2009 N.Y. PUC LEXIS 507

New York Public Service Commission

April 24, 2009, Issued and Effective; April 24, 2009, Issued and Effective

CASE 08-E-0539; CASE 08-M-0618

Reporter

2009 N.Y. PUC LEXIS 507

Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service; Petition for Approval, Pursuant to Public Service Law, Section 113(2), of a Proposed Allocation of Certain Tax Refunds between Consolidated Edison Company of New York, Inc. and Ratepayers

Disposition: [*1] ORDER SETTING ELECTRIC RATES

Core Terms

customers, recommended, electric, forecast, update, estimate, ratepayers, energy, property taxes, delivery, savings, annual, targets, bills, load, reconciliation, expenditures, tariff, network, plant, congestion, hiring, outages, reply brief, calculation, reliability, variable, meters, retail, inspections

Panel: COMMISSIONERS PRESENT: Garry A. Brown, Chairman; Patricia L. Acampora; Maureen F. Harris, dissenting; Robert E. Curry, Jr.; James L. Larocca

Opinion

At a session of the Public Service Commission held in the City of Albany on April 21, 2009

BY THE COMMISSION:

I. INTRODUCTION

These cases primarily concern the terms and conditions of electric delivery service for the full service and retail access customers of Consolidated Edison Company of New York, Inc. Following the cases' procedural history and a summary of the public comments, this order discusses all issues raised in exceptions to the January 7, 2009 Recommended Decision, in proposed revenue requirement updates, and in the parties' trial briefs concerning non-revenue requirement issues. Issue-specific discussions are followed by a final conclusion section and ordering paragraphs. For the reasons discussed below, we are allowing an annual electric delivery service revenue increase of $ 721.405 million (19.7% on total system delivery revenues and 6.1% on a total system electric revenue basis).

A. Procedural History

On May 9, 2008, Consolidated Edison Company of New York, Inc. (Consolidated Edison [*2] or the Company) filed amendments to its electric tariff schedules by which it proposed to change its rates, charges, rules, and regulations. The Company estimated that the tariff revisions, if approved, would produce an annual increase in electric revenues of $ 654.1

million over what they otherwise would be in the 12 months ending March 31, 2010 (the Rate Year). The Company stated that the $ 654.1 million figure is $ 427.7 million lower than it would otherwise be because of Company proposals to extend the recovery periods for certain expenses, defer the recovery of a depreciation reserve deficiency, and seek at that time a return on common equity of 10.0% as opposed to the 11.0% figure supported in the direct testimony of the Company's witnesses (collectively, the Amelioration Proposals).

The May 9, 2008 filing also provided information in support of further electric revenue increases of $ 475 million and $ 421 million, respectively, for the 12 months ending March 31, 2011 (Rate Year Two) and March 31, 2012 (Rate Year Three). These two amounts are lower than they otherwise would be because of the Amelioration Proposals. As an alternative, the Company proposed three levelized annual [*3] electric revenue increases of $ 556.7 million each.

The filed tariff revisions were suspended through April 5, 2009. [1]

In a letter dated May 23, 2008, the Company reported on and proposed the disposition of a property tax refund from the Town of Mount Pleasant in the amount of $ 434,000. That matter was docketed in Case 08-M-0618 and assigned for consideration under Public Service Law (PSL) § 113(2) in connection with the pending electric rate filing.

Discovery ensued and active parties were identified. The Company advised that it responded to approximately 1,600 discovery requests, most of which had multiple parts. A formal litigation schedule was adopted without objection. [2] Among other things, it called for the Company to offer an informal update on July 25, 2008, for DPS Staff and intervenors to file their direct cases on September [*4] 8, 2008, and for the submittal of rebuttal and formal update presentations on September 29, 2008.

On June 18, 2008, the Company hosted a technical conference to provide interested parties with an overview of its May 9, 2008 filing. [3]

Notices of the pending electric tariff filing and tax refund petition, inviting public comments on both, were published in the State Register on September 24 and October 1, 2008, respectively. A notice inviting public comments through January 25, 2009 was also published prominently in November 2008 in the New York Post, the Staten Island Advance, and the Journal News. The published notices provided information about the cases, including the major factors driving the requested increase, and invited comments [*5] via U.S. mail, the internet, and the Department's toll-free opinion line through January 25, 2009. Affidavits of publication were received on November 26, 2008.

Evidentiary hearings commenced on October 15, 2008 and concluded on October 24, 2008. Commissioner Robert E. Curry, Jr. participated in the October 23, 2008 hearing. As of the time of the hearings, the Company's updated and corrected electric revenue increase request for the Rate Year was $ 819.024 million. [4] That figure remained $ 427.7 million lower than it otherwise would be because of the Amelioration Proposals. The Company's revenue requests for the second and third rate years were not updated or corrected as of that date, nor was the alternative proposal for three levelized revenue increases. Meanwhile, Department of Public Service (DPS) Staff's corrected and partly updated direct case around that time supported an annual electric revenue increase of $ 346.117 million in the Rate Year. [5] Neither DPS Staff nor any intervenor provided alternative estimates of any revenue increases required beyond the Rate Year.

[*6]

---

1 Case 08-E-0539, Order Suspending Major Rate Filing (issued May 29, 2008) and Untitled Order (issued September 17, 2008). An extension of the suspension date is discussed below.

2 Case 08-E-0539, Ruling on Schedule (issued June 24, 2008).

3 The handout for the conference is Exhibit (Ex.) 209.

4 Ex. 403. Corrections reported subsequent to the Recommended Decision (R.D.) are discussed below.

5 Ex. 420.

The evidentiary record includes approximately 5000 pages of transcript, a few of which are protected from public disclosure on an interim basis. [6] There are also 460 exhibits. [7] Some of the exhibits are protected on an interim basis from public disclosure in whole or in part.

Initial trial briefs were filed and served by the Company; DPS Staff; the Consumer Protection Board (CPB); the New York Power Authority (NYPA); the City of New York, [*7] the Metropolitan Transportation Authority, and the Port Authority of New York and New Jersey (jointly, the NYC Government Customers) ; Westchester County (Westchester or the County); Consumer Power Advocates (CPA); [8] the New York Energy Consumers Council (NYECC); [9] the Pace Energy and Climate Center (Pace); the Retail Energy Supply Association (RESA); the Small Customer Marketer Coalition (SCMC); and Joint Supporters.

