BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of

Consolidated Edison Company of New York, Inc.

Case 09-E-0428

August 2009

Prepared Testimony of:
Accounting Panel

Kristee Adkins
Public Utility Auditor 2

Tim Canty
Public Utility Auditor 3

Claude Daniel
Public Utility Auditor 2

Olena Lake
Senior Auditor

Kristine A. Prylo
Senior Utility Financial Analyst

Jerry Shang
Senior Auditor

Office of Accounting and Finance
State of New York
Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

Q. Would the members of the Staff Accounting Panel please state your names, employer, and business addresses?

A. Kristee Adkins, Tim Canty, Claude Daniel, Olena Lake, Kristine Prylo and Jerry Shang. We are employed by the New York State Department of Public Service (DPS or Department). Our business addresses are Three Empire State Plaza, Albany, New York 12223 and 90 Church Street, New York, New York 10007.

Q. Ms. Adkins, what is your position at the Department?

A. I am employed as a Public Utilities Auditor 2 in the Office of Accounting and Finance.

Q. Please describe your educational background and professional experience.

A. I graduated from the State University of New York Institute of Technology in Marcy, New York in 2002 with a Bachelor of Science degree in Accounting and Finance. I have been employed by the Department since June 2005. In the course of my employment, I examine accounts, records, documentation, policies and procedures of regulated utilities.

Q. Ms. Adkins, have you previously testified before the New York State Public Service Commission (the Commission)?

A. Yes, I have submitted testimony on revenue requirement, various other operating revenues and operation and maintenance (O&M) expense forecasts in Case 05-G-1494, Orange and Rockland - Gas Rates; Case 06-G-1332, Con Edison - Gas Rates; Case 07-E-0523, Con Edison - Electric Rates; Case 07-S-1315, Con Edison - Steam Rates; and Case 08-E-0539, Con Edison - Electric Rates. I have testified in Case 08-E-0539, Con Edison - Electric Rates; Case 07-E-0523, Con Edison - Electric Rates; and Case 07-S-1315, Con Edison - Steam Rates.

Q. Mr. Canty, what is your position at the Department?

A. I am employed as a Public Utility Auditor 3 in the Office of Accounting and Finance.

Q. Please describe your educational background and professional experience.

A. I graduated from St. Bonaventure University, in St. Bonaventure, New York in 1988 and have a B.B.A. degree with an Accounting major. I have been employed by the Department since 1988.

Q. Please briefly describe your responsibilities at the Department.

A. My responsibilities include examination of accounts, records, documentation, policies and procedures of regulated utilities. I have been involved in numerous rate and accounting examinations.

Q. Mr. Canty, have you previously testified before the Commission?

A. Yes, I have testified in Commission proceedings on a variety of accounting and regulatory issues, most recently in Con Edison's steam rate proceeding in Case 07-S-1315 and electric rate proceeding in Case 08-E-0539.

Q. Mr. Daniel, what is your position at the Department?

A. I am employed as a Public Utilities Auditor 2 in the Office of Accounting and Finance.

Q. Please describe your educational background and professional experience.

A. I graduated from Hunter College of the City University of New York with a Bachelor degree in Accounting and joined the Department in 1986.

Q. Please describe your responsibilities at the Department.

A. I routinely examine accounts, records, documentation, policies, and procedures of regulated utilities. I have also reviewed numerous petitions filed by Con Edison seeking authority for asset transfers, deferrals, reconciliations and refunds.

Q. Mr. Daniel, have you previously testified before the Commission?

A. Yes, I have prepared cost of service exhibits and proffered testimony on various operating & maintenance expense, taxes other than income taxes and rate base adjustments in previous Con Edison Electric, Gas and Steam Rate Cases. These include Cases 04-E-0572, 06-G-1332, 05-S-1576, 07-E-0523, 07-S-1315 and 08-E-0539. I also testified on rate base items in a New York Telephone case, Case 90-C-0191 in New York Telephone company rates.

Q. Ms. Lake, what is your position at the Department?

A. I am employed as a Senior Auditor in the Office of Accounting and Finance.

Q. Please describe your educational background and professional experience.

A. I graduated from State University of New York at Albany in 2006 with Master of Science degree in Accounting and in 2007 with Master of Science degree in Taxation. I have Master of Science degree in Economics from the State University of Ukraine at Kiev in 1986. I have been employed by the Department since April 2009. I have international accounting experience working as a Chief Accountant for Ukrainian branches of the international corporations: Cargill Enterprises, Alcatel, Daewoo Motor, from 1992 until 2000, and Internal Auditor for International Bridge Corporation in Guam in 2000 - 2002.

Q. Please describe your responsibilities with the Department.

A. My responsibilities include examination of accounts, records, documentation, policies and procedures of regulated utilities.

Q. Ms. Lake, have you previously testified before the Commission?

A. No, I have not.

Q. Ms. Prylo, have you already discussed your educational background, professional and testimonial experience, and responsibilities?

A. Yes, I provided that information in the Staff Finance Panel testimony in this proceeding.

Q. Mr. Shang, what is your position at the Department?

A. I am employed as a Senior Auditor in the Office of Accounting and Finance.

Q. Please describe your educational background and professional experience.

A. I graduated from China Anhui Institute of Finance and Trade in 1993 with a Bachelor of Business Administration in Accounting. In 2006, I received my Master of Science degree in Accounting from SUNY at Albany. After I graduated from SUNY Albany, I was employed by Ernst & Young LLP at its Stamford, Connecticut office from June 2006 to March 2008 as an audit associate. In May 2008, I joined the New York Department of Public Service, working as a Senior Auditor in the Office of Accounting and Finance.

Q. Mr. Shang, have you previously testified before the Commission?

A. Yes, I testified in Orange and Rockland, Inc.'s gas rate proceeding, Case 08-G-1398.

Q. Did the Panel's analysis refer to, or otherwise rely upon, any information obtained by discovery in this proceeding?

A. Yes, we will refer to, and have relied upon, several responses to Information Requests (IR) from Staff and other parties, which we are sponsoring as Exhibit ___ (AP-2).

Q. Is the Panel sponsoring any Exhibits?

A. Yes, we are sponsoring four Exhibits.

Q. Would you please describe your first Exhibit?

A. Exhibit___(AP-1), is Staff's cost of service presentation. Exhibit___(AP-1) contains ten schedules. Schedule 1 is Staff's projection of electric operating income, rate base and rate of return for the rate year ending March 31, 2011, and includes Staff's proposed revenue requirement. Schedule 1 is supported by Schedules 2 through 10.

Q. Please describe the format of Schedule 1.

A. Column 1 of Schedule 1 contains the income statement, rate base and rate of return figures as filed by the Company for the rate year, before any required revenue increase. Column 2 contains the Company's update as of July 10, 2009. Column 3 reflects the income statement, rate base and rate of return figures as updated by the Company. Column 4 contains references to the supporting schedules that present Staff's adjustments set forth in Column 5. Column 6 presents Staff's projected Rate Year figures before any required revenue increase. Column 7 contains Staff's proposed changes in revenues, and Column 8 is Staff's forecasted rate year income, rate base and rate of return after its recommended revenue increase.

Q. What information is shown on Schedules 2, 3, and 4?

A. Schedule 2 shows the forecast of rate year other operating revenues. Schedule 3 shows the forecast of rate year O&M expense by cost element. Schedule 4 shows the forecast of rate year taxes other than income taxes.

Q. What information is shown on the remaining schedules?

A. Schedules 5 and 6 calculate New York State and federal income tax expenses, respectively. The adjustments in these schedules correspond primarily to adjustments set forth in other schedules. Schedule 7 shows the forecast of rate base for the rate year. Schedule 8 shows the details of the allowance for working capital, which is a component of rate base. Schedule 9 is the Capital Structure and Weighted Cost of Capital. Schedule 10 is a summary of Staff's adjustments.

Q. Would you please describe your second Exhibit?

A. Exhibit___(AP-2) contains a number of responses to Information Requests (IR) by Staff and other parties, and Company supplied supporting information that we refer to, or otherwise rely upon, that were produced during the discovery phase of this proceeding.

Q. Would you please describe your third Exhibit?

A. Exhibit___(AP-3) is Appendix III from the 2009 Electric Rate Order which is a two page document entitled: "WAGE PROGRESSION INCREASES EXAMPLE".

Q. Panel, what is the purpose of your testimony?

A. Our testimony addresses accounting aspects of Con Edison Company of New York's (Con Edison or the Company) electric rate filing. In addition, we will discuss our adjustments to the Company's Rate Year forecasts in the following areas:

- Other Operating Revenues
    - Rent from Electric Property
    - Late Payment Charges
    - T&D Deferral
    - Site Investigation and Remediation
    - Property Tax Deferral
    - Deferred Interference Expense
    - Property Tax Refunds
- Labor Related Operating & Maintenance Expenses
    - Company Labor and Company Labor EO, STO, SSO
    - Other Compensation
    - Directors' Incentive Compensation
- Operating & Maintenance Expenses - non-labor
    - Electric Operation
    - Employee Pensions and Other Post Employment Benefits (OPEBs)
    - Employee Welfare
    - Information Resources (ERP)
    - Insurance
    - RPS/SBC
    - Regulatory Commission Expense

- Research & Development Capitalization
- Security
- Uncollectible Expense
- Other Operating and Maintenance (O&M)
    - Vehicle Fuel
    - EEPS

- Taxes Other Than Income Taxes
    - Property Taxes
    - Revenue Taxes
    - Payroll Taxes
    - All Other Taxes
- New York State and Federal Income Taxes
- Rate Base
    - Unbilled Revenue
    - Working Capital
    - Interference
    - SBC/RPS
    - Regulatory Deferrals
    - Accumulated Deferred Income Taxes
        - Change in Accounting Section 263A
        - ADIT - MTA
        - Deferred SIT

Moreover, we will also discuss a request for more information concerning New York City traffic and notice of violation costs. Finally, we will discuss the Company's proposal for deferral accounting for a number of its cost elements.

Overview of Staff's Position on Revenue Requirement

Q. What is the effect of Staff's adjustments on rate of return?

A. The adjustments, as shown on Exhibit___(AP-1), Schedule 1, increase the electric rate of return before any proposed rates from 4.98% to 5.91%.

Q. What is the rate of return recommended by the Staff Finance Panel?

A. The Finance Panel recommends a 7.78% rate of return based, in part, on a 10.1% return on equity. As a result, the recommended change in electric revenue requirement is a $477.360 million increase for the rate year ending March 31, 2011.

A portion of the Company's delivery revenue requirement (approximately $254.4 million) would continue to be recovered through the revenue adjustment clause (RAC) established in Case 07-E-523. The amount recovered through the RAC, is affected by the cost of capital, and will be updated to reflect the Commission's approved cost of capital. The Commission has yet to authorize a change to its prior determinations concerning the recovery of this portion of the Company's revenues.

Q. What are the major cost elements Staff is proposing to adjust?

A. The adjustments fall into six major categories: sales revenues, other operating revenues, O&M expenses, depreciation expense, taxes other than income taxes, and rate base.

