides as follows:

> If Staff recommends early Commission approval of the use of SBC [System Benefits Charge] funds to augment the Division of Housing and Community Renewal [DHCR] programs, it should include its responses to the legal and policy issues raised in this proceeding concerning such use of SBC funds. Among other things, these include the identification or creation of a mechanism to implement its proposal, and to ensure that SBC funds can be channeled exclusively for energy efficiency programs as part of the EEPS.

According to Staff (at 14-15), this issue can be resolved by channeling the funds directly to the New York Sate Housing Trust Fund Corporation ("HTFC"), which is "closely allied" with DHCR. Staff would have HTFC enter into a memorandum of understanding ("MOU") with each utility, modeled on NYSERDA's utility MOUs, which would, among other things, restrict the use of such monies.

Increased funding for low income energy efficiency is a laudable goal that the Companies fully support, but they do not believe that the Commission should set a precedent at this time that provides for ratepayer funding of additional programs for agencies other than NYSERDA. The DHCR program has been funded by the general budget to date, which is the appropriate mechanism for funding a housing program. To the extent that the DHCR program requires additional funding, the funding should come from RGGI auction revenues or the State budget and should not be supplemented by additional ratepayer money.

(iii) Cost Allocation and Recovery

Staff makes a number of recommendations for cost allocation and recovery: (1) continuing existing customer exemptions from SBC payments, except that SBC-exempt customers (both gas and electric) that would like to participate in the fast track program should be allowed (and encouraged) provided that the customer agrees to contribute to energy efficiency funding (SBC plus incremental EEPS charges) through 2015; (2) funds collected from a particular class should be used to fund programs for that class; (3) costs allocated among utilities be allocated based on energy usage (kWh); (4) gas costs should be allocated based on therms but interruptible gas customers should be exempted; (5) any gas costs allocated should be offset by any amount that the LDC is already collecting to fund energy efficiency.

To the extent that the Fast Track proposal is adopted, the Companies' positions on these recommendations are as follows: (1) existing customer exemptions should not be continued in its service territory because the customers of the New York Power Authority comprise a substantial portion of the service territory's load and they have expressed interest in participating in Con Edison's programs; (2) funds collected from a particular class should not be used only to fund programs for that class because it will create administrative burdens and restrict program flexibility for programs that are designed to benefit all customers through the environmental and possible infrastructure benefits they produce, as well as through potentially lower commodity prices -- the Companies note that the Commission has rejected a similar kind of proposals in the past[27]; (3) and (4) the Companies agree that costs should be allocated based on usage for both gas and electric but disagrees with the automatic up-front exclusion of interruptible customers because

[27] Case 04-E-0572, Order Adopting Three-Year Rate Plan, at 90-91 (March 24, 2005).

significant efficiency opportunities could be missed[28]; and (5) the Companies agree that any gas program costs should be offset by any amount that an LDC is already collecting.

Most important, however, is the question of equitable use of energy efficiency funding between and among utility service territories. As discussed above, to date, NYSERDA's administration of energy efficiency programs has resulted in a substantial underfunding of both Con Edison's and O&R service territories. There is one obvious and cost-effective way, however, to ensure that energy efficiency funds are equitably spent in each utility's service territory, i.e., each utility collects funds for its own programs and spends those funds in its own territory. This is especially so for resource acquisition programs, as opposed to market transformation programs.[29]

Notably, Staff claimed at the Technical Conference that it could seek to ensure parity between and among utility service territories, but then drops the issue when it presents the March 2008 Staff Report. Staff stated at the March 5 Technical Conference that it is "looking for in effect usage reductions probably in each utility service territory on a pro rata basis, that we need to have cost recovery and cost allocations that match that pretty directly, as directly as we can." (300). At the Technical Conference, when Staff was asked how it would apply such a requirement, Staff could state only that "h]opefully the design that would be going forward would try to minimize those differences." There is no discussion of this issue in the March 2008 Staff Report.

[28] The Company believes that a pilot program for certain interruptible customers is appropriate and plans to file such a pilot program with the gas efficiency collaborative report that it is required to file with the Commission by April 15, 2008.