[*8]

On December 3, 2008, a notice of impending negotiations was filed and served by the Company. We received a memorandum reporting on that filing dated December 4, 2008. Negotiations did not culminate in a joint proposal. However, the initial trial briefs of the Company and DPS Staff both discuss issues on which there is agreement between these two parties or among them and other parties. [10] Those issues concern, among others, unbilled revenues, rents from transmission towers, late payment charges, the recovery of deferred targeted Demand Side Management (DSM) costs, Transmission Service Charges, the exclusion of SC 13 from the Revenue Decoupling Mechanism (RDM), a Transmission Congestion Contract (TCC) revenue imputation of $ 120 million, the disposition of various property tax refunds, and a number of other issues.

On December 8, 2008, reply trial briefs were filed and served by the Company, [*9] DPS Staff, CPB, NYPA, the NYC Government Customers, Westchester County, CPA, NYECC, Pace, RESA and Joint Supporters. The initial and reply trial briefs totaled approximately 1,580 pages.

Twenty-six calendar days after the initial trial briefs were filed, it was readily apparent to the judges that they would not be able to analyze and prepare recommendations on all disputed issues by the targeted recommended decision issuance date of January 5, 2009. (The latter date was three months prior to the then-effective suspension date of April 5, 2009). Accordingly, in an electronic message dated December 17, 2008, the judges advised all parties of their intention to complete a recommended decision on all revenue requirement issues (Phase I issues) on or shortly after January 5, 2009 and to prepare a separate recommended decision on all other (Phase II) issues. They anticipated a second decision by us on Phase II issues after April 5, 2009.

In an electronic message dated December 18, 2008, the judges invited the Company, DPS Staff, and CPB to provide factual updates to inputs to their respective cost of common equity analyses. The judges relied on some of the factual information in their recommendations. [*10] The judges did not rely on any information provided by the Company that went beyond the information they had requested.

In late December 2008, the Company filed some further updates, including one for a 7.5% New York City property tax rate increase effective January 1, 2009. This is greater than the 7% increase the Company had been forecasting.

---

6 5023 transcript (Tr.) pages less Tr. 406, line 22 through Tr. 428, line 7. The latter are not in evidence, but remain in the transcript as an offer of proof. See Cases 08-E-0539 and 08-M-0618, Ruling on Motion to Strike (issued November 4, 2008).

7 Numbers 1-462 with the exceptions of 72, 309, 334, all of which are blank, and counting exhibits 448-A and 448-B separately. One further exhibit, submitted after the recommended decision was issued, is discussed separately below.

8 CPA comprises large, high load factor SC 9, time-of-day, not-for-profit organizations including Fordham, Mount Sinai Medical Center, Memorial Sloan Kettering, Beth Israel Medical Center, St. Luke's-Roosevelt Hospital Center, Long Island College Hospital, New York Eye and Ear Infirmary, Montefiore Medical Center, NYU Medical Center, and New York University.

9 NYECC members include a broad spectrum of energy buyers, including hospitals, universities, financial institutions, residential and commercial property managers, public benefit corporations, energy service companies, and energy consultants.

10 The Company's Initial Brief, pp. 527-534 and DPS Staff's Initial Brief, pp. 343-360. DPS Staff's discussion is more extensive.

In the recommended decision issued January 7, 2009, the judges concluded that the Company needs $ 632.5 million of additional annual revenues to meet the minimal, reasonable cost of providing electric delivery service in the Rate Year. Major drivers underlying the $ 632.5 million (and contemporaneous estimates of the associated dollars) include higher property tax expense ($ 276 million), higher rate base and associated depreciation expense ($ 258 million), a higher cost of capital, including 10.0% on common equity ($ 104 million), increased expense for pensions and other post-employment benefits (OPEBs) ($ 67 million), and decreased TCC revenues to offset delivery service revenue requirement ($ 30 million). [11]

[*11]

The recommended decision summarized competing proposals to reduce the Company's Rate Year expenses and the amount of incremental revenues required on the grounds that the economic downturn reduces the Company's customers' collective ability to pay higher electric rates. However, the judges made no substantive recommendation on the propriety of such proposals.

On or before January 27, 2009, briefs on exceptions were filed by the Company, DPS Staff, CPB, NYPA, the NYC Government Customers, Westchester County, CPA, and RESA. Subject to other possible updates, the Company and DPS Staff were supporting electric revenue increases as of that date of $ 935.14 million and $ 484.1 million, respectively, a difference of $ .45 billion.

In a letter from the Office of Consumer Services dated January 27, 2009, further public comment was solicited from 400 community and political leaders through February 11, 2009. The letter was accompanied by a fact sheet and stated that comments could be offered by writing, posting comments electronically on the Department's website, or calling the Department's toll-free opinion line.

For a variety of reasons, including concern about customer confusion if we were [*12] to adopt an interim across-the-board (or equal percentage) revenue allocation and rate design in March 2009, and a different, final revenue allocation and rate design several months thereafter, members of Advisory Staff contacted the Company in late January 2009 about the possibility of the Company extending the statutory suspension date. [12]

In response, the Company offered to extend the suspension date from April 5, 2009, through April 30, 2009, subject to the condition that it be made whole for any revenue shortfall during that 25-day period. [13]

[*13]

Once it was apparent the Company would extend the suspension date, the judges were instructed to prepare a report on all Phase II issues so that a decision on all contested Phase I and II issues could be rendered prior to the extended suspension date. This instruction was given, notwithstanding the judges' prior expectations about a second recommended decision, because there was not adequate time for the judges to prepare a recommended decision on Phase II issues, for a second recommended decision to be issued for exceptions, for any exceptions to be filed, analyzed, and reported to us along with the Phase I exceptions and updates, and for all issues to be decided finally in April 2009.