Q. Would the Panel highlight the amount of the adjustments for each of these categories?

A. Staff proposes that the Commission decrease Con Edison's forecast of Rate Year revenues by $185.607 million. Although the adjustments to revenue appear to be very significant, the major adjustment in this category relates to removal of the PSL-18a Assessment from base rates, which is fully offset by an identical adjustment in Staff's adjustments to O&M expense.

Staff proposes that the Commission increase Con Edison's forecast of Rate Year other operating revenues by $4.593 million. Staff's major adjustments are to the amortization of deferred property taxes and the recovery of SIR program costs.

Staff proposes that the Commission decrease the Company's forecast of Rate Year O&M expense by $326.242 million. Staff's major adjustments are to Company's forecast of rate year company labor, interference and informational advertising expenses.

Staff proposes that the Commission decrease the Company's forecast of Rate Year depreciation expense by $21.239 million. This adjustment tracks the proposed elimination of capital amounts from the Company's forecast of Rate Year plant in service.

Our Panel proposes that the Commission decrease the Company's forecast of Rate Year taxes other than income taxes by $26.872 million. Our primary adjustment is to the Company's forecast of rate year New York City and Westchester/Upstate property taxes.

Staff proposes that the Commission decrease the Company's forecast of Rate Year rate base by

$438.273 million. Staff's primary adjustments are to the Company's forecast of Rate Year plant in service, working capital and accumulated deferred income taxes.

Finally, Staff's proposed adjustments impact the calculations of New York State (NYS) and federal income taxes, primarily due to lower income resulting from the Staff Finance Panel's recommended return on equity.

Other Operating Revenues

Rent from Electric Property

Q. Is Staff proposing to adjust the Company's forecast of rate year Rents from Electric Property?

A. Yes. In its response to Staff IR DPS-190 (Exhibit__(AP-2)), the Company offered an update increasing its rate year forecast of rent associated with wireless attachment agreements. Accordingly, we are increasing the Company's forecast of Rent from Electric Property from $16.140 million to $16.253 million, or by $0.113 million. It is our expectation that any new wireless agreements revenues beyond those noted in Staff IR DPS-190 will be reflected in the Company's rebuttal filing.

Late Payment Charges

Q. Please explain your proposed adjustment.

A. We are decreasing the forecast of rate year late payment charge revenues from $28.774 million to $28.750 million, or by $0.024 million tracking the impact of Staff's rate year revenue requirement adjustments.

T & D Deferral

Q. Would the Panel please explain its adjustment to the deferred carrying charges on transmission and distribution (T&D) expenditures?

A. In its response to Staff IR DPS-306 (Exhibit__(AP-2)), the Company acknowledged that an adjustment reducing T&D carrying charge deferral balance is warranted to account for 2006-2007 removal costs reclassified to O&M expenses in 2008. Con Edison indicated that the T&D carrying charge deferral balance should be reduced by $0.422 million. Since the Company is recovering the T&D carrying charge deferral balance over the remaining eight-year recovery period associated with this deferral, we are decreasing the Company's rate year forecast by $0.053 million. A concomitant adjustment is also required to decrease the rate year rate base by $0.239 million to reflect the removal of this amount.

Site Investigation & Remediation Program

Costs

Q. Are you proposing an adjustment to the Company's forecast of rate year Site Investigation and Remediation (SIR) program costs?

A. Yes, in its response to Staff IR DPS-45 Revised (Exhibit__(AP-2)), the Company offered an update to its forecast of rate year SIR program costs to account for actual SIR costs through June 2009. The update decreases the Company's rate year forecast of SIR program costs from $18.580 million to $17.397 million, or a decrease of $1.182 million. A concomitant adjustment is also required decreasing rate year rate base by $6.783 million to reflect this update.

Deferred Property Tax Expense

Q. Does the Company's filing include a request to recover incremental property tax costs for which they had a pending petition for deferral authority?

A. Yes. The Company's filing reflected the recovery of approximately $75.783 million of deferred property tax associated with this petition, over a three-year period, or $25.261 per year.

Q. Has the Commission acted on the Company's request?

A. Yes. The Commission recently acted on the Company's petition. In Case 08-M-0901 – Petition of Consolidated Edison Company of New York, Inc. for Authorization to Defer Property Tax Expense Resulting from Increased Property Tax Assessments by the New York State Office of Real Property Services, the Commission denied a portion ($14.558 million) of the Company's request. Consequently, we are decreasing the rate year amortization from $25.261 million to $20.408 million, or by $4.853 million to reflect the Commission's recent Order in Case 08-M-0901. A concomitant adjustment is also required reducing rate year rate base by $7.326 million.

Deferred Interference Expense

Q. Please explain the Panel's adjustment to the Company's proposed amortization of deferred interference expense.

A. In its response to Staff IR DPS-360 Revised (Exhibit__(AP-2)), the Company corrected the balance of deferred interference expense from $22.255 million to $22.292 million, or $0.037 million to be reflected in this case. Since the Company proposes to pass back deferred interference expense over a three-year period we increased the rate year amortization by $0.013 million. A concomitant adjustment is also required increasing deferred interference expense in rate year rate base by $0.019 million.

Property Tax Refunds

Q. Does the Company propose to pass back to customers various property tax refunds in its rate filing?

A. Yes. In its July 10, 2009 preliminary update, the Company indicates that by the beginning of the rate year the customers' share of the property tax refunds will amount to $4.790 million, which it proposes to refund over three years, or $1.597 million on an annual basis. It appears that all of the refunds are forecasted and have yet to be received.

Q. What is the Panel's position on whether these refunds should be administered within this rate proceeding?

A. Counsel advises that a State Administrative Procedures Act (SAPA) notice (notice) regarding the refunds anticipated has not been issued. Although it is possible that the notice could be issued and a hearing could be held, in time for the Commission to include the customer's share of the refunds in the revenue requirement in this case, it seems premature to make such a recommendation at this time. As a result, we are removing the proposed refunds from the cost of service.

Q. What adjustments are required to remove these proposed refunds from the cost of service?

A. A decrease of $1.597 million property tax refunds included in other operating revenue and a $2.410 million decrease of property tax refunds included in rate base.

O&M Expenses - Labor

Company Labor

Q. Did Con Edison present its forecast of rate year labor expense differently in this case than in its past two electric rate cases?

A. Yes. In the past two cases the Company's electric labor expense was reported all together as Company Labor. In its current case, the Company separates its electric labor expense into two categories - Company Labor, and Company Labor - Electric Operations (EO), System and Transmission Operations (STO) and Substation Operations (SSO).

The Company is requesting $297.12 million for Company Labor and $266.82 million for Company Labor - EO, STO, SSO, or a total labor expense of $563.94 million for the rate year ended March 31, 2011.

Q. When discussing labor expenses in your testimony, will you be referring to both labor expense components?

A. Yes. Unless we specifically refer to one Company labor component or the other, we will be referring to both Company labor components in our discussion of the Company's forecast of rate year labor expense.

Q. Would the Panel explain how Con Edison developed its forecast of rate year labor expense?

A. Yes. Con Edison started with the actual booked historic test year (HTY) labor expense for electric service. It then normalized (increased) the HTY amount by $0.163 million, to account for the electric allocated labor expense associated with two vacant positions in its customer operation organization during the HTY. The Company then increased Company Labor by $6.621 million and Company Labor-EO, STO, SSO by $12.22 million to reflect new, or the expansion of existing programs, referred as program changes, or a total program change for the two labor components of $18.83 million. The Company then applied a labor escalation rate of 8.54% to that amount, and subtracted $0.430 million related to an austerity adjustment to arrive at a rate year forecast of $563.94 million.

Q. Is the Panel proposing to adjust the Company's forecast of rate year labor expense?

A. Yes. We are proposing four adjustments to the

Company's rate year forecast. Our first two adjustments relate to Company program change requests for additional employees. Our third adjustment removes historic test year variable pay expense from the Company's rate year forecast. Our final adjustment reduces the labor escalation rate used to forecast rate year labor expense.

Q. How much is the Company requesting for labor related program changes in this case?

A. As noted above, the Company seeks $18.83 million for total labor related program changes in this proceeding. The Company's proposed labor program changes reflect the hiring of 110 new employees. We reviewed the Company's labor program change request related to its Law, Finance, Auditing Departments, and Energy Policy & Regulatory Affairs.

Q. How many new employees is the Company requesting for its Law, Energy Policy & Regulatory Affairs, Finance, and Auditing Departments and what is the estimated expense in the rate year?

A. Con Edison's is requesting: (1) 19 new employees for its Finance Department of which it has already hired 12; (2) 9 new employees for its Auditing Department of which it has already hired 1; (3) 2 new employees for its Energy Policy & Regulatory Affairs office of which it has already hired 1; and (4) 15 new employees for its Law Department of which it has already hired 4. To summarize, the Company is requesting a total of 45 new employees for these four departments at a total rate year cost of $3.32 million.

Q. Do you believe this is the right environment to be adding these employees?

A. No. Given the significant upward pressure on the Company's rates caused by its capital spending as well as by increases in property taxes and pension costs, the economic health of its service territory as discussed by the Staff Policy Panel, and the Commission's concerns with regards to the Company doing more to cut some of its costs, as stated in its 2009 Rate Order, we do not believe that this is the right time for the Company to be increasing its workforce.

Q. Has the Company's overall workforce increased significantly over the past four years?

A. Yes. The Company's workforce has expanded from 12,744 in 2005 to 14,402 in 2008, or an increase of approximately 13% over that four-year period.

Q. Since the current economic recession began, have competitive businesses been hiring new employees?

A. No. In fact, many businesses operating in competitive industries have regrettably laid-off employees and many other firms have instituted hiring freezes. Further, many governmental agencies, including the State of New York, have instituted hiring freezes as well. As a regulated monopoly, Con Edison is, in general, not subject to competitive pressures.

Q. Are Con Edison customers being adversely impacted by this recession?

A. Everything we have read indicates that the economy in the Company's service territory has been severely impacted by this recession. The increase in the level of termination notices issued, the number of customers in arrears and number of customers using deferred payment arrangements seem to corroborate what we have read about the economy in Con Edison's Service territory. The Staff Policy Panel describes in more detail the health of the economy in the Company's service territory.

Q. Is the Panel proposing to adjust the Company's request for new employees for its Law, Finance, Auditing Departments, and Energy Policy & Regulatory Affairs?

A. Yes. Given that these areas are not the primary areas effecting safe and reliable service, the state of the economy; the recent electric rate increases, the significant rate request proposed in this case, the recent run-up in the Company's employee count over past four years, the layoffs and hiring freezes competitive companies are experiencing, and, the Commission's stated concerns with regards to the Company doing more to cut some of its costs, we propose to only allow the Company the employees it has hired to date. Accordingly, of the 45 employees requested for the Law, Finance, Auditing, and Energy Policy & Regulatory Affairs Departments, we propose to allow the 18 already hired and disallow the remaining 27 requested. The impact of this adjustment is to reduce the Company's forecast of rate year labor expense by $2.377 million.