[29] While the line between market transformation and resource acquisition can admittedly be difficult to draw, the Companies believe that this line provides an initial helpful framework for determining which programs should be administered by NYSERDA and which by utilities. The January 11 Recommendation recognizes that this is not a bright line distinction and states (at 2) that in "certain situations, the delivery of incentives as part of upstream market transformation programs (e.g. retailer incentives) will be coordinated between NYSERDA and the utilities."

(iv) Evaluation and Reporting

Working Group III agreed that MV&E should be consistent across all programs: "There should be a single set of statewide protocols that are applicable to all program administrators (including program administrators that may not be subject to the Commission's jurisdiction) and all programs."[30] Staff's proposal deviates from this conclusion in two significant respects. First, Staff proposes (at 19) that MV&E could be different in a service territory where a utility does not have a revenue decoupling mechanism and is instead entitled to lost revenue recovery: "in instances where programs are being implemented in utility service territories that employ lost revenue recovery methodologies, a higher level of precision than is currently employed may be necessary (Staff recommends a reliability rate of 90%)." Staff does not explain why a reliability rate of 90% should not be used for *all* programs run by all administrators so that the Commission will have accurate results for all programs. The ultimate goal should be to have a higher standard than employed by NYSERDA for all energy efficiency programs so that the utilities and the NYISO can rely on the results in their system planning efforts. Indeed, given that Staff is proposing to double MV&E funding from 2% to 5%, this should be possible for all programs, and Staff does not allege otherwise.

Staff also proposes (at 19) that it should have oversight of MV&E contractors for utility programs, but not for NYSERDA programs. Staff's purported justification is that "the group performing the evaluation should not be the group installing the energy efficiency measure to allow for internal control," but Staff does not show how this principle would be implemented for NYSERDA's programs. Consistent with the Working Group III report, any proposal for MV&E should be applied equally to all PAs.

[30] Working Group III Report at 25.

Moreover, this Staff proposal may be contrary to the Working Group III recommendation that "Each program administrator would be responsible for the day-to-day management and conduct of evaluation activities for their programs using competitively selected third party evaluation contractors." The Companies believe that program administrators should have the direct contractual relationship with the evaluators so that the evaluations are directly integrated into the programs and can be used to improve programs. All program evaluation for all program administrators should be subject to Commission and Staff review, but it is premature at best to conclude that evaluators should be subject to Staff "oversight."

Finally, Staff recommends that a "small percentage" (probably less than one percent) should be used to fund an Evaluation and Reporting Task Force ("ERTF"), a collaborative formed to develop evaluation and reporting protocols. The Companies believe that it is premature to discuss funding for the ERTF, which they do not object to in principle.

(v) Low Income and Environmental Justice

Staff makes two recommendations with respect to these issues: (1) for low-income, increased funding for the WAP program administered by DHCR; and (2) for environmental justice, "study is needed to identify the most appropriate strategies and approaches, which would require more time than is available if the fast track programs are to be implemented quickly." Con Edison agrees, but also notes in particular that environmental justice could have particular application in New York City and proposes that these issues, with respect to their application in New York City, should be handled by the proposed New York City partnership.

(vi) Marketing, Outreach and Education for Customers

Staff's proposal for marketing, outreach and education completely ignores the important role that utilities should have in such efforts. Staff's initial proposal (at 22) is that additional funding for this effort should be "about $3 million for NYSERDA and $3 million for Department of Public Service efforts needed to implement a comprehensive outreach, education, and marketing campaign during 2008 and 2009." Staff does not indicate how it would undertake broad education efforts or more specific marketing efforts. It also provides no examples of past Staff efforts in this regard and the success of those efforts. Staff does not propose any additional funding for utility efforts. Con Edison notes that it its recent order on the Company's electric rates, the Commission substantially reduced the amount of funding available to the Company for informational advertising, but stated that the "application of the policy statement to Con Edison will not adversely affect any new or important informational programs that the Company will implement for any valid public programs we may mandate."[31] Con Edison and Orange and Rockland, as well as other utilities, should have a substantial, primary role, but that requires adequate funding. The Companies are prepared to include proposed budgets for outreach and education in their upcoming filings.

(vii) Workforce Development

Staff recommends that collaborative discussions among partners in this effort (e.g., Staff, NYSERDA, community colleges and universities, trade associations, etc.) should begin within 30 days of a Commission decision on the fast track programs. The Companies support this recommendation but note that Staff proposes to allocate $16.4 million for workforce development over the fast track period (contained in Staff April 1,

[31] Case 07-E-0523, Order Establishing Rates for Electric Service, at 47 (March 25, 2008).