On or before February 11, 2009, briefs opposing exceptions on Phase I issues were filed by the Company, DPS Staff, CPB, NYPA, the NYC Government Customers, Westchester County, NYECC, and RESA.

---

[11] There are other increases, as well as offsets, that net out to $ 632.5 million.

[12] There was also interest in our being able to consider simultaneously all rate of return issues and the dollar amounts to be at risk under the Company's reliability and service quality performance mechanisms. Revenues to match the low-income customer discount are also impacted by our revenue allocation and rate design determinations.

[13] February 2, 2009 letter from Mr. Lubling to Secretary Brilling.

On February 13, 2009, the judges submitted their 126-page report on Phase II issues. On February 17, 2009, an order was issued extending the suspension date subject to a make-whole through April 30, 2009. [14] That order reserved judgment on the issue of exactly how the make-whole would be implemented. That issue [*14] is addressed in Section X (J) and an ordering paragraph.

It was apparent to the judges that some parties' post-recommended decision arguments refer to one or more attachments to Exhibit 396 that were not introduced into evidence. The attachments and a supporting affidavit were subsequently submitted. The original Exhibit 396 is now Exhibit 396-A and the supplemental attachments and the sworn affidavit comprise Exhibit 396-B.

The Company filed two different sets of updates after all the post-recommended decision briefs were submitted. As of these updates, the Company was requesting incremental electric revenues for the Rate Year of $ 851 million as of March 25, 2009 and $ 1.003 billion as of April 6, 2009. The major difference between the two is the increased assessment under Public Service Law § 18-a.

B. Summary of Public Comments

Ninety-five public comments were received in these cases in the period between June 9, 2008 and March 25, 2009. The vast [*15] majority were received via the Internet. [15] Among others, comments were submitted (in chronological order) by State Assemblymember Sandra R. Galef from Ossining, State Senator Jeffrey D. Klein of the Bronx, the Lefrak City Merchants' Association of Queens, the United States Environmental Protection Agency, and New York City Council Member Tony Avella of Bayside Queens.

All public comments are summarized in table form in Appendix V. The comments of EPA are also discussed in the body of our order. Key themes expressed by members of the public are that rates are too high, and that further increases are untenable in light of the poor economy and anticipated impacts on the elderly, others on fixed incomes, and the poor. Many feel that they are being forced to absorb ever-increasing costs without any increase in income and therefore [*16] the Company should be required to do the same in the face of tax and other cost increases. There are also calls for belt-tightening by the Company.

Significant frustration is expressed by some customers about why the Company is asking that rates go up while commodity costs have dropped. Others express concern that rates are increased as usage goes down on account of increased conservation.

As discussed in the sections that follow, the increased revenues we allow today reflect significant increases in several specific expense areas over what is reflected in the Company's current rates. The austerity adjustment we adopt also reflects our expectation, in 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.

II. SALES REVENUES

A. Sales Revenue Forecast

The recommended decision endorsed the Company's revised sales forecast, along with DPS Staff's 239 GWH demand side management (DSM) adjustment. The Company acquiesces to the DPS Staff DSM adjustment, but states that the recommended [*17] decision overlooked the Company's inclusion of all but 34 GWH of that adjustment in its updated

[14] Case 08-E-0539, Untitled Order (issued February 17, 2009).

[15] Of these, 79 were received by the original January 25, 2009 due date, another 9 were submitted by the February 11, 2009 extended due date, and the balance were submitted after the deadline.

sales forecast. [16] The Company says our decision accordingly should reflect a corrected sales figure, reducing the forecast in the recommended decision by the difference of 205 GWH; and a concomitant downward adjustment of only $ 1.9 million--rather than the recommended decision's $ 14.7 million--in the revenue to be collected from rates in the Rate Year. Our review indicates that the Company is correct and we adopt the corrected adjustment.

In addition to its DSM adjustment, DPS Staff maintained that four elements of the Company's sales forecasting methodology should be changed: employment update, personal income variable, Service Classification (SC) 2 (General-Small) **[*18]** employment variable, and cooling degree-days. Its forecasting witness did not propose any adjustment based upon those four methodological differences, however, because his estimate differed by only 43 GWH, in the aggregate, from the Company's original filing. DPS Staff contends that the recommended decision erred in accepting the Company's revised sales forecast, which reflected only the employment update of the four changes DPS Staff proposed to the Company's forecast methodology. [17] On exceptions, DPS Staff states that some of its proposed corrections to the four variables drove the forecast upward, some downward, and only their aggregate effect was minimal and led DPS Staff to conclude that the Company's original forecast was acceptable. DPS Staff urges us to reject the recommended decision's sales forecast, which includes only the employment update correction. Instead, DPS Staff maintains that we should adopt the Company's originally filed forecast, modified only by DPS Staff's DSM adjustment. In its brief opposing exceptions, DPS Staff reverses position and says that all four of its sales forecasts adjustments should be adopted in their entirety. [18]

[*19]

In opposition to DPS Staff's arguments, the Company claims that DPS Staff failed to establish on the record that its four adjustments are interrelated; and the Company updated all variables, not just the employment forecast. It contends that DPS Staff's proposal to use the Company's original, now stale, forecast would rely on outdated projections (such as positive employment growth) that are unrealistically optimistic in light of the severe economic downturn that took place since the Company's original filing. The Company adds that DPS Staff never quantified the impact of its three methodological adjustments that were not recommended, and did not respond to the recommended decision's request that the parties indicate the extent to which they agreed or disagreed with the judges' understanding of the arguments on those adjustments. [19]

DPS Staff's brief on exceptions does **[*20]** not ask that the forecast be updated using its revisions to all four variables. Rather, it proposes that the Company's original forecast be used, modified only by DPS Staff's DSM adjustment. Nor did DPS Staff's brief on exceptions propose, contrary to the recommended decision, that we decide the disputed issues about the personal income variable, the SC 2 employment variable, or the cooling degree-days variable. Only in its brief opposing exceptions does DPS Staff seek to have the forecast updated using the four revised variables. Holding off until its brief opposing exceptions deprives other parties of the opportunity to respond to that position. Therefore, we will not consider the request in its brief opposing exceptions to adopt adjustments for all four variables.