Historical Lag in Hiring Approved Positions

Q. Is the Panel proposing another adjustment related to the Company's request for new employees in the rate year?

A. Yes. We are proposing an adjustment related to the historical lag in hiring as compared to positions allowed in the Company's previous two rate cases.

Q. Does the panel believe that the Company will have all 110 positions requested via its proposed labor program changes filled by the beginning of the Rate Year?

A. No, we do not. When we reviewed the recent history of new employees requested in a rate case compared to the actual hire date, there were a significant amount of employees hired well after the start of the rate year and sometimes not hired at all during the rate year.

Q. If history shows that only a portion of the employees requested are hired for only part of the rate year, or not at all, do you believe Con Edison should collect 100% of the rate year costs of these new employees?

A. No, we do not. In its 2009 Rate Order, the Commission imputed a 55% hiring adjustment to the cost of the new employees requested, to reflect the historical relationship between the number of new employees requested and the full-time-equivalents of the number of people hired in the rate year.

Q. What does your analysis in this case show?

A. We reviewed the number of employees approved in the 2009 Rate Order and compared them to the number of employees hired to date. Our analysis shows that approximately 80% of the costs of the requested new employees will be borne in the Rate Year. In the last case, the Commission found that only 45% of the costs of new employee costs were allowable in the rate year.

Q. Do you propose a similar adjustment in this case?

A. Yes. We propose to use a two-year average based on the data from the prior two cases. This results in a lag percentage, or slippage factor, of 37.5%. Applying this lag percentage to the cost of the employees requested, but not specifically disallowed elsewhere by Staff, results in an adjustment decreasing the Company's forecast of rate year labor expense by $1.933 million.

Q. Please briefly describe Con Edison's Variable Pay Plan?

A. Con Edison's Variable Pay Plan provides for additional compensation to non-office management employees based on the achievement of certain targets related to the Company's net income, operating budget and operating objectives; and the individual employee obtaining at least a "satisfactory" performance rating during the review period.

Q. Is it Con Edison's position that the cost of its Variable Pay Plan is a reasonable and necessary business expense?

A. Yes. It is the Company's position that this cost is just and reasonable and its customers should bear the full cost of the plan.

Q. Has the Company proposed any changes to its current Variable Pay Plan in this case?

A. Yes. In its testimony, the Company suggests it will be changing the weighting of various plan

components in its current plan in a number of ways including:
1) changing the weighting for achieving "Consolidated Edison Company of New York (CECONY) Adjusted Net Income" from 50% to 25%;
2) changing the weighting for performance within an "Operating Budget" from 20% to 25%; and
3) changing the weighing for achieving of specific safety, reliability, customer satisfaction and operating performance indicators from 30% to 50%.

The Company also suggests its revised plan will no longer include a threshold for making variable pay awards, whereas under the current plan no awards are made if adjusted net income is less than 90% of the target.

Q. Does the Panel agree that the revised Variable Pay Plan, as described by Company witness Tai, offers a clear benefit to ratepayers and should be allowed in rates?

A. No, we do not.

Q. Please explain why not.

A. First, the changes to the Con Edison's Variable Pay Plan are purely speculative at this time.

That is, the Company has yet to formally implement the changes discussed by witness Tai. In its response to Staff IR DPS-54 (Exhibit__(AP-2)), the Company indicated that: "[n]o formal revisions have been made to the Company's existing Variable Pay document" and, further, that "[n]o written communication has been distributed to management employees describing the revised weighting for the 2010 Variable Pay Plan." Consequently, without a formally approved plan in place, it would be inappropriate to simply assume that the Company will make these changes.

Q. Please continue.

A. Second, in its 2009 Rate Order, the Commission stated: "[i]n addition, even if goals and targets in an incentive pay plan do not include financial factors, we remain concerned about the problem that funding would inure to the benefit of shareholders in the event performance falls short. On the other hand, providing funding subject to downward-only reconciliation could lead management to be less than rigorous in evaluating performance and making variable pay awards. To be acceptable, a variable pay plan would have to solve this dilemma."

The Company's proposed plan changes do not answer the Commission's dilemma, that funding would inure to the benefit of shareholders in the event performance falls short. If the Company misses its performance goals, the employees Variable Pay incentive awards will not be paid out, and the funds collected from ratepayers will go unspent. This expense savings will increase net income, which will directly inure to the benefit of shareholders. Since the Company has not resolved this issue, approval of this plan should be denied by the Commission.

Finally, the Company's modified plan still includes financial parameters for which the Company fails to quantify any savings and it fails to show any benefits related to the non-financial parameters, even though they may not be quantifiable in dollar terms.

Fifty percent (50%) of the Company's proposed Variable Pay Plan is related to financial parameters that can be measured in dollars savings. Twenty-five percent (25%) is tied to net income and twenty-five percent (25%) is tied to operating budgets. The Commission found in the 1991 National Fuel Gas Distribution Corporation Rate Order (Case 90-G-0734, et al. Opinion No. 91-16 (issued July 19 1991)) that: "[s]ince, in this case the goals are related to financial parameters, it is only reasonable to expect that, if those goals are met, there will be cost savings, which have not been reflected in the revenue requirement. In that case, the savings would offset the costs of the plan, and the plan would be self-supporting. Failure to reflect those savings would provide the Company a windfall at the ratepayer expense."

Further, in its 2009 Rate Order the Commission stated: "[n]othing in the National Fuel Gas decision suggests it is limited in such a way, rather than applicable to any plan that includes financial parameters.", …"[i]f it was not clear before, we note that the National Fuel Gas policy that such plans must be self supporting through productivity savings or financed by shareholders applies to any incentive plans that <u>include</u> financial parameters."

Q. Has the Company been able to quantify the savings associated with financial the indicators?

A. No, in its response to Staff IR DPS-55 (Exhibit__(AP-2)), the Company stated it has not conducted any studies or analyses that show quantifiable productivity savings associated with the financial parameters. Contrary to the 2009 Rate Order, the Company believes that there is no basis for tying recovery of variable pay costs to additional productivity savings.

Q. Does the Commission require savings from non-financial parameters, such as reliability benchmarks, to be reflected in the company's cost of service?

A. No. In its 2009 Rate Order, the Commission noted that these parameters may not readily be measured by dollar savings.

Q. So why does the Panel believe that the part of the variable pay plan associated with non-financial parameters should also be disallowed?

A. As we discussed earlier, there is currently only a broad plan related the safety, reliability, customer service and operating performance. Although customer benefits related to this part of the plan may not readily be measured in dollar savings, the customer benefits should still be definable, clear, and measurable. We have no way of knowing what the undefined benchmarks measure, if the benchmarks are in line with clear customer benefits, whether the employee benchmarks coincide with Commission incentives in these areas, or whether the benchmarks required to earn an employee a "satisfactory" rating are designed merely to achieve the Commission's minimum standard, or whether higher standards would be required. Without details on the specific plan, it is impossible to clearly see the benefits to customers.

Q. What adjustment is necessary to remove the historic teat year variable pay from the Company's forecast of rate year labor expense?

A. An adjustment reducing the Company's forecast by $14.815 million.

Q. Are you proposing to adjust the Company's forecasted labor escalation rate?

A. Yes, we are recommending four adjustments to the Company's forecasted labor escalation rate. They are (1) the removal future variable pay amounts; (2) the use of an annual average employee count; (3) the reflection of a 2% productivity imputation; and (4) the removal of wage progressions. Cumulatively, the adjustments to the Company's labor escalation rate reduce it from 8.54% to 3.39%.

Q. Please explain your first adjustment related to removing variable pay from the escalation calculation.

A. Consistent with our proposal to remove historic test year variable pay expense from the Company rate year labor expense forecast historic test year discussed earlier, we are removing variable pay from the Company's forecasted labor escalation rate.

Q. Please explain your second adjustment related to the employee count used in the development of the labor escalation rate.

A. Con Edison developed its rate year labor escalation rate based on the actual number of employees in December 2008 (14,326). We propose using the average number of employees in calendar year 2008 (14,082), which we believe is a fairer representation of an average, or normal year.

Q. Would you explain why Staff believes it to be appropriate to use the annual average number of employees in the forecast?

A. The escalation rate is applied to the actual 2008 labor expense and forecasts it forward to the rate year. The actual 2008 labor expense is a sum of all twelve month labor costs taken over the entire rate year. So, if the underlying labor costs are developed over the course of the year, it is only proper to use the average employee count, over the course of the year.

Q. Was this an issue in the Company's last electric case?

A. Yes. In the prior case, Staff used the same methodology we propose here, and Commission adopted Staff's use of the annual average number of employees in developing a labor escalation rate. The Commission, at page 41 of the 2009 Rate Order states: "[t]he judges found use of the average employee count for the Test Year more reasonable than use of just the average count for the last month of the Test Year in determining the labor escalation rate, because the Company's cost of service and resulting rates are to be established for the entire Rate Year, not just the ninth month (December) of the Rate Year.

Q. How did the Commission ultimately decide this issue in the 2009 Rate Order?

A. On page 42 of its 2009 Rate Order, the Commission states that: "[a]s the recommended decision states, we are determining the cost of delivery service and resulting rates for the entire Rate Year, not just one particular month."

Q. Please explain your third adjustment to relating to annual productivity.

A. Based on our Staff Infrastructure Investment Panel's proposal to increase the level of productivity savings reflected by the Company in its rate filing, we are increasing the productivity imputation included in the Company's labor escalation rate from 1% to 2%.

Q. Would you explain your fourth and final adjustment to the Company's labor escalation rate related to wage progression increases for union employees?

A. Yes. Consistent with the Commission's 2009 Rate Order, wage progression increases are not an incremental expense to the Company and accordingly should not be reflected in the Company's forecasted labor escalation rate.

Q. In developing its labor escalation rate in this proceeding, did the Company reflect wage progressions in a different way than in its last case?

A. Yes. In the previous case, the Company made the assumption that every union employee received a progression increase during the period between the linking period and rate year. In the current case, the Company calculated a three-year average of the actual number of union employees that received progression increases, and used the historical average to forecast the linking period.

Q. Does the Panel agree with the Company's revised methodology concerning wage progressions in the labor escalation rate?

A. No, we do not. The Company's filing only reflects the number of employees eligible for wage progression increases on a semi-annual basis, and then takes an average of the last six wage progression payouts to develop a forecast for the linking period.

Q. Why is this problematic?

A. By only showing the eligible stepped increases, the Company fails to show any savings that result from employees retiring, leaving or being promoted to a new title.

The Company's forecast fails to consider that progression wages are included in any given year's costs. Progression wages are not an incremental cost to the Company. The stepped increases are already included in the historic test year labor expense and over time should not result in any incremental costs to the Company from year to year.

Q. Why do employees retiring, leaving or being promoted result in savings?

A. Logically, employees who retire are almost always higher along the progression plan than the employees who replace them, who generally start at the bottom of the pay grade and begin working their way up, one step at a time. In fact, there is usually a net saving to the Company when employees retire and their positions are filled by new employees who are lower on wage progression scale.