2008 Revised Proposal). The Companies support NYSERDA's role in this effort and believe that funds should be authorized for this effort to the extent that they are not available from RGGI.

(viii) Demand Response

Staff recommends that at a minimum a requirement should be placed on the EEPS portfolio that as a result of the implementation of energy efficiency programs there should be no net reduction system in load factor in any utility's service territory. Staff proposes (at 24): "if net system load factor appears to be declining then the affected utility should develop and file a plan to bring the net system load factor back to its original state using demand response resources."[32]

The Companies vigorously object to this Staff recommendation. This Staff recommendation illustrates why it would be better if the resource acquisition programs were principally administered by utilities and not NYSERDA. If the utilities are in control of energy efficiency programs from the outset, they can take into account the need to design programs that balance off-peak energy efficiency reductions with on-peak demand reductions, which are best achieved through permanent energy efficiency.[33] For example, Con Edison plans to focus from the beginning on programs that achieve permanent demand reductions for peak hours through energy efficiency. This is why Con Edison also will propose in its upcoming rate case to achieve 137 MW through its Targeted Demand Side program that seeks to achieve permanent peak demand reductions to potentially defer the need for new T&D infrastructure.

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[32] This text is quoted from the revision that Staff circulated on April 1, 2008.

[33] The Companies value and support demand response, but note the difficulties in relying on demand response to permanently reduce demand. NYSERDA recently reported a substantial decline in demand response achieved as program participants, who received incentives in exchange for participating in demand response for a certain number of years, have dropped out of the demand response programs after their obligation period ended.

Clearly, the complexity of the downstate New York City market and the complexity of the Con Edison network distribution system must be accounted for, including the expansion of new network designs (new spot networks). Capital planning, conducting operations, forecasting new load and establishing and delivering new energy efficiency programs, evaluating market potential and achievable metrics by network or substation area involves an in depth understanding of load growth/customer decision-making, engineering limitations from the transmission substation, area substation, feeder and secondary main to the customer's service.

(ix) Enhanced Energy Codes and Standards

Staff recommended an annual budget for these activities of $2.5 million to be split between NYSERDA and the Department of State. Staff recommends that these funds should be used to help develop new state equipment efficiency standards, work on implementation of the new state Energy Code that is likely to be approved in 2008, and begin laying the groundwork for an aggressive round of new code enhancements to be adopted in 2010 and take effect in 2011.

The Companies fully support the use of enhanced codes and standards to achieve energy efficiency reductions. Staff, however, has not demonstrated the need for this incremental budget expense and it should be rejected as premature. The Companies submit that NYSERDA and DOS should be required to submit their current budgets for these activities and show the specific uses to which these incremental funds would be dedicated prior to the authorization of any funds.

2) The second item that the ALJs requested comments on is the policy rationale for authorizing utility administration of energy efficiency programs in the broader context of the EEPS proceeding, including the reasons identified in the February 11, 2008 Straw Proposal

New York State utilities are uniquely positioned to continue, create and administer customized energy efficiency plans to meet the individual needs of their customers and service territories for a number of reasons. First, Con Edison, O&R and other utilities enjoy an ongoing relationship and regular communications with their customers that facilitates marketing and delivery of energy efficiency programs efficiently and cost-effectively. Second, utilities understand their systems and system needs. Third, utilities can combine these two bodies of knowledge to implement energy efficiency into their system forecasting and planning while delivering cost-effective programs. As a result, permanent efficiency measures, when effectively verified, can be used to defer capital investments or even be equivalent to new supply. In Con Edison's case, this is particularly important as its network system is unique and expansion of that system is expensive. Permanent energy efficiency offers the opportunity to defer some of that expense, which is an added benefit.

Each customer interaction, whether with existing customers, new customers or future customers, is an opportunity that a utility has to integrate energy efficiency into resource and system planning. These regular and frequent communications via routine attachments, service requirements, bill inserts, site visits, emergencies, meter readings, information requests, and speaking engagements at community events, in conjunction with historical brand recognition, provide utilities with the ability to build and deliver energy efficiency programs by building customer and system knowledge. Con Edison and Orange and Rockland have a presence in their service territories. Their offices are located here; their employees work here; and their employees live here. We are a known entity. We interact with our customers on a day-to-day basis during work hours and outside of work hours and as a result understand their impact on the system.