The record itself does not directly address whether any of the four disputed variables individually has a significant effect on the sales forecast. It includes only DPS Staff's testimony that in the aggregate the difference between the Company's original filing forecast and the DPS Staff forecast is in the range of acceptable forecasting error; and that the Company's estimate as originally filed should be accepted. There **[*21]** is no record evidence either in support or contradiction of DPS Staff's allegation on exception that only in the aggregate is the difference between the Company's original filing forecast and the DPS Staff forecast insignificant. Nor, given the state of the record, do we find adequate support for DPS Staff's proposal that we adopt the Company's originally filed forecast, modified only by its DSM adjustment. In any event, the revenue decoupling mechanism (RDM) now in place for the Company will protect both ratepayers and the Company, in

---

[16] The Company's Brief on Exceptions (BoE), p. 6. Parties' briefs on exceptions will be cited as "BoE." Briefs opposing exceptions will be referred to as "BOE." Initial trial briefs will be cited as "Initial Brief" and reply trial briefs as "Reply Brief."

[17] DPS Staff's BoE, p. 5.

[18] DPS Staff's BOE, p. 2.

[19] The Company's BOE, pp. 1-3.

the event that the sales revenue forecast proves to be understated or overstated. Consequently, we will adopt the recommendation of the judges.

B. Billing and Payment Processing / Merchant Function Charge / Metering Revenues

The Company and DPS Staff agree on the method to be used to determine Rate Year charges for the Company's competitive services -- merchant function charge, competitive metering charges, and billing and payment processing charges. Since different sales forecasts affect the level at which those competitive service charges should be set, both parties also agree that the charges should be adjusted once the sales issue is resolved. [*22] The recommended decision asked that the parties specify in briefs on exceptions what the revised charges should be, based on the judges' sales forecast recommendations.

In response to the judges' request, the Company provides calculations that it indicates should be considered preliminary, pending our decisions on the sales forecast and rate increase. DPS Staff essentially agrees, noting the competitive services charges should be recalculated based upon our sales forecast, revenue requirement, and rate design determinations. The competitive service charges should be reset consistent with the terms of this order.

III. OTHER OPERATING REVENUE

A. Purchase of Receivables Discount and Other Update Issues

The Company forecast Rate Year revenues from its Purchase of Receivables (POR) program of $ 6.880 million and DPS Staff argued that the latest available information through August 2008 supported a Rate Year forecast of $ 7.710 million. The judges recommended DPS Staff's forecast. Noting that the Policy Statement on Test Periods in Major Rate Proceedings generally invites updated forecasts only through the time of the hearings at which DPS Staff's direct testimony and exhibits [*23] were cross-examined, the judges recommended that an updated forecast for this item be considered only if such updates would be considered for other items as well. [20]

The Company does not object to the recommendation in support of DPS Staff's forecast. However, it proposes that the forecast for this item not be further updated for the following reasons: [21]

a. Updated forecasts are not usually considered this late in a rate case.

b. Updating the forecast for this item would open up the door to numerous other updated forecasts.

Addressing the issue of updates more broadly, the Company adds the following: [22]

c. The Company agrees with other recommended updates of material and volatile cost elements such as property taxes, interest expense, pensions and other post-employment benefits (OPEBs) expense, return on equity, letter of credit costs, and vehicle fuel.

d. The Company opposes any further update of its forecast capital expenditures, especially given that it takes no exception [*24] to the recommended one-way, downward-only reconciliation of any differences between projected and actual T&D capital investment.

e. The Company states that it takes no position on the judges' recommendation to reflect the City's January 2009 construction plan forecast for purposes of estimating Municipal Infrastructure support expense levels.

f. The Governor's budget proposes to increase the Company's electric department assessment under PSL § 18-a by approximately $ 112.5 million per year and any actual increase in its assessment should be reflected in rates or deferred for future recovery from ratepayers.

---

[20] R.D., pp. 32-33.

[21] The Company's BoE, pp. 7-8.

[22] Id., pp. 8-9.

DPS Staff opposes the Company's arguments as follows: [23]

a. In addition to updates with which the Company agrees, known changes to operating revenues or costs should be reflected such as for:

i. Transmission Service Charge (TSC) revenues;

ii. Municipal Infrastructure Support expenses;

iii. Labor [*25] capitalization rate;

iv. Capital expenditures;

v. Federal and state tax law changes; and

vi. PSL § 18-a assessment changes if known at the time of our decision.

b. As to TSC revenues specifically, DPS Staff previously proposed the pass back of this deferral be updated (Tr. 2648) and the latest information available suggests the Company's revenue requirement should be reduced by $ 4 to $ 5 million for this known change. [24]

c. Based on the latest New York City Commitment Plan, the Company's forecast for Municipal Infrastructure Support expense should be lowered by $ 4 million.

d. The Company recently disclosed a 2009 labor capitalization rate of 38.0%, up from 35.5% in 2008. The impact of this known change should be reflected. [25]

e. Congress is considering tax law changes, related to the economic stimulus package, that may reduce the Company's revenue requirement by $ 20 to $ 30 million per year. These ″known changes″ should be reflected in revenue requirement in accordance with the Statement of Policy on Test Periods in Major Rate Proceedings.

f. In the event PSL § 18-a is amended [*26] after a decision is rendered in these cases, the issue will likely be addressed on a generic basis and the Company should not be given preferential treatment (apparently referring to the Company's request for approval now to defer such costs later) merely because it has a pending rate filing.

g. The Company reported on December 31, 2008 additional property tax refunds of $ 4.9 million, but a requisite hearing has not been held and, thus, action cannot yet be taken on these.

Our revenue requirement determination reflects post-recommended decision known changes in costs for property taxes, pensions and OPEBS, the Company's labor capitalization rate change (from 35.5% to 38.0%), an increase on the pass back of Transmission Service Charge Revenues, the Company's most [*27] recent 12-month uncollectibles write-off rate, the effects of accelerated depreciation under the American Recovery and Reinvestment Act, increases in the PSL § 18-a assessment (to be recovered via surcharge), and changes in the cost of debt. While some of these known changes were provided after the due date for parties' briefs on exceptions, they are reflected in large part either because the changes result from government action or because they are otherwise largely beyond the Company's control. Given that some of the updates put significant upward pressure on revenue requirement, it is also fair to reflect updates having the opposite effect.