Over time, with the natural turnover of employees, the progressive steps are averaged into the Company's cost in any given year. In years when there is a larger turnover, the cost could be less than average year. In years when turnover is low, the progressive increments may cost more than in an average year. Over time, the savings from seasoned employees at higher pay levels leaving should offset the cost of stepped increases for new employee.

Q. Did the Commission recognize the wage progression issue in its 2009 Rate Order?

A. Yes, it did. On page 40, the Commission stated: "…[t]he record supports the conclusion that the Company will experience saving from employees leaving the Company at the top of the salary grade that will more than offset the costs of wage progressions for new hires, even with an increasing union workforce."

Q. Didn't the 2009 Rate Order include an appendix that has a wage progression example?

A. Yes. Appendix III of the 2009 Rate Order has a two page example of progression wage increases. We have included as Exhibit__(AP-3) of our testimony.

Q. What analysis did the Panel perform to demonstrate that a labor escalation rate of 3.39% is reasonable for Con Edison in this case?

A. We analyzed the Company's actual annual labor costs for its electric operations from 2004 through 2008 provided by Con Edison in response to Staff IR DPS-15 Revised and DPS-364 Revised (Exhibit__(AP-2)). It shows that the Company's electric labor costs, including variable pay, increased by approximately 0.3% over that five-year period, or approximately 0.1% on an annual basis. Whereas the Company's proposed rate year labor expense of $563.94 million, including variable pay, represents a 12.57% increase from the historic test year, or approximately 6% on an annual basis.

Q. What is the impact of adjustments to Company's forecasted labor escalation rate?

A. The four adjustments we propose reducing the Company's labor escalation rate from 8.54% to 3.39%, reduce the Company's forecast of rate year of labor expense by $25.852 million.

Q. Would you please summarize the Panel's adjustments to the Company's forecast of rate year labor expense?

A. Yes. We are decreasing the Company's forecast by (1) $14.815 million to eliminate the historic teat year variable pay expense included in the Company's forecast; (2) $2.377 million to reduce the Company's requests for new employees for its Law, Energy Policy & Regulatory Affairs, Finance, and Auditing Departments; (3) $1.933 million based on the Company's historical hiring practices; and (4) $25.852 million to reflect a rate year labor escalation rate of 3.39%.

Other Staff witnesses or Panels are proposing adjustments to the Company's rate year labor forecast by $0.446 million. Also, as discussed later in our testimony, we propose a $0.291 million labor adjustment related to Energy Efficiency Portfolio Standard (EEPS) related to costs requested by the Company. Those adjustments, as well as our labor adjustments discussed earlier, decrease the Company's forecast of rate year labor expense from $563.94 million to $518.23 million, or by $45.71 million.

Other Compensation

Q. What is other compensation expense?

A. Other Compensation is incentive compensation for the Company's officers and non-officer management employees. Specifically, costs associated with Con Edison's Long-Term Incentive Plan (LTIP). According to Company witness Tai, the LTIP rewards achievement of financial and operation goals, as well as total shareholder return.

The LTIP provides for awards of restricted stock units. The stock units provide for the right to receive one share of Con Edison common stock, the cash value of one share of common stock, or a combination thereof, for each stock unit granted.

Q. How much is Con Edison requesting for other compensation expense?

A. The Company is requesting a rate year rate allowance of $2.43 million for Other Compensation.

Q. How did the Company derive its rate request for other compensation?

A. The Company normalized, or reduced, the actual historic test year expense of $7.087 million by $4.730 million to remove LTIP compensation expense associated with its officer employees. The Company then escalated the normalized amount for inflation.

Q. Was this an issue in Con Edison's last electric rate case?

A. Yes, it was.

Q. Has the Company made any changes to the program to address the Commission's concerns in the last case?

A. No.

Q. What did the Commission decide in the 2009 Rate Order concerning the recovery of costs associated with this program?

A. The Commission denied the Company's request to recover LTIP in rates. The Commission stated that "[t]he issues of the Long-Term Incentive Plan are the same as for the variable pay except, as the recommended decision explains, that the long-term incentive plan is even more heavily based on the financial parameter that benefit shareholders rather than ratepayers."

Q. Does the Panel support the recovery of the costs associated with the Company's LTIP in this proceeding?

A. No. The LTIP is designed to, and intended to, primarily benefit of shareholders. Furthermore, cost reductions associated with the program cannot be accurately identified and captured for customers. Allowing the cost of the program would impose an unwarranted economic burden on customers, without the appropriate benefits flowing to them.

Directors' Incentive Compensation

Q. Please describe the nature of the costs the Company seeks to recover through its rate allowance for corporate and fiscal expense.

A. The costs included in this expense category relate to the Board of Directors, the annual shareholder meeting and shareholder publications.

Q. How much is the Company forecasting for rate year corporate and fiscal expense?

A. The Company is forecasting corporate and fiscal expense of $4.679 million in the rate year.

Q. Are you proposing to adjust the Company's forecast?

A. Yes. Included in the Company's forecast is the cost of stock awards given to the Board of Directors. To be consistent with the Commission decision regarding incentive pay, and considering the fact that this benefit is aligned solely with shareholder interests, we are eliminating this cost from the Company's forecast.

Q. Please elaborate as to why the costs associated with Board of Director stock awards should be removed from the rate year forecast.

A. Pursuant to the terms of the LTIP, Directors must hold the stock until they no longer serve as Directors of the Company. By receiving compensation in the form of stock, Director's compensation is directly tied to shareholders interests. If the stock price appreciates, the value of the Director's deferred compensation increases. If the stock price declines, the value of the Director's deferred compensation also declines. Therefore, it stands to reason that the ultimate purpose of the plan is to incent Directors to increase the stock price.

Q. Are dividends paid on the LTIP - Stock Awards?

A. Dividend equivalents are paid to Directors based on these Stock Awards. Directors may elect to receive dividend equivalents earned on the stock units in cash payments or reinvested in additional stock units. Since the Board controls the dividend, there is further incentive for them to award greater dividends, since they are direct beneficiaries.

Q. Does the Panel believe the dividend equivalents associated with the LTIP should be allowed in rates?

A. No, we do not for two reasons. First, these dividend equivalents are associated with the LTIP - Stock Awards - as discussed previously. In its 2009 Rate Order, the Commission did not allow this incentive pay to be included in rates. If the underlying stock units are not allowed in rates, the dividends associated with the disallowed stock should be similarly disallowed.

Second, dividends are never accounted for above-the-line. Dividends are not an expense; they are not paid out of net income, nor are they part of the income statement. Dividends are recorded in the statement of retained earnings, as a distribution of equity. If normal dividends are not allowed in rates, dividend equivalents should not be allowed in rates.

Q. Would you please summarize your adjustments to Directors' incentive compensation within corporate and fiscal expense?

A. The adjustment associated with Board of Director stock awards is $0.534 million. The adjustment related to the Director's dividend equivalents is $.831 million. Therefore, we are proposing to reduce the Company's rate year forecast for corporate and fiscal expense from $4.679 million to $3.314 million, or by $1.365 million.

O&M Expenses - Non-Labor

Electric Operations

Q. Does the Panel have a correction to electric operations expense?

A. Yes. In response to Staff IR DPS-448 (Exhibit__(AP-2)), the Company agrees that a normalization adjustment is appropriate in the amount of $354,000, including escalation, to reflect a normal level of installation costs to be incurred in the rate year.

Employees Pension and OPEB Expense

Q. Does the Panel agree with the Company's forecast of rate year pension and other post employment benefits (OPEBs) costs?

A. Yes. We examined the Company's forecast based on latest actuarial information and agree with the rate year pension and OPEB expense reflected in the Company's revenue requirement calculation

Q. Does the Panel believe that the pension and OPEB expense should be updated for the latest known actuarial data in this case?

A. Yes, we do. Since this is a material cost which can be easily verified, we propose that it be updated for latest known information later in this proceeding.

Q. If the pension and OPEB expense forecast is updated later in this case, should the Company also reflect the impact of that update in its calculation of the capitalized pension and OPEB adjustment?

A. Yes, it should.

Employee Welfare Expense

Q. How much is the Company requesting as a rate year rate year allowance for employee welfare expense?

A. The Company is requesting a rate allowance of $98.387 million, which consists of $67.141 million for health insurance expense, $30.154 million for employee welfare benefit programs expense other than health insurance and $1.092 million for employee welfare expense for new employees.

Q. Would you explain how the Company forecasts its rate year health insurance expense?

A. For medical, hospitalization, and dental plans (excluding the dental plan with ASO), the Company started with January 2009 actual premium levels and number of employee plans as of March

2009, and then escalated the plans costs by an annual rate of 2.2% for 2010 and 2011.

For its other health insurance plans, specifically prescription drugs, vision and ASO dental plans, the Company started with the historic test year expenses and then escalated the plans costs by a total of 2.2% rate for the 27 months from the historic test year to the rate year.

For its long-term disability plan, the Company projected the rate year expenses by increasing the historic test year expense level by a 7.4% labor escalation factor.

The Company then deducts the employee contributions to the health insurance plans to develop the net health insurance costs before employee contributions. The Company includes a program change of $1.904 million related to a proposed increase in the employees' health insurance contribution.

Finally, the Company reflects the forecasted capitalization of approximately 35.09% of its projected electric health insurance cost associated with capitalized labor cost in the rate year.

Q. What escalation rate did Company use to forecast its rate year health insurance cost in this case?

A. The Company testified that it proposed to use the GDP deflator to escalate this expense, but the Company actually applied an annual rate of 2.2% for both 2009 and 2010 to escalated this expense, instead of their own forecasted rate GDP deflator rate, per CPB IR CPB-119 (Exhibit__(AP-2)), of 1.2% and 2.1% for 2009 and 2010, which overstates its forecast.

Q. Did the Company underestimate certain employee health cost for the Rate Year?

A. Yes, it did. It used an annual inflation rate, when it should have used the 27 month inflation rate of 3.13% to forecast its rate year health care costs related to prescription drug, vision and ASO dental plan, the Company understated these costs.

Q. What is the net adjustment the panel is proposing to address the overstatement and understatement of the Health Insurance forecast?

A. The net adjustment is a decrease of $0.39 million, net of capitalization.

Q. Did the Commission comment on employee welfare programs in its 2009 Rate Order?

A. Yes. On page 84 of its 2009 Rate Order, in reference to one of the Company's employee welfare benefit programs- the work-home wellness program, the Commission stated: "[o]therwise, in these challenging economic times, the Company should be looking for additional ways to economize, rather than ways to expand discretionary programs."

Q. Did the Commission's 2009 Rate Order make any additional comments on discretionary spending?

A. Yes. On page 10 of its Order the Commission stated: "[i]n light of the extraordinary hard times being experienced by the Company's customers, that the Company can and should do more to cut some of its other costs without negatively impacting electric service reliability, safety, or quality in the near- or long-term."

Q. Has the Con Edison proposed any austerity related savings in this case?

A. Yes. The Staff Policy Panel is addressing the Company's proposed austerity program efforts in the rate year.

Q. Are you proposing an austerity related adjustment in addition to the measures offered by the Company, and that provided by the Staff Policy Panel?