The utilities' extensive customer and service territory knowledge, including confidential, proprietary, customer data, will allow for more targeted, cost effective and successful programs. Utility customer operations, engineering and energy services departments that include service representatives, customer project managers, technical specialists, engineers, account executives and many other parallel disciplines provide a deep knowledge base about customer's usage and needs and can integrate that knowledge into system design and planning. Again, Con Edison has done this, building 500 MW of permanent efficiency into its long-term plans and as a result, projecting that it can defer over $1 billion of capital projects. The ability in place to tailor outreach efforts specific to service territories, customer classes, market sectors or even individual customers, offers a natural advantage in quickly achieving participation in programs and thus energy efficiency goals. Similarly, utilities are in a position to influence and transition customers in the decision-making process when evaluating and selecting the range of technology and equipment options.[34]

For example, in the most pervasive building market sector in NYC, the leased office space market, Con Edison is most familiar with the daily and dynamic interactions (including the many landlord-tenant arrangements) associated with customer move in – move outs, calls for new services and capacity requirements and ongoing construction

[34] The Companies point out that they both have successful retail choice programs, which could reasonably be viewed as a much harder "sell" than energy efficiency. This success demonstrates that they have effective channels of communication with their customers that would make utility-run energy efficiency programs successful.

activity. Con Edison has an intimate knowledge of the office sector as a result of its contact infrastructure and distribution engineering expertise across all markets and particularly in the large office market. Thus, Con Edison can assess service delivery options (low tension, high tension), rate alternatives, fuel options (electric, gas, steam), potential onsite and emergency generation installations, and the resultant energy efficiency and peak load reduction opportunities. This will be extremely important for marketing and delivering energy efficiency for the City and the State.

Because of these well-established relationships, customers are accustomed to and comfortable with dealing with their local utility on practical, everyday electric and gas issues and therefore will be more receptive to participation in utility-delivered programs. This State's utilities have previously developed and implemented energy efficiency programs for many years with an excellent record of customer participation, ease of entry for customers into efficiency programs and acceptance of programs by customers (that is, utility programs have typically had a very low administrative burden for customers)[35] which will likely result in greater customer participation.

Utilities can use their customer service departments and field personnel to market programs, can leverage vendor relationships and can use third parties such as ESCOs for both marketing and program delivery. Utilities will also be able to consolidate the administration and delivery of gas and electric efficiency programs (as well as demand response) programs for customers (and steam programs for Con Edison) and thus devise comprehensive projects incorporating as many elements as possible, including, for

[35] For example, in Con Edison's Enlightened Energy program, a business customer could apply for a rebate for a retrofit or for existing construction on a one page application that had one additional page of terms and conditions. In addition, rebate checks were made out to the customer who could endorse the checks to his contractor for payment of project costs. In contrast, non-utility programs in New York have not been as transparent or customer-friendly and this is important in achieving widespread customer acceptance.

example, a carbon footprint analysis showing measures to reduce carbon. This would provide one stop shopping for customers.

The detailed familiarity with their customer's energy usage and needs, combined with utilities engineering and technical knowledge of their electric and gas systems, enables utilities to design demand reduction programs that can result in greater overall system efficiency, including tailored or deferred infrastructure investment.[36] The utilities' knowledge of usage patterns and forecasted load growth patterns is critical to optimize implementation of such targeted programs. As a result, energy efficiency and demand reduction can be recognized as an important and cost-effective resource in system planning.

Long before there were government agencies or advocacy organizations seeking to promote energy efficiency, energy utilities worked with customers to conserve energy because they knew what was in their customers' and their communities' interest was also in the utilities' interest. Using their programmatic and technical knowledge the utilities, then as now, possess the wherewithal to ramp up quickly, as they did in the late 1980s and early 1990s, to run the kind of large-scale programs that will be necessary to meet the State's goals.

Moreover, utilities are currently running comprehensive successful energy efficiency programs in other states that can be applied to New York. The experience and success of these utility-administered programs (compared to central administration) in other states has shown such programs to be effective and beneficial for customers.