As discussed in some of the sections that follow, we are also relying on some actual 2008 expenditure levels as a check on the competing forecasts for the Rate Year. Operation and maintenance expenses in this category include five-year underground inspection costs and municipal infrastructure support expenses.

IV. EXPENSES - COMPANY LABOR O&M

A. Staffing Requests

1. Historic Hiring Practices Adjustment

---

[23] DPS Staff's BOE, pp. 3-7.

[24] The latest data on which it relies are not identified.

[25] DPS Staff also discusses proposed updates for actual and forecast reductions in plant in service. These all are discussed in Section IX-Rate Base.

The Company's rate request included full funding for all requested new positions for the [*28] entire Rate Year. The judges recommended a slightly revised version of a DPS Staff proposal to calculate the cost of payroll, benefits, and related expenses for new employees taking into account the lag in the Company's filling of new positions over the course of the Rate Year, based on its demonstrated performance in filling new positions authorized and funded for the current rate year in the Company's last electric rate case. [26] As a general matter, the recommended decision proposed providing only 45% of the Company's requested funding associated with new positions.

DPS Staff takes exception, contending that its own proposal to provide only 40% of the funding requested for new positions should be adopted instead. [27] DPS Staff maintains that the judges' proposed percentage failed to recognize that the Company's rate of filling new positions [*29] was lower in the fifth and sixth months of the current rate year than in the first four and that DPS Staff's own 60% downward adjustment was conservative.

The Company excepts, contending that the recommended decision's 55% downward adjustment failed to recognize the Company's expenditures on contractors retained to perform underground inspections in lieu of permanent employees. It also argues that the judges erred by giving the Company no credit for its expenditures for those positions filled before the start of the current rate year, in advance of receiving rate relief, which it claims amount to 47 full-time equivalents (FTEs). [28]

The Company replies to DPS Staff's exception, arguing that focusing on just two months' experience in hiring would be unfair, fail to recognize the Company's [*30] need for flexibility in achieving annual budget goals and objectives for myriad programs, and undercut customer interests in adequate Company staffing. [29] In addition, the Company says that DPS Staff, like the recommended decision, does not take into account the Company's expenditures on contractors and overtime as a substitute for hiring.

DPS Staff answers the Company's exception noting that the Company provided no evidence of any costs for its claimed use of contractors or overtime, but simply attempts to shift its burden of proof to other parties. DPS Staff also accuses the Company of exaggerating the FTEs hired before the beginning of the current rate year, which amount to fewer than 29, not 47. [30]

The Company seizes on the recommended decision's recognition that the calculation [*31] of these employee labor expenses should take into account the use of contractors and overtime, but ignores the following remonstrance that this should be done ″insofar as the record permits.″ The Company claims in brief that it hired 108 contractors instead of 108 new permanent employees that were funded for underground inspections for the current rate year because it realized ″early on″ that it could not fill the new positions on a sufficiently timely basis. This contention is not supported adequately by the record. The sole testimony on point is a single sentence by its Accounting Panel in rebuttal that: ″The Company is using contract labor to complete this program″ (Tr. 2297). The record is devoid of evidence of when the Company decided it could not fill the new positions on a timely basis, when it hired any contractor as a substitute for filling any new position, how many it claims to have hired, or what expenditures it claims to have made on contractors, compared to the funding allowed for permanent employees.

The Company claims the burden of proof was not on it to justify its requested funding level, but rather on DPS Staff to justify DPS Staff's adjustment, once the Company [*32] made its bare, unsupported declaration that it had hired some unidentified number of contractors at some unidentified time at some unidentified cost, in lieu of hiring 108 new employees. We do not accept that contention. The Company had the burden of proof to support its request for funding for

---

26 Case 07-E-0523, Consolidated Edison Company of New York, Inc.- Electric Rates, Order Establishing Rates for Electric Service (issued March 25, 2008) (2008 Rate Order).

27 DPS Staff BoE, pp. 6-7.

28 The Company's BoE, pp. 9-12.

29 The Company's BOE, pp. 3-5.

30 DPS Staff's BOE, pp. 7-8.

the new positions, as well as the obligation to establish by competent testimony its detailed cost of service. [31] Contrary to the Company's claim, DPS Staff met its obligation to seek discovery of the information underlying the Company's direct case. DPS Staff conducted discovery and provided testimony that--together with the Company's own responses to interrogatories and exhibits (e.g., Ex. 441)--clearly established that the Company had not hired many of the new employees for which it received funding in its last electric rate case and, given its hiring performance, would not incur the full level of expenses for new employees for which it seeks funding for the Rate Year.

[*33]

The Company did not suggest in its responses to DPS Staff's discovery that it had substituted contract labor for the 108 new employee positions in question. Only on rebuttal did the Company raise the claim that it had used contract labor instead of hiring new employees. That bare statement in itself is unpersuasive and we find it unreasonable for the Company to assume that statement would be sufficient. If the Company had supporting evidence of incurring costs for contract labor for underground inspections, its accounting panel surely had access to that information and the Company should have provided it in a timely manner. It was incumbent on the Company to come forward with actual evidence of the expenditures it claims to have incurred in lieu of labor expense to perform the work the new employees were supposed to have performed. The Company has even less record support, moreover, for its claim that it used overtime as a substitute for hiring than it does for its claim about contractors.

The bottom line is that there are no cost data on the record from which we can determine the extent, if any, to which the Company used contract labor or overtime to perform work in lieu of the new **[*34]** employees for which funding was provided to perform that work. The Company claims that we now have the responsibility either to request information on alleged Company use of contractors and overtime, in order to calculate a hiring adjustment, or to use a reasonable proxy. [32] It cites no law, regulation, or precedent for that proposition, however, and we reject it.