A. Yes.

Q. Would you please explain your recommended austerity related adjustment?

A. Yes. We believe the Company can cut back on several of its employee welfare benefit program costs without effecting safe and reliable service Specifically, the programs we propose adjusting as discretionary in the rate year are: (1) Tuition Aid; (2) Employee Publication and Communication; (3) Scholarship for Employee's Children; (4) Consulting Service, and (5) Home and Work Wellness.

The cost of these five benefit programs increased dramatically in the past year. The combined cost of these programs increased 66% in 2008 as compared to 2007.

Q. How did the Company forecast its rate year expense for the first four of the five benefit programs?

A. The Company uses the actual historic test year program costs, and then increased labor related costs by 7.4% and non-labor related costs by GDP inflation rates.

Q. How did the Company forecast the program related to Home and Work Wellness?

A. For this program, Con Edison decreased the forecast of this expense by approximately 3% from the test year to rate year, to reflect reductions and savings in various sub-programs within this group.

Q. Please explain your proposed adjustment.

A. We propose to use the historic three-year average expense level for the period from 2006 through 2008 to forecast the rate year expense levels for these five benefit programs. In recommending this adjustment, we are taking into consideration the continued economic condition in the Company's service territory, the Company's significant requested rate increase in this proceeding and the Commission's desire that companies under its jurisdiction undertake measures to reduce or eliminate costs that will not impact the provision of safe and reliable service. This approach will mitigate the rate increase impact and partially relieve the Customers' burden in this tough economic environment, while not impairing the Company's ability to provide safe and reliable service.

Q. Using a three-year average of actual historic costs as a basis to forecast these five benefit program costs, what is your proposed adjustment?

A. Our proposed adjustment decreases the Company's rate year forecast of employee welfare expense by $2.242 million.

Q. Does the Panel have an alternative austerity related proposal for these five programs?

A. Yes. Our alternative proposal is to recommend that the Commission consider disallowing all of the costs associated with these five employee welfare programs. If these programs are eliminated in their entirety it would decrease employee welfare expense by approximately $8.08 million in the rate year.

Q. Does the Panel have any additional adjustments to the Company's forecast rate year request of employee welfare expense associated with the Staff's adjustments to the company's request for new employees in the rate year?

A. Yes. We have two adjustments. One is just a concomitant adjustment tracking Staff's labor program change adjustment related to the number of new employees in the rate year. This adjustment reduces the Company's forecast by $0.293 million.

Our second adjustment reflects a correction of the Company's failure to include the employee's contributions to health care for new employees. The Panel's methodology more accurately reflects the true net health care costs the Company will incur in Rate Year. This adjustment decreases the new employee welfare expense for the Rate Year by $0.301 million.

Q. Are there any concomitant adjustments to employee welfare expense related to using Staff's labor escalation?

A. Yes. We have two concomitant adjustments to employee welfare expense related to the change in the labor escalation rate.

Q. What is the first adjustment?

A. Applying Staff's labor escalation rate of 3.39% to the calculation of employee welfare benefit expense, other than health insurance, this results in adjustment of $0.517 million.

Q. What is the second adjustment?

A. For the Company's health care costs related to for the long term disability plan, we propose to apply our labor escalation rate of 3.39%, rather than the Company's rate, to project the rate year cost. This produces an adjustment of $0.161 million.

Information Resources

Q. Does the Company's forecast of rate year Information Resources expense include costs associated with it proposed Enterprise Resource Planning (ERP) system?

A. Yes. The Company's forecast includes $0.327 million in rate year related to the ERP system.

Q. Please briefly describe the Company's proposed ERP system as testified to by the Company's

Accounting Panel?

A. This a comprehensive plan by the Company to replace many of its aging computer systems. The vast majority of the costs relate to "Corporate Accounting New Financial & Supply Chain System", which is replacing its current the General Ledger System. The total cost of this part of the capital project is forecast at approximately $163 million.

Q. Please further discuss the project related to replacing the General Ledger System.

A. In its initial filing, Company estimated that the replacing the General Ledger system would cost approximately $100.5 million on a total company basis. The electric department's share of the total cost was estimated to be approximately $77.5 million. In its July 10th preliminary update, the Company significantly revised its forecasted ERP project costs to approximately $163.5 million.

Q. When does the Company estimate that this system will go in service?

A. It expects to complete the project sometime after the end of the second rate year.

Q. Does Con Edison discuss the benefits of these programs in its testimony?

A. Yes. In its testimony, the Company goes to great lengths to discuss the benefits, the need, and potential cost savings of replacing this system. It discusses improved controls and decision making, improvements in internal customer service, reduced manual efforts, enhanced reporting capabilities, consistency and standardization of procedures, improved resource management, improved ability to measure and track project/programs costs more accurately, improved tracking of inventory, reduced risk in the financial close and reporting process, reduced data entry, and enhanced ability to do ad hoc reporting.

Q. Does the Company have an estimate of when all these benefits will pay for themselves?

A. Yes. In response to Staff IR DPS-293 (Exhibit__(AP-2)), the Company estimates that this project will pay for itself in 11 to 17 years.

Q. Did Liberty Consulting Group recently complete a management and operations audit of Con Edison in

Case 08-M-0152?

A. Yes. On August 7th, the New York State Department of Public Service(DPS) released the Liberty Consulting Group's management and operations audit of Con Edison. The audit covers the electric, natural gas, and steam businesses, with a specific focus on the company's construction program planning processes and operational efficiency; it also identified opportunities for improvement.

Q. Do you have a concern with the Company moving ahead with a project of this magnitude when a very recent audit found there was deficient Board Directors involvement in infrastructure planning decisions?

A. Yes, we do. The audit recommended that Con Edison revise its "Board Committee structure to better coordinate functions and to focus on infrastructure planning, oversight, and performance measurement." The audit also recommended that Con Edison "[i]ncorporate changes in management's form and schedule for infrastructure planning and budgeting into a more structured, resequenced, and more intensive regimen of board review."

Q. Has Con Edison's Board of Directors approved this project?

A. To our knowledge it has not.

Q. Did the Commission comment on discretionary spending in the 2009 Rate Order?

A. Yes. As discussed previously, the Commission in its 2009 Rate Order stated that: "[i]n these challenging economic times, the Company should be looking for additional ways to economize, rather than ways to expand discretionary programs". Further, the Commission stated: "[i]n light of the extraordinary hard times being experienced by the Company's customers, that the Company can and should do more to cut some of its other costs without negatively impacting electric service reliability, safety, or quality in the near- or long-term."

Q. Given the economic turmoil that the Company's customer base is facing, the Commission's concerns on discretionary spending, the recent management and operations audit findings regarding the lack of Board involvement in infrastructure planning, and the recent electric rate increases the customers have endured over the last few years, does the Panel believe that this is the best environment to pursue this large capital project?

A. No, we do not. If you add up Con Edison's rate increases for the last two years, plus the amount the Company is requesting in this case, it adds up to approximately $2 billion more in additional annual revenues, in this difficult economic environment. We believe this is the wrong time to be spending vast amounts of money on projects that have little to do with providing safe and reliable service.

Q. Can the Panel suggest a way it would not oppose this capital projects?

A. Con Edison has gone to great lengths to stress the benefits and savings that these new projects will bring. If the Company can develop a plan to implement this new system on a basis that is revenue neutral to its customers, we would consider recommending such a proposal.

Q. How much is your adjustment for this expense item?

A. There is a $.327 million adjustment required to remove this cost from the rate year.

Insurance

Q. Is the Panel proposing to adjust the Company's forecast to rate year insurance expense?

A. Yes, we have one adjustment related to the insurance escalation used by the Company, and two adjustments related to Directors and Officers Insurance (D&O).

Q. Please explain your adjustment to the Company's insurance escalation calculation.

A. The Company uses the latest known actuals, plus the GDP escalator to forecast this expense. The concern we have is with the Company's use of a 2.2% annual inflation rate for 2009 and 2010, instead of the inflation rate it reported in response CPB IR CPB-119 (Exhibit__(AP-2)), which is 1.2% and 2.1% for 2009 and 2010, respectively.

Q. If the Company's reported inflation rates are used in calculating the forecast, instead of 2.2%, what would be the adjustment to this expense?

A. The rate year forecast of this expense decreases by $.134 million.

Q. Please describe D&O insurance?

A. D&O insurance covers the Company and its directors and officers for "wrongful acts" in performing its respective corporate capacities.

Q. Could you further explain "wrongful acts"?

A. "Wrongful acts" are defined as: "Actual or alleged breach of duty, neglect, error, misstatement, misleading statement or omission actually or allegedly caused, committed or attempted by any Director or Officer while acting individually or collectively in their capacity as such, or claimed against them solely by reason of their being Directors or Officers." Illegal or fraudulent acts would not be covered under this insurance.

Q. Please explain your two adjustments to D&O insurance.

A. The first adjustment has to do with the Company being over-insured relative to its peers. The second adjustment has to do with splitting the cost of this insurance 50/50, between stockholders and shareholders, in accordance with recent Commission decisions on this issue, including Con Edison's 2009 Rate Order.

Q. Please explain how you developed your peer group for Con Edison.

A. We did not develop a peer group; the Company did in its Exhibit__(RH-7). We relied on that.

Q. What does Exhibit__(RH-7) show?

A. Exhibit__(RH-7) shows a list of 20 Companies that Con Edison considers its peers. It shows the D&O coverage limits and market capitalization for each company and then calculates the coverage limits as a percent of market capitalization.

Q. What is the average coverage limit as a percent of market capitalization for the peer group?

A. The average is coverage limit represent 1.8% of overall market capitalization.

Q. If you apply the peer group's average coverage limit as a percent of capitalization to a utility of Con Edison's size, what should the average coverage level be?

A. Con Edison has a market Capitalization of approximately $10.2 billion, the coverage level for a utility company of that size, based on the peer group's 1.8% average, would be $183 million.

Q. What is Con Edison's coverage limit?

A. Con Edison's D&O coverage limit is $300 million, or $117 million above its peer group's average.

Q. Do you believe that Con Edison is currently over insured, and its coverage limit should be in-line with its utility peer group?

A. We believe that the management of the Company can choose whatever coverage level it thinks it needs, but customers should not be expected to pay beyond the average coverage limit of its peers. If management believes they need a higher level of coverage, the shareholders should pay the amount above the average.

Q. How much less would it cost Con Edison if its coverage limit was inline with its peers?

A. D&O insurance would cost Con Edison approximately $0.753 million less. We propose to disallow this amount.

Q. What is your second adjustment to D&O insurance?

A. D&O insurance indemnifies the Company and individual officers and directors for acts found to be "wrongful". Although "wrongful acts" are not criminal or fraudulent, "wrongful" acts do include negligence, error, and breach of duty on the part of Directors or Officers.

Q. If a court of law determines that an officer of Con Edison acted with negligence, and awarded a large sum of money to the plaintiff, do you believe the customers should bear the cost of that negligent act.