[36] The Commission recently authorized Con Edison to continue its targeted program and stated that it agreed (Electric Rate Order at 96) that "the integration of demand response and energy efficiency into the Company's infrastructure planning should be encouraged to the extent that such measures can economically delay or displace the need for capital expenditures and provide other benefits."

Comparative studies on the cost effectiveness of energy efficiency programs suggests that utility-run programs, such as those now in place in California and Connecticut, can be twice as cost effective as those run largely or entirely by centralized PAs (e.g., Efficiency Vermont).[37]

The Companies believe that the interests of New York State are best served if there are multiple PAs -- a single entity conducting statewide programs has not worked for their service territories. In addition, given the vast regional differences within New York State, programs should be tailored to address the varying needs of customers and service territories. For example, a comparison between New York City on the one hand and Buffalo and Rochester on the other shows that New York City (including Westchester) has about seven times more housing units than Rochester or Buffalo, and that most housing in Buffalo and Rochester is heated using warm air furnaces, while in New York City steam or hot water system comprise most heating systems. In addition, New York City has ten times the number of businesses as either Buffalo or Rochester and ten times the number of retail trade establishments as either Buffalo or Rochester.

Given these characteristics, it is very highly unlikely that a one size fits all approach will achieve the efficiency results necessary to achieve the State's 15x15 goal. As we believe the Commission now recognizes, these provide an insurmountable basis for assigning utilities a major role in the delivery of energy efficiency services. We believe a single statewide entity will tend to develop a preferred approach to conducting

[37] 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." It also found (at 4) that NYSERDA administers the second most expensive energy efficiency program among the States surveyed.

programs, a preferred method of selecting programs, and consistent tools and mechanisms to support programs. At the same time, although this is not the intent, these preferences and consistencies tend to narrow options, reduce flexibility and thereby increase the scale of unexpected problems and failures. If most or all programs are statewide, many weaknesses will also be statewide.

Finally, the Commission's regulatory oversight of utilities provides further assurance of the cost-effectiveness and efficiency of utility-run programs, ensuring accountability for the expenditure of customer dollars. The utilities will include their proposed administrative costs in their filings with the Commission (as Con Edison has done for the suite of programs it has filed here - approximately 5-7% of its budget) and responsibility for cost-effective administration and goal achievement will rest with the utilities, subject to PSC oversight with regard to the parts of the program under PSC jurisdiction. Accountability and authority for achieving clear goals and priorities facilitates the actual achievement of incremental energy efficiency and cost minimization, as will the close working relationships among parties delivering various programs.

Con Edison customers are becoming increasingly aware of the significance of energy efficiency and its global impacts and are requesting guidance. They need leadership from a known and trusted energy ally – their local utility – who can assist them with the economics and societal benefits in making a transition to lower energy consumption and reduced carbon emissions.

3) The third item that the ALJs requested comments on is whether the program cost and bill impact figures presented in the Technical Appendix to the Straw Proposal represent a reasonable estimate of the overall cost of those elements of the 15 x 15

initiative to be achieved through utility ratepayer-funded programs and on-bill financing

The overall program cost and bill impact figures presented in the Technical Appendix to the Straw Proposal are reasonable to use as early placeholders for the outset of this program based upon the Companies' estimated cost for their programs (exclusive of on-bill financing). But it should not be assumed that this estimated cost will remain the same throughout the duration of the program. This State is seeking to establish the most ambitious energy efficiency goal in the United States.[38] There is no experience to draw upon anywhere with respect to the cost of achieving an energy efficiency goal of this magnitude. As was pointed out by the Joint Utilities in their comments on the Draft Generic Environmental Impact Statement, the preliminary cost estimates for achieving the 15 x 15 goal are based upon a 2003 study by Optimal Energy, Inc. which in turn bases its tentative conclusions on 1990's data. The response to comments section in the Final EIS notes (at 4) that "As appropriate, and as necessary, updated studies are ongoing or will be undertaken." The Companies assert that such additional studies are necessary and that it cannot be assumed at this time that costs will remain the same. It is much more likely that costs will increase as the efforts are made to dig deeper and obtain the energy efficiency that is more costly or has more significant market barriers.[39]

The Companies are not prepared at this time to endorse the use of on-bill financing to achieve energy efficiency. The Companies are accordingly not prepared at

[38] While California is seeking to establish more ambitious goals, its current goal is that "55 percent to 59 percent of the utilities' incremental electric energy needs between 2004 and 2013 will be met through energy efficiency." CPUC Decision 07-09-043, p. 26. The New York goal, on the other hand, is for more than 100 percent of incremental electric needs to be met through energy efficiency.