Nor are we persuaded by the Company's suggestion that it should somehow receive credit for the costs incurred prior to the current rate year for 72 net positions filled before the current rate year began (and before we approved funding of them in current rates). The judges' recommended Company labor expense includes full Rate Year funding allowance based upon all 72 of those net positions. The Company maintains that Ex. 441 shows a total of 47 FTEs for those employees hired before the current rate year. This figure appears to be grossly overstated. The actual number appears to be 28.7 FTEs by our count, taking into account **[*35]** whether and when the positions were backfilled. Furthermore, funding equivalent to 16.5 of those FTEs was captured in the Test Year for this proceeding. In any event, the Company's costs prior to the current rate year associated with advance hiring of positions for the current rate year are irrelevant to the issue of how much funding the Company needs for payroll, benefits, and related costs of new positions expected to be filled over the course of the Rate Year. The Company incurred those costs voluntarily without any basis for assuming it could defer them and later recover them in rates. Furthermore, the Company has a large pool of available funds to pay the costs of those hirings, due to the fact its personnel hiring rate was below that authorized and funded in the 2008 Rate Order.

DPS Staff's own adjustment percent is a subjective one, interpolating from an adjustment factor of ″56.07%″ based on the rate of hiring over the first six months of the current rate year and a factor of ″62.43%″ based on the hiring rate over the fifth and sixth months. Its adjustment assumes that a lower rate of hiring will prevail over the second half of the current rate year than did over the first **[*36]** half (dropping from 13.3 per month to 8.8 per month), solely on the basis of the lower rate for the fifth and sixth months, and more heavily weights the rate in those two months. Month-to-month variation in the rate of hiring is to be expected. The six-month period used for the historic hiring adjustment is relatively short and does not reasonably lend itself to the degree of precision in forecasting inherent in DPS Staff's position. The Company's argument that management requires some flexibility in its rate of hiring over the course of a year is well taken. It would be unreasonable to expect the Company to maintain the same rate of hiring month after month throughout the course of the year.

We find it more reasonable to base the adjustment on the assumption that the overall hiring rate for the second half of the current rate year will be the same as that over the full first six months, as the recommended decision did. That assumption

---

[31] PSL § 66(12)(i); 16 NYCRR 61.1, 61.3(b)(1).

[32] The Company's BoE, pp. 10-11.

results in an allowance factor of 43.9% (56.1% downward adjustment), which the judges rounded to 45%, rather than DPS Staff's proposed 40% allowance (60% downward adjustment). We conclude that the record most reasonably supports the recommended decision's [*37] adjustment of 55%, i.e., a 45% allowance, for the Company labor expense for new positions.

2. DPS Staff's Department-Specific Adjustments

a. Electric (Distribution) Operations--Various

The Company sought funding for five new distribution engineer positions for various programs, including operations to mitigate risk of violent transformer failure by analyzing such items and factors as field-returned equipment, transformer failure root causes, and dissolved gas in oil. The recommended decision endorsed full funding for three of the five positions because they had already been filled, as well as 45% funding for the other two positions, following the judges' historic hiring practices adjustment. In addition to its advocacy of only 40% funding based on historic hiring practices, DPS Staff excepts to the recommendation for full funding of three engineering positions. It maintains that, because its historic hiring practices adjustment was a global adjustment, funding known filled positions diminishes the effect of the adjustment. DPS Staff says consistent application of the recommended decision's approach would require recalculating the adjustment to exclude the effects of funding [*38] labor program changes for known filled positions. [33] The Company does not address this particular DPS Staff exception.

We agree that consistency calls for application of the historic hiring adjustment to the three newly requested engineering positions despite the fact that they are already filled. The historic hiring practices adjustment was a general adjustment that did not address when particular positions were filled, but only the Company's overall rate of hiring for all new positions. The judges' calculation of the historic hiring practices adjustment they recommended included credit for positions approved for the current rate year that were filled before the beginning of the current rate year. Thus, the historic hiring practices adjustment already takes into account that some new Rate Year positions are being filled before that year begins. We have already rejected DPS Staff's calculation of the historic hiring practices adjustment in favor of the recommended decision's. We therefore [*39] apply the judges' historic hiring practices percentage and will allow only 45% funding for all five of these distribution engineering positions, including the three that have been filled.

b. Electric (Distribution) Operations--Enhanced Project Planning

The Company requested funding for 12 positions for enhanced project planning. Rejecting DPS Staff's proposal to eliminate funding for all of the positions, the judges recommended an allowance of 45% based on the recommended decision's historic hiring practices adjustment. DPS Staff takes exception on the ground that the Company could not explain why existing personnel are unable to perform the work or why there is a shortage of manpower, and thus the Company has not demonstrated the new employees will provide added benefits. [34] The Company responds that the recommended decision fully considered the need for the positions and found the Company had provided sufficient evidence of need and steps to avoid duplication, and also that it would be difficult for the Company to prove the positions would not duplicate the work of existing employees. [35]

[*40]

The Company explained that the positions, comprising one supervisor and three project specialists in each of its three regional engineering sections, were requested due to expansion of the capital budget for electric distribution operations, as the Company performs more detailed analysis to design enhancements to the distribution system and meet changing demand and operating requirements. It maintains the increased staffing level is commensurate with the increased capital

---

33 DPS Staff's BoE, p. 57.

34 DPS Staff's BoE, p. 8.

35 The Company's BOE, pp. 5-6.

construction program in electric distribution and will facilitate completion of greater workload in project planning and oversight. (Tr. 3913-14; Ex. 169 (redacted), pp. 766-67. [36])

The judges' recommendation was not [*41] unreasonable in light of the arguments made to them by the parties. We have concern, however, about the sufficiency of the underlying justification for the Company's request. Over the period 2004 through 2007, the Company's capital expenditures for electric distribution rose from $ 485.2 million to $ 898.8 million [Ex. 169 (redacted), pp. 14-15]. In 2008, its actual expenditures in that category were $ 1,041.7 million. [37] Capital expenditures for electric distribution peaked in that last year, however. In 2009, the Company forecasts that they will drop to $ 996 million, then level off at approximately $ 960 million in 2010 through 2012 (Ex. 51). The need for these enhanced project planning positions is predicated on an increase in the Company's capital expenditures on electric distribution, but in 2009 through 2012 those expenditures will actually be lower than they were in the year just completed. We conclude that the Company has not established its claimed need for the 12 positions. We will therefore disallow funding for those positions.