A. Although it is difficult analyze every possible hypothetical scenario, and give a definitive answer that applies every situation, we believe in the vast majority of those situations the customers should not have to pay for a negligent act of an Officer.

Q. So if in your opinion, in the vast majority of those cases you would not expect customers to pay awards for an officer found to be negligent, why should the customers to pay for insurance protecting against officer negligence?

A. In general, the customer should not. Insurance is in place to provide financial protection against future, unknown incidents. In the instance of D&O insurance, it is for negligence or breach of duty by an Officer or Director. Since the events that trigger insurance coverage are by definition in the future and unknown, the only thing we can analyze are hypothetical scenarios. Although we believe that the vast majority of officer negligence awards should not be paid by customers, we cannot say definitively that they would never be paid by customers, under any circumstances. We also believe that the customers do receive a benefit from the portion of the insurance that covers litigation, since plaintiffs may bring lawsuits whether or not the claims and alleged wrongful acts have any basis. Defense costs can be significant, even in instances where the underlying claim is without merit.

Q. How does the Panel believe the cost of D&O insurance should be split between shareholders and customers?

A. As discussed earlier, we're dealing with hypothetical scenarios so it is difficult to develop a cost-sharing split with any precision. Since it is our opinion that in most cases customers should not have to pay for negligence or breach of duty, we believe that a sharing percent of around 75% would be an appropriate amount of the costs for the shareholders to bear.

However, since the Commission in its recently adopted 50/50 sharing in its 2009 Order, we would accept 50/50 sharing for the term of the rate plan in this case.

Q. What is the basis for the Commission's adoption of the 50/50 split in the 2009 Rate Order?

A. On pages 90 and 91, the Commission stated: "[o]n the other hand, D&O insurance also provides substantial protection for shareholders. The latter, moreover, not customers, elect directors and thus have influence over whether competent directors and officers are in place that customers do not. We find no particularly good way to distinguish and quantify the benefits of D&O insurance to ratepayers from the benefits to shareholders, especially taking into account the advantage that shareholders have in control over directors and officers. We believe the fairest and most reasonable way to apportion the cost of D&O insurance therefore is to share it equally between ratepayers and shareholders. We will allow 50% of the cost of $200 million in insurance coverage in the Company's cost of electric delivery service."

Q. Since the issuance of Con Edison's 2009 Rate Order, has the Commission adopted 50/50 sharing for any other utilities?

A. Yes, for Central Hudson in Case 08-E-0887. On page 16 of the Order issued June 22, 2009, the Commission states: "[t]he Company's argument misses the point. We acknowledged in our Con Edison Order that there is:

no particularly good way to distinguish and quantify the benefits of D&O insurance to ratepayers from the benefits to shareholders. In other words, we adopted the 50-50 sharing for Con Edison precisely because there was no empirical basis for determining the relative value of the benefits of this type of insurance to ratepayers and shareholders.

We have the same situation in this case, and we adopt the same resolution. Accordingly, Staff's exception is granted, and we direct that one-half the cost of the premiums for D&O liability insurance be excluded from rates."

Q. Has the Company filed a Petition for Rehearing on the Commission's 2009 Rate Order on this issue?

A. Yes. The sharing of D&O costs 50/50 between shareholders and customers is one of the issues Con Edison is contesting in its Petition for Rehearing that was filed on May 26, 2009. It is also an issue in a Petition for Rehearing filed by Central Hudson on July 21, 2009.

Q. Do you believe that what the Commission decides in the rehearing cases should be instructive as to how this issue should be handled in this case?

A. Yes, since the issue in the rehearing case is identical to the issue in this case.

Q. What is your adjustment to insurance expense when you apply your 50/50 sharing proposal?

A. Our adjustment for 50/50 sharing of D&O insurance decreases the insurance expense by $1.535 million.

Q. Is there a concomitant adjustment to Rate Year working capital as a result of the Panel's adjustments to the Company's Rate Year forecast of insurance expense?

A. Yes. Prepayments for insurance assume 45% of insurance premiums are prepaid. So the adjustment to prepaid insurance is $1.144 million, based on our adjustments.

Renewable Portfolio Standard / System Benefit Charge Fees

Q. Please describe the nature of System Benefit Charge (SBC) and Renewable Portfolio Standard (RPS) fees reflected in the Company's rate filing.

A. To support energy-related programs administered by New York State Energy Research and Development Authority (NYSERDA), Con Edison collects SBC and RPS fees from its customers and in turn remits them to NYSERDA.

Q. How does the Company present these fees in its revenue requirement presentation?

A. The RPS and SBC fees in the Company's revenue requirement presentation are included in both operating revenue and expense and completely offset each other, since the Company actually recovers these fees via a customer bill surcharge rather than base rates.

Q. Is the Panel proposing to correct the amount of

RPS and SBC fees reflected by the Company's in its filing?

A. Yes. Based on the allowed recovery of these fees in Cases 03-E-0188, 05-M-0090, and 07-M-0548, we are increasing the Company's forecast of RPS fees from $47.438 million to $47.807 million, or by $0.369 million, and decreasing its forecast of SBC fees from $148.698 million to $146.088 million, or by $2.610 million. Consequently, we are decreasing the Company's forecast of operating revenues and expense by $2.610 million, since the fees are included in the Company's forecast operating revenues and expenses.

Regulatory Commission Expense

Q. Please explain your adjustments to the Company's forecast of rate year regulatory commission expense?

A. Our first adjustment addresses the Company's inclusion of Temporary State Assessment - part of Public Service Law (PSL) Section 18a in its rate year forecast.

The Temporary State Assessment in the Company's revenue requirement presentation are included in both operating revenue and expense, since its recovers the temporary surcharge by way of a customer bill surcharge pursuant to the Commissions' directives in Case 09-M-0311 (Order Implementation Temporary State Assessment). The Company also reflected the impact of the Temporary State Assessment in its working capital calculation.

We are removing the amounts associated with the Temporary State Assessment from the Company's revenue requirement calculation because the Company fully recovers all costs, including all working capital requirements, via the Commission ordered surcharge mechanism. In its response to Staff IR DPS-389 (Exhibit__(AP-2)), the Company agreed to remove the Temporary State Assessment in its entirety from its revenue requirement calculation.

Q. Please continue with your second adjustment.

A. We are proposing to update the forecast of rate year PSC Assessment based on the Commission's August 10, 2009 assessment billing for Con Edison. Accordingly, we are decreasing the Company's forecast from $28.762 to $27.339, or a decrease of $1.423 million.

Q. Please continue with your final adjustment concerning spent nuclear fuel (SNF) litigation costs included in the Company's forecast.

A. This case involves Con Edison's claim of the Department of Energy's (DOE) disregard of a 1982 statute and breach of a 1983 contract with Con Edison. Under the statute and contract, in exchange for the payment of fees by Con Edison that exceeded $120 million, DOE was required to commence disposal of spent nuclear fuel from the Con Edison's Indian Point (IP) nuclear power plant beginning in January 1998. Con Edison sold IP to the Entergy Corporation in 2001, according to the Company, when DOE was already in breach of the contract. A decision is expected in early 2010.

Q. Does the panel predict that the Company will be successful in its law suit?

A. Outcomes of the lawsuits are very difficult to predict, but we believe there is a reasonable possibility that Con Edison will be successful, otherwise they most likely would not have pursued the law suit.

Q. Would the Panel prefer that the Company defer their litigation costs until the outcome of the case becomes known?

A. Yes, we would. Considering the size of the rate increase in this case and the current state of the economy, we recommend to defer the recovery of the Company's Rate Year SNF litigation cost request until the Company recovers the cost, partly or wholly from its proceeding against DOE. The impact of our adjustment decreases the Company's Regulatory Commission Expense in the Rate Year by $2.67 million. We propose the Company defer, with carrying charges at the Other Customer Capital Rate, its actual litigation costs not already reflected in rates.

Research and Development Capitalization

Q. Did the Company propose to capitalize a portion of its forecasted research and development (R&D) expense in the rate year?

A. Yes, the Company proposed to capitalize 1.6% of its projected rate year R&D expense based on the methodology reflected in the Commission's 2009 Rate Order.

Q. Would you explain how the Company calculated the amount to be capitalized?

A. Yes. The Company took the amount of R&D actually capitalized over the five year period 2004 - 2008 and compared to its actual R&D expense in those same five-years to develop a capitalization rate. It then applied this capitalization to its rate year forecast of R&D expense to determine the amount of expense capitalized in the rate year.

Q. In developing its capitalization rate, did Con Edison normalize out a portion of costs capitalized in 2005?

A. Yes. The Company normalizes out some capitalization costs in 2005 related to "Sarnoff stray voltage vehicles" in developing its capitalization rate. It is the Company's contention that this was a very high priority project and it purchased more prototypes vehicles from the R&D organization than it normally would have, had this not been a high priority case.

Q. Do you agree with the Company's normalization of 2005 capitalized costs?

A. No. The reason for using a five-year average to develop the capitalization rate is to smooth out any anomalies in any given year. The Company's normalization distorts the intent of using a five-year average in developing a capitalization rate.

Q. What is the impact of including the normalized amount in the R&D capitalization rate?

A. The capitalization rate would increase from 1.6% to 3.5%. Applying this rate to Staff's rate year forecast of this expense results in a decrease to R&D expense of $.282 million. A concomitant adjustment is also required increasing rate year plant in service by this amount.

Security

Q. How much is Con Edison forecasting for rate year security expenses?

A. The Company is requesting a rate allowance of $1.767 million for security expenses.

Q. Is the Panel proposing to adjust Con Edison's rate request?

A. Yes. We are proposing to reduce the request by $0.100 million to remove forecasted maintenance contract costs associated with the Company's new geo-spatial camera mapping system.

Q. Why is the Panel removing the expense from the Company's forecast?

A. To prevent the Company from recovering the same maintenance costs twice; once through rate base and once in O&M expense.

Q. Would you please explain how customers would be paying for these maintenance costs two times under the Company's proposed ratemaking?

Q. Yes. In pre-filed testimony, Company Witness Campanella indicates that the capital costs associated with installing and putting into place this system are forecasted to cost $1.427 million. She states that, "[t]he maintenance costs the first rate year would be included in the contract price as part of the warranty". She also claims that thereafter, the annual maintenance costs of the new system would be $120,000.

The capital costs of $1.427 million associated with this new system are fully reflected in the Company's forecast of rate year plant in service. In its case, Staff is not proposing to adjust the Company's forecast of capital costs associated with this new system.

The Company also reflects the electric departments' share of the ongoing annual maintenance costs related to this system ($0.100 million) in its rate year forecast of security expense. Consequently, Con Edison would be recovering the maintenance costs associated with this new system twice in the rate year without Staff's proposed adjustment. Accordingly, we are reducing the Company's forecast of rate year security expense by $0.100 million to eliminate the recover of same maintenance cost twice by the Company in the rate year.

Uncollectible Expense

Q. Please explain your proposed adjustment.

A. We are increasing the forecast of rate year uncollectible expense from $62.328 million to $61.010 million, or a decrease of $1.318 million tracking the impact of Staff's rate year revenue requirement adjustments.