[39] One independent consultant stated at the Technical Conference that there is "a very steep supply curve beyond a certain point" for energy efficiency. (192). He noted that costs in California had increased by a factor of 60 to 70 percent as they sought to obtain larger amounts of energy efficiency (191).

this time to endorse any estimate as to the cost of energy efficiency achieved through on-bill financing. They are willing to enter into discussions concerning on-bill financing, and viable alternatives such as loan buy-down programs. For example, New York State used to have a requirement (Home Insulation and Conservation Act, "HIECA," PSL Art. VII-A) that utilities have a "home conservation plan" that could, but was not required to, include utility-based financing. Taking advantage of an alternative allowed by the law, Con Edison's plan provided not for direct financing but for an arrangement with lending institutions to buy down the interest rate on consumer loans intended for conservation investments; the law allowed the possibility of the utility's guaranteeing repayment of the loans to the lending institutions, which Con Edison provided

The law did not allow termination of utility service for customers in default under utility financing programs but did expressly allow the utility's recovery of the "just and reasonable costs of carrying out" the requirements of HIECA.

4) The fourth item that the ALJs requested comments on is the advisability of allocating in advance energy efficiency targets and funding among NYSERDA and each utility, as per the Straw Proposal

The objective of the Straw Proposal was to set forth “wedges” attributable to the investor-owned electric and gas utility ratepayer-funded sector for the attainment of the overall statewide 15 x 15 target. The Companies believe that this proposed allocation for achieving the goal through 2015 was premature. The Companies support the Working Group III statement (at 14) that:

> In creating goals for the State’s energy efficiency programs, it is critical to have well thought out targets that are designed to take advantage of the knowledge of each of the investor owned utility service territories and other potential administrators of programs (including NYSERDA, NYPA, LIPA and municipalities). As each of these entities may be program administrators (PA) in some form, each of the PAs should be

> responsible for proposing program delivery goals informed by knowledge of the constituents that they will serve. This structure is most likely to result in the establishment of achievable goals.

The Companies accordingly recommend, as provided in the Working Group III report,[40] that *all* PAs be directed to set practical interim targets based on their best efforts and judgment, and the programs they propose to undertake. The Commission could then determine based upon the targets proposed by each PA (and an estimate as to what can be achieved through codes and standards) and the compatibility of those targets with achievement of the long-term goal.

Final long-term targets and cost estimates should be considered as part of the interim review that will take place two to three years from now when more actual experience is gained with attempting to achieve energy efficiency of this magnitude. The renewable portfolio standard ("RPS") is especially instructive in this regard. Staff recently reported that NYSERDA has contracted for 3.6 million MWh out of the 9.5 million MWh required to meet the RPS goal (37%), and committed to spend $573 million out of the $762 million expected cost (75%) and that an increase in premiums is therefore necessary.[41] This stands in stark contrast to the estimate in the RPS order that the "cumulative cost of premium payments for renewables, to achieve the recommended RPS design, is projected to reach between $582 million and $762 million."[42] It makes more sense to conclude that the information available is insufficient at this time to set final expected costs or targets and such final determinations can be made after actual experience is gained.

[40] Working Group III Report at 14-16.
[41] Case 03-E-0188, Status Report on Implementation of the Renewable Portfolio Standard Program (August 9, 2007).
[42] Case 03-E-0188, Order Regarding Retail Renewable Portfolio Standard, at 10 (Sept. 24, 2004).

CONCLUSION

Based upon the foregoing, the Companies request as follows: (1) that Con Edison be authorized to commence its programs in accordance with the process described herein; (2) that O&R's plan be expeditiously considered as part of the schedule of Phase II of Case 06-E-1433 or as otherwise provided by the Commission; (3) that the Staff Fast Track Proposal be rejected and the Commission instead adopt the governance structures proposed herein; and (4) 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 10, 2008

Respectfully submitted,

Consolidated Edison Company
of New York, Inc., and
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By their Attorney

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