[*42]

c. Shared Services--Programmers

The Company requested funding for a total of 14 programmers for its Shared Services unit, seven funded in the 2008 Rate Order and seven newly proposed for the Rate Year. The judges found that the 55% downward historic hiring practices adjustment should be applied to the seven newly requested positions, but recommended full funding for the seven positions approved in the Company's last electric rate case, all of which were filled before the end of the first quarter of the current rate year. DPS Staff takes exception to the recommendation for full funding of the seven positions previously funded in the 2008 Rate Order, on the same grounds it asserted in its exception to full funding of distribution engineering positions, discussed in IV(A)(2)(a) above. [38] The Company opposes DPS Staff's exception, declaring that the historic hiring practice adjustment, if allowed at all, should not apply to positions approved in the 2008 Rate Order that will be fully staffed before the Rate Year, such as these already-filled positions. The Company maintains that the adjustment was clearly formulated to measure the pace at which the Company may fill positions first [*43] approved by the Commission in this case. [39]

We agree with the judges and the Company. Unlike the distribution engineering positions discussed in section IV(A)(2)(a) above, these seven programmer positions are undisputedly positions that were funded in Case 07-E-0523, not ones newly requested in this proceeding. We therefore deny DPS Staff's exception and adopt the judges' recommendation.

d. Other Normalizations

The Company sought full-year funding for positions in Public Affairs, Strategic Planning, Tax, and Environmental Health and Safety (EH&S) that were vacant all or part of the historic Test Year. The judges recommended adoption of DPS Staff adjustments to disallow funding for those positions because in brief the Company merely referred generally to update/ rebuttal testimony of its accounting panel and another witness, with no reasoned argument in opposition to the proposed DPS Staff adjustments. The Company excepts in a similarly off-hand [*44] manner, merely claiming those positions were filled in early 2008 and referring to even less evidence. [40] DPS Staff opposes, stating that its adjustments did not track specific positions in each department; and, even if the specific positions in question have been filled, other positions in those particular departments or other departments will be vacant during the Rate Year.

The Company's exception does not even address the EH&S positions with any reference to the record. For the remainder of the positions in question, the Company's exception argues only that they were filled in early 2008. The testimony to

---

[36] As noted above, some exhibits are protected from public disclosure in whole or in part on an interim basis. In these instances, there are redacted, or public, versions and unredacted, or confidential, versions.

[37] The Company's December 2008 Monthly Financial Report, p.11.

[38] DPS Staff's BoE, p. 7.

[39] The Company's BOE, p. 4.

[40] The Company's BoE, p. 16.

which it refers contradicts its argument, stating variously that some of the positions were filled in early 2008, some were filled later in the first half of 2008, and some had not been filled but the Company "expected" to fill them before the end of 2008 (Tr. 2309-12). Nothing in the testimony addresses whether any of the positions were filled by internal transfer and backfilled. [*45]

The testimony to which the Company refers also addresses the need for the positions in issue. Neither DPS Staff nor the judges questioned the need for the positions, only the degree to which the Company's overall requested funding for program change positions matched its historic practice in filling positions. To the extent that the positions were filled from external sources or filled internally and backfilled, they were credited in calculation of the historic hiring practices adjustment. There is insufficient persuasive evidence or argument in support of the Company's exception and we deny it.

e. State Regulatory Affairs

The recommended decision accepted the Company's request for funding seven new positions for a new State Regulatory Affairs Department (SRAD), subject to the 55% downward adjustment for historic hiring practices. DPS Staff excepts, arguing against any funding for the positions. It contends that the Company did not provide any substantive documentation in support of the request, disputes the Company's contention that the group is being developed in response to feedback from DPS Staff, and argues that the SRAD is a discretionary program that could be deferred without [*46] affecting safe and adequate service. [41] The Company counters that, before DPS Staff's brief on exceptions, DPS Staff never questioned the Company's Vice President's testimony that, among other things, the SRAD was developed in response to feedback from DPS Staff, testimony on which DPS Staff never sought discovery or cross-examination. [42] In addition, the Company maintains that its witness' testimony explains the value of a regulatory affairs program for not only itself but its customers, in light of the growing complexity and criticality of regulatory matters.

DPS Staff's claim that the Company provided no substantive documentation in support of its request is difficult to fathom. There is substantial record evidence in support of the request (Ex. 364), which [*47] DPS Staff chose not even to cross-examine. Nevertheless, we are concerned that, although the SRAD might hold the prospect of some benefit, it is not a necessity for the Company. We see no reason why lack of an SRAD would adversely affect the Company's ability to provide safe and reliable service. Thus, we disallow funding for it.

f. Emergency Management

We denied the Company's request for incremental Emergency Management positions in the 2008 Rate Order, but indicated we would entertain a better-supported request for incremental costs. On March 3, 2008, the Company filed a Master Implementation Plan (MIP) in Case 06-M-1078 reflecting addition of 16 new positions, funding for which it requests in this proceeding. The judges recommended full funding and rejected DPS Staff's proposed adjustment to eliminate funding for all but three of the new positions. DPS Staff takes exception, on the basis that the Company has failed to demonstrate its incremental costs for the positions. It notes that, as of December 8, 2008, four of the new positions had not yet been filled; and that the record lacks any evidence of the extent to which nine of them have been filled by internal transfers and, [*48] if so, the extent to which the vacated positions have been backfilled. [43] In essence, DPS Staff argues that only positions filled externally, or filled internally with vacated positions backfilled, by December 8, 2008, can serve as proof of incremental costs the Company can reasonably be expected to incur in the Rate Year.

The Company contends that DPS Staff's proposed adjustment is unreasonable because: the Company is filling the questioned positions in the current rate year at its own expense, in advance of funding in rates; the recommended decision finds the Company has made significant progress in filling the positions and is likely to fill them all by the beginning of the Rate Year; and the Company is filling the positions in accordance with its MIP (Tr. 242-43).