Other O&M

Q. Does the Company provide a forecast for vehicle fuel?

A. No, the Company did not. The initial filing only reflects the historic test year, 12-months ending December 31, 2008, at $5.186 million that is escalated by general inflation of 3.13 percent in Exhibit__(AP-5), Schedule 1, page 3, to a rate year allowance of $5.349 million.

Q. Does the Company plan to update its vehicle fuel expense in this proceeding?

A. Yes. On page 54 of Shared Services Panel's (SSP) testimony and in its responses to Staff IRs DPS-70 and DPS-180 (Exhibit__(AP-2)), the Company indicates that it plans to update vehicle fuel expense at the latest date permissible based on the latest available DOE information.

Q. Please describe the Company's proposed methodology to calculate vehicle fuel expense.

A. The Company developed a formula for gasoline and a formula for biodiesel that consider the net effect of its bulk purchase agreements, including local taxes and fees based on the DOE, Energy Information Administration's (EIA) Short-Term Energy Outlook (STEO) report. The Company claims that these formulas develop a relationship between Con Edison's cost for fuel and the Federal Government's actual and projected price for fuel.

Q. Did the Panel review Con Edison's proposal for forecasting this expense, and its planned update?

A. Yes, we reviewed the Company's proposal and believe it to be a reasonable methodology for forecasting this expense.

Q. Does the Panel recommend an adjustment to vehicle fuel expense?

A. Yes. Based on the August 2009 STEO report and on the Company's methodology, we forecast vehicle fuel expense at $4.194 million in the rate year, a decrease of $1.155 million from the Company's historic test year level of $5.349 million currently reflected in this proceeding.

Q. What is the Panel's opinion of the Company's request to update vehicle fuel expense at the latest date permissible based on the latest available DOE information?

A. Given the volatility of the price of gasoline and diesel fuel, we believe it is best to update this expense using the December 2009 STEO report, when it becomes available.

Other O&M (EEPS)

Q. In the 2009 Rate Order did the Commission decide whether mechanisms of recovery of costs related to Energy Efficiency Portfolio Standard (EEPS) should be decided in the rate proceeding or in the EEPS proceeding, Case 07-M-0548?

A. It started on page 101 of the 2009 Rate Order: "[t]he Company is correct that no language in either the EEPS Order or the Fast Track Order expressly precludes considering its base energy efficiency costs here. Nonetheless, we are concerned that allowing these costs in rates here could make it more difficult to keep track of them in addressing cost recovery and cost-effectiveness evaluations of energy efficiency programs in the EEPS proceedings. In our judgment, it is preferable for the Company to pursue recovery of these costs through the mechanisms established in those proceedings. Accordingly, we will disallow the costs in question here."

Q. Does the Panel propose to follow the approach adopted in the 2009 Rate Order for this case, and defer to the EEPS Case to decide the recovery mechanisms?

A. Yes, we do.

Q. Has the Company filed a Petition for Rehearing on the Commission's 2009 Rate Order on this issue?

A. Yes. The mechanisms for recovery of EEPS is one of the issues Con Edison is contesting in its Petition for Rehearing.

Q. Do you believe that what the Commission decides in the rehearing case should be instructive as to how this issue should be handled in this case?

A. Yes, since the issue in the rehearing case is identical to the issue in this case.

Q. How much is your proposed adjustment to remove EEPs recovery mechanisms from the revenue requirement?

A. The adjustments to remove EEPs recovery mechanisms from the rate year are: 1) $0.291 million to company labor (including escalation); 2) $0.567 million to other O&M (including escalation); and 3) $0.755 million to plant in service.

Property Tax Expense

Q. Please describe how New York City (NYC or the

City) Property Taxes have increased in the past few years.

A. New York City Property taxes for the electric division have increased from $584 million in 2006 to $706 million in 2008, which is a 20% increase. In the current case the Company is forecasting this expense to be $988 million, which is a 38% increase from the historic test year amount of $706 million.

Q. Do you know how much New York City property taxes are as a percentage of total delivery revenues in the Company's updated rate request?

A. Yes. Approximately 20%, or one dollar in every five electric delivery dollars collected goes to pay for New York City property taxes.

Q. Did the Commission express its concern about property taxes in the 2009 Rate Order?

A. Yes. On page 109 and 110 of the 2009 Order the Commission stated: "[i]n sum, it appears the Company's ratepayers are being forced to contribute a disproportionate share of the total property tax revenues in the Company's service territory, undermining the ability of many customers to pay for an essential service. In this light, we want to examine all the steps the Company is taking to restrain the growth of real property tax expense beyond contesting assessments."

Q. Was the need for incentives to control taxes discussed in the 2009 Rate Order?

A. Yes. In dissenting to the Commission's decision, Commissioner Harris stated: "[t]he utilities have no incentive to oppose these taxes since the Commission merely flows these costs on to the ratepayer…"

Q. Didn't the Commission also recently state concerns about the Company doing its best to control property taxes?

A. Yes. At the August Session, when Con Edison's property tax deferral request was before the Commission, in Case 08-M-0901, the Commission expressed concern with property taxes and the Company's efforts to control this cost.

Q. Are there any incentives in place to encourage the Company to control this cost?

A. Yes. Currently there is a 14%/86% Company/customer sharing mechanism in place for property tax refunds in situations where the

Company can demonstrate that the refunds were due to its efforts.

Q. Are there any other incentives that the Commission should consider implementing to encourage the Company to control property taxes?

A. Yes. We believe by not reconciling this expense, it provides an incentive to the Company to control its costs. Alternatively, offering a partial reconciliation could also be considered.

Q. Please further explain how not reconciling this expense or instituting a partial reconciliation will encourage the Company to control its property tax costs.

A. If this expense is not trued-up, it gives the Company a vested interest in keeping its property taxes down. If taxes go up more than the forecast, the Company will experience the loss. If it keeps the costs below the forecast, it will benefit. The Company will be in a position to directly reap the benefits of its efforts. As stated previously, property taxes are a very significant expense for the Company.

Q. Does the panel have concerns that providing no true-up, in a one year case, puts too much money at risk for the Company?

A. No, we don't. Once the Company provides all of its property tax updates in this proceeding, there is really only a small portion of the expense that is at risk. For one quarter of the rate year, all of the data will be known. For the last three-quarters of the rate year, we will know some of the assessed values and should have a very good forecast on the unknown assessed values. The biggest unknown is the tax rate that will be in effect for three-quarters of the rate year. Also, in the event of an extraordinary increase in property taxes beyond the forecast, the Company always has the right to file a deferral petition to seek recovery of its un-recovered costs.

Q. Could you further explain your suggestion for partial reconciliation mechanisms in the context of a one year case?

A. There are many methods that could be employed to implement a partial reconciliation, and thereby encourage the Company to control its cost, such as placing a dead-band around the forecast. Another method that could be considered is to put the Company at risk for 20% of the missed forecast.

Q. How did the Company determine its rate year estimate of New York City property tax expense?

A. The Company forecasted its rate year property taxes for NYC based on projected assessed values of the electric properties, including forecasted construction expenditures, and estimated tax rates for properties that are classified as Class 3 - utility property, and Class 4 - commercial property. Ninety-percent of Con Edison's NYC property is classified as Class 3 and ten-percent is Class 4.

Q. What is the basis for the Company's forecasted assessed value?

A. The starting point is the 2009/2010 assessment rolls for NYC and the New York State Office of Real Property Services (ORPS). The rate year level is computed by adding the Company's estimate of changes in net plant service, as well as the estimate of changes in the Handy-Whitman (HW) Index.

Q. What is the basis for the Company's forecasted tax rates?

A. The Company uses the assumed 2009/2010 final rates as determined by the NYC Council as a starting point and then escalates those rates by 2% to forecast the rate year 2010/2011 rates. It should be noted that the Company computed a five-year average change of property tax rates, but did not use the results in forecasting its rate year expense. The five-year average shows an actual average rate increase of 0.30% for its Class 3 properties and an actual average rate decrease of 2.04% for its Class 4 properties.

Q. What was the Company's rational for not using the results of its five years average computation?

A. In his testimony, Company witness Hutcheson states: "[I] used judgment as to whether those tax rates should be increased or decreased based on recent trends within the six years used in the computation as well as other information that I believe could influence the trend." In addition, in the Company's response to a Staff, Mr. Hutcheson explained that: "[I] did not think a negative escalation was reasonable …. Moreover, I saw no basis for assuming that municipalities will be able to cut rates during the economic crisis, so past rates are not likely to repeat given the erosion of other revenue sources available to municipalities."

Q. Does the Panel have any concerns with the Company's position?

A. Staff is concerned with the departure from the traditional method of forecasting the property tax and substituting a judgmental determination. Prior to the 2009 Rate Order, the Commission used a five year average to estimate the change in tax rates. In the 2009 Rate Order, the Commission departed from its traditional methodology in order to account for special circumstances in the economy and the City of New York's finances.

Q. Did New York City recently institute a large tax increase?

A. Yes. The City took the unusual step of passing a mid-fiscal year property tax increase of 7.5% that went into effect on January 1, 2009. That increase became known in time to be included as an update to the revenue requirement in the 2009 Rate Order.

Q. The City usually passes tax rate increases at the beginning of its fiscal year, on July 1st. Did the City raise its taxes on July 1st this year?

A. No. The City left its property tax rates unchanged for all four classes.

Q. Not counting the tax increase this past January, how often has the City passed a mid-fiscal year tax increase?

A. The data we have on New York City tax rates goes back 28 years to July 1981. Since that time, the City has only passed one mid-fiscal year tax increase which was in January 2003.

Q. Could the Panel tell us what happened to New York City's tax rates in the years following the one other large mid-fiscal year tax rate increase?

A. Yes. The tax rates decreased in four of the next five years for both Class 3 and Class 4 property.

Q. Does the Panel believe it is appropriate to return to the traditional method of using a five year average to forecast the tax rate change?

A. Yes, we do. Repeated departures from recognized and verifiable averages carry a strong potential for error over time. The consistent use of the five year average over time tends to make the Company and the customer whole over time.

Q. Please explain further.

A. For example, if the City passes a large 5% tax rate decrease next year, the Company would collect more than the forecasted five year average, and the Customer would lose out in that year, but that 5% decrease would go into calculating the average for the next five years. Consistently applied, over time, this system works out fairly for both the Company and the Customer.

Q. Could you describe how the Company calculates its property tax forecast for Westchester/Upstate?

A. For Westchester/Upstate the Company uses the actual 2008 property taxes as a starting point, and then calculates a five year average change percentage of 2.14%. Then the company uses judgment as whether the five year escalation percentage should be adjusted up or down. In this case the Company indicated that it used the judgment to forecast an escalation percent of 4%, instead of the five year average of 2.14%.

Q. Does the Panel propose to use the five year average to forecast New York City and Westchester/Upstate property taxes?

A. Yes. Since consistent application of the five year average over time, produces the fairest methodology for both the Company and the customer, we believe it should be used.

Q. How much is Staff's adjustment if the five year average is used?

A. Applying the five year average produces a $13.585 million adjustment to the New York City forecast and $3.823 million adjustment to the Westchester/Upstate forecast.

Revenue Taxes

Q. Please explain your proposed adjustment.

A. We are reducing the Company's forecast of rate year revenue taxes from $215.339 million to $210.615 million, or by $4.724 million tracking the impact of Staff's rate year revenue requirement adjustments.

Payroll Taxes

Q. Are you making any adjustments to the Company's forecast of payroll taxes in the Rate Year?

A. We are reducing the Company's forecast from $55.427 million to $51.008 million or by $4.419 million, tracking the impact of Staff's rate year labor expense.

All Other Taxes

Q. What type of tax expenses does the Company reflect in its forecast of All Other Taxes?

A. Commercial Rent, Motor Vehicle, Franchise-Capital, Insurance Premium, Gasoline, Vehicle Registration & Highway Use, Vehicle Registration & Highway Use Reserve Electric, Environmental-Hazardous Waste and Other are all included in All Other Taxes.

Q. How much is the Company requesting for a rate allowance for these taxes?

A. The Company is requesting an allowance of $1.597 million.

Q. How did the Company forecast its rate year tax expense?

A. The Company used of a three- year average of the actual taxes from 2006 through 2008 to project the rate year level.

Q. Are you proposing to adjust the rate year forecast of All Other Taxes?

A. Yes. We are proposing to reduce the Company's forecast of All Other Taxes from $1.597 million to $1.276 million, or by $0.321 million based on the historic test year level, increased for inflation. This methodology is consistent with that used to set the rate allowance for this item in each of the last two electric rate cases(Case 07-E-0523 and Case 08-E-0539).

Further the Company's three-year average includes two large non-recurring tax expenses that call into question the appropriateness of using a three-year average to forecast the rate year expense level. The first non-recurring expense increases this expense by $0.810 million in 2007, and the other event decreases the expense by $0.540 million in 2008. Instead of using a three-year average methodology to smooth out these two one-time events, we believe that a more accurate forecast can be achieved by simply using the 2008 historic test year level of $0.699 million , normalized for the non-recurring tax of $0.541 million, and then increase that amount for inflation.

New York State Income Taxes

Q. Did the Panel prepare a schedule showing the rate year forecast of NYS income tax expense?

A. Yes. Schedule 1, page 5 of our Exhibit____(AP-1) presents our calculation of rate year NYS income tax expense.

Q. Does the Panel have any corrections to the State Income Tax (SIT) calculation filed by the Company in its July 10, 2009 preliminary update?

A. Yes. We corrected the Company's SIT calculation to reflect the $1.600 million associated with Brownfield tax credit program.

Federal Income Taxes

Q. Did the Panel prepare a schedule showing the rate year forecast of federal income tax expense?

A. Yes. Schedule 1, page 6 of our Exhibit____(AP-1) presents our calculation of rate year federal income tax expense.

Rate Base

Unbilled Revenues

Q. Did the Company correctly reflect the Rate Base effect associated with its update of unbilled revenues?

A. No, it did not. In its July 10, 2009 preliminary update, Con Edison updated its calculation of unbilled revenues included in its sales forecast, but it failed to reflect the adjustment's effect on unbilled revenues included in Rate Base. In order to correct this error, we are decreasing the unbilled revenues in Rate Base by $10.253 million.

Working Capital

Cash Working Capital

Q. Would the Panel please explain its adjustment.

A. Yes, we are proposing to eliminate the SBC/RPS expenses the Company reflects in its forecast of rate year Cash Working Capital.

Q. Please explain the reason for eliminating these fees from the Cash Working Capital.

A. According to the Company's General Accounting Procedure (GAP) Number 910C, the SBC/RPS is collected from customers in advance, on a monthly basis, and is subsequently remitted to New York State Energy Research and Development Authority (NYSERDA) on a quarterly basis. Thus, there is no cash working capital requirement related to these fees. The Company collects approximately $16.158 million of SBC/RPS funds monthly, based on the total Rate year NYSERDA remittance requirement of $193.895 million in the rate year. Accordingly, the Company holds SBC/RPS funds for 2.5 months on average, or about $40.395 million, before remitting the funds to NYSERDA.

Q. Does removing this item from the cash working capital have an effect on the earnings base capitalization adjustment (EBCap)?

A. Yes. Consequently, we have made a corresponding adjustment to the Con Edison's EBCap adjustment, increasing it by $14.513 million.

Q. When the Panel removes this item from cash working capital, what is the effect on the rate year rate base?

A. Based on Staff's adjusted amount of SBC/RPS we discussed previously, the elimination of SBC/RPS in the working capital calculation will reduce rate base by $24.237 million. The corresponding adjustment to EBCap will increase rate base by $14.513 million. As a result, the net impact on rate year rate base is a decrease of $9.724 million.

Interference

Q. What is the basis for including prepayment interference expense in working capital?

A. NYS and NYC serve as agents for Con Edison when awarding contracts for certain types of interference work such as bridgework, street resurfacing and catch-basin installations. Upon the acceptance of a contractor's bid for a project, NYS and NYC may require advance payment from the Company for its share of the contracted work. Con Edison's own Accounting Opinion #277 requires that any material advance payment, in excess of $100,000, be recorded as a prepayment. This prepayment balance is reduced by actual costs incurred, either expensed or capitalized.

Q. Does the Panel have any concerns with the Company's forecast of rate year prepayments for interference expense?

A. Yes. The Company increased the historic 12-months average ending December 2008 balance of $6.895 million to forecast the prepayment for interference at $7.111 million. This balance should continue to decrease over time unless the

Company incurs another prepayment associated with a new project.

Q. Are you proposing to adjust the Company's forecast of prepaid interference expense?

A. Yes, absent any proof that the same level or a higher level of prepayments will recur in the rate year; we propose to increase the rolling 12-month average ending June 2009 of $4.994 million by inflation to forecast the rate year prepaid interference expense of $5.109 million. This adjustment reduces the amount of working capital in rate year rate base by $2.003 million.

SBC/RPS - Net of Tax

Q. Does the Panel have any adjustments to SBC/RPS Over/Under collections included in the Company's rate year rate base?

A. Yes. We are proposing to eliminate the SBC/RPS over-under collection from rate base. The removal of this item results in a rate base reduction of $4.212 million.

Q. Please describe how the Company develops an over or under collection of SBC/RPS.

A. The SBC/RPS rate charged to customers is based on a forecast of kWh sales designed to collect enough revenues to cover a fixed amount that the Company is required to remit to NYSERDA. Although the Company does its best to forecast its kWh sales for the upcoming year, there is always a difference between its forecast and actual sales. The difference between its forecast of kWh sales and its actual sales, results in an over or under collection that is brought forward as an amount to be collected or refunded to customers in the subsequent year. The key point is that the development of SBC/RPS rate is specifically designed to collect the exact amount owed to NYSERDA, even though in actuality there is almost always some under or over collection. In other words, it is designed to be revenue neutral.

Q. What is the basis of removing SBC/RPS from rate base?

A. Simply because the Company is currently showing an under collection, there is no reason to believe that it will continue to have an under collection in the rate year. As we stated previously, the SBC/RPS rate forecast is designed to be revenue neutral. There is just as much of a likelihood that there will be an under collection as an over collection. Therefore, we believe the proper way to reflect this item in rate base is to assume there will be no over or under collection in the rate year.

Further, as discussed, the Company, on average, holds onto the SBC/RPS funds for approximately 2.5 months before it remits them to NYSERDA. However, the Company does not consider the benefit of retaining these funds in its request for rate base treatment here. Should the Commission consider this item appropriate for rate base treatment, it should also consider the cash the Company retains before it submits the funds to NYSERDA.

Accumulated Deferred Income Taxes

Change of Accounting Section 263A

Q. Are you proposing to adjust the Company's forecast of rate year accumulated deferred income taxes (ADIT) - change in accounting section 263A?

A. Yes. We have two adjustments which increase the Company's rate year forecast (decrease rate year rate base) from $277.283 million to $363.851 million, or by $86.568 million. The first adjustment corrects the starting point the Company used to forecast the rate level. The second adjustment reflects the additional ADIT on the forecasted level of tax deductions associated with Section 263A in the linking period as well as in the rate year. In its response to Staff IR DPS-294 (Exhibit__(AP-2)), the Company agreed that these adjustments are appropriate.

ADIT - MTA

Q. Would you please explain your adjustment?

A. Yes. The Company inadvertently used February 2008, instead of February 2009, as a starting point to forecast its rate year average balance of ADIT - Metropolitan Transportation Authority (MTA). Consequently we are increasing the Company's rate year forecast (decreasing rate year rate base) by $0.299 million to correct the Company's forecast.

Deferred SIT

Q. Would you please explain your adjustment to deferred SIT?

A. We decreased the average rate year forecast by $0.761 million to account for various revenue requirement recommendations made by Staff.

NYC Traffic and Notice of Violation Costs

Q. Please briefly describe the situation regarding traffic tickets and Notices of Violation (NOV) issued by the City of New York.

A. In response to Staff IR DPS-373 (Exhibit__(AP-2)), the Company indicates that it has incurred a total of 18,312 NOVs in 2008, at a total cost ranging from $5.3 million to $25.8 million. These costs appear to have increased substantially since 2006. The Company also indicates that there are three Senior Specialists each spending 60 to 100% of their time evaluating and processing NOVs.

Q. Do the number of tickets issued and the cost of these violations concern the Panel?

A. Yes, they do. The violations and escalating costs we are talking about could be indicative of a violation system that places unwarranted and unfair burdens on Con Edison, and ultimately its ratepayers. Con Edison performs a critical mission within the City to keep utility services functioning properly. Properly functioning utility equipment is important from both a safety and efficiency standpoint to the citizens of New York City.

Q. From the information you have received, can you determine if the Company or the City is at fault?

A. No. It is difficult to say whether the City has imposed laws, rules, and regulations that are so difficult, cumbersome, or near impossible for the Company to comply with and still complete their critical mission in a reasonable manner, or, if the Company and/or its employees are simply disregarding reasonable laws, rules and regulations of the City. Either way, the Customers appear to be picking up the tab for a large portion these charges, and we do not believe that is appropriate.

Q. Do you propose to make an adjustment with regard to NOVs and/or other violations noted in the Company's response to Staff IR DPS-373 (Exhibit__(AP-2))?

A. Not at this time. The Company should thoroughly address these issues in its rebuttal testimony, including the actual expenses incurred in each category in the Company's response to Staff IR DPS-373 (Exhibit__(AP-2)) for the last three years, and why it believes this is a reasonable expense for customers to bear.

Deferral Accounting

Q. On pages 32 through 42 of his testimony, Company witness Rasmussen seeks to employ the use of deferral accounting to true-up a number of cost elements in the rate year. Does the Panel support the Company's requests?

A. Yes, with the exception of property tax expense and interference expense. We have addressed our concerns with regard to property tax expenditures previously in our testimony. The Staff Interference Panel discusses the Company's request for deferral accounting with regard to interference O&M expenditures.

Q. Does this conclude your testimony at this time?

A. Yes.