---

[41] DPS Staff's BoE, pp. 8-9.

[42] DPS Staff did not address that particular point on an anticipatory basis in its initial brief, although the Company witness had testified to it (Ex. 364, pp. 5-6), and did not discuss the SRAD at all in its reply brief.

[43] DPS Staff's BoE, pp. 11-13. DPS Staff also suggests that, if we do allow all 16 positions requested, we apply the historic hiring practices adjustment to them. Id., n. 7.

DPS Staff agrees that all 16 incremental emergency management positions [*49] are needed (Tr. 2848-50). The positions are included in the Company's MIP filed in compliance with our directive. [44] The Company's testimony and exhibits in this case explain the MIP in detail, including how the new emergency management unit would be organized and would function, how it would be staffed, including existing positions and positions moved from other units to it, and incremental costs (Tr. 192-95, 204-28; Ex. 74-80). DPS Staff testified that the Company is on target in fulfilling the recommendations of the Vantage Consulting, Inc. independent audit of the Company's emergency outage response program and the requirements of our Emergency Management Order (Tr. 553-65). The only issue currently outstanding on compliance with either the Emergency Management Order or our directive on justifying incremental funding for the program is the question of emergency management staffing.

[*50]

The essential issue here, as we see it, is the same one we discussed for the distribution engineering positions in IV(A)(2)(a) above. For positions newly proposed for the Rate Year, consistency demands that we apply the historic hiring practices adjustment regardless of whether some particular positions have been filled already. In addition, the historic hiring practices adjustment takes into account the extent to which hirees came from internal sources and, if so, the extent to which vacated positions have been backfilled. DPS Staff's proposal amounts to an allowance of less than 20% of the funding for these emergency management positions, which is inconsistent with even its own calculation of the historic hiring practices adjustment. The Company's exception and the recommendation of the judges do not recognize the general applicability of the historic hiring practices adjustment notwithstanding whether some or all of the positions have already been filled. Consequently, we deny DPS Staff's and the Company's exceptions. We will apply the judges' recommended historic hiring practices adjustment to these 16 emergency management positions and allow 45% of the requested funding for them. [*51]

g. Gold Program

The Company requested funding for its 18-month long Growth Opportunities for Leadership Development (GOLD) Program, which gives newly hired college graduates the opportunity to become future Company leaders through rotational job experience. DPS Staff noted that the Company's request did not reflect attrition the program has historically experienced. It maintained that the historical data supported an average attrition rate of nine percent per six-month segment of the program, or 18% annually. The judges found that DPS Staff had used only the two highest attrition rate class periods from five class periods of historical data in developing its proposed attrition rate. They recommended an adjustment using an average attrition rate of 14%, based upon all five class periods of available data. DPS Staff takes exception, denying that it selected the highest attrition class periods to calculate its proposed rate and claiming that it simply used the most recent and consistent data available, excluding outliers that skew the average. [45]

[*52]

The Company replies that DPS Staff's approach in fact rejected relevant data, ignored the most recent data available, and is one of a number of examples of DPS Staff's inconsistent approach to determining historical averages, in terms of numbers of years to consider and use of "judgment" in making adjustments to historical periods. [46]

Out of five class periods of available data, DPS Staff based its "historical average" on the two class periods with the highest attrition levels, those for 2005 and 2006 (Tr. 2468). DPS Staff's brief on exceptions claims there is no record basis for selecting a five-year average, because the data incorporate only four 18-month GOLD classes that have completed the program. This claim can only reasonably be interpreted to mean that DPS Staff considers the 2007 class data unusable, because that class has not completed the program. DPS Staff also rejects the 2003 class data as "inconsistent with the most recent attrition rates." Nonetheless, it then cites both [*53] the 2003 and the 2007 rejected class data (along with those for

---

[44] Case 06-M-1078, Consolidated Edison Company of New York, Inc.--Performance Audit of Outage Emergencies Response, Order Directing Submission of an Implementation Plan (issued January 17, 2008)(Emergency Management Order).

[45] DPS Staff's BoE, pp. 13-14.

[46] The Company's BOE, p. 6.

the 2005 and 2006 classes) as demonstrating that 2004 class data should also be rejected because significantly lower.

DPS Staff rejects the 2003 and 2004 class data as lower than the ″most recent″ data, meaning those for the 2005 and 2006 classes. As the Company points out, DPS Staff provides no explanation of why the 2003 and 2004 class data are the ″outliers″ and the 2005 and 2006 class data are not. DPS Staff also, in fact, threw out the ″most recent″ data, those for the 2007 class. But it provides no explanation for why the 2007 class data should be excluded from the calculation entirely, rather than filled out by extrapolating the final six-months' attrition from the attrition experience over the first twelve months of the class period. [47]

DPS Staff also inconsistently claims only now, on **[*54]** exceptions, that 2007 is a ″representative″ year and suggests that it calculated its proposed attrition rate with the 2007 class year data included, resulting in a 9% per six months average attrition rate for the class years 2005 through 2007 that supports its proposed adjustment. [48] But if the 2007 class year data were included in the average with 2005 and 2006 class year data, the six-month average attrition rate would, in fact, have been 8%, not DPS Staff's 9%; and the annual attrition rate would have been 16%, not DPS Staff's 18%. Moreover, as noted above, DPS Staff actually testified that its attrition rate was based on the 2005 and 2006 class year data. Thus, DPS Staff's claim in brief that its attrition rate calculation included the 2007 partial class data is contrary to the record. (It is, in fact, contradicted on the prior page of DPS Staff's brief, where DPS Staff rejects the use of that partial-program data. [49])

[*55]

DPS Staff's exception is denied. The record supports the recommended decision's attrition rate adjustment for the GOLD Program and we adopt its recommendation.

B. Productivity Adjustments

The Company proposed a productivity imputation of 1% ($ 10.6 million), with which the recommended decision agreed. The judges concluded that the Company had sufficiently explained how expected productivity savings had been reflected in the Rate Year revenue request to the extent practical and why opportunities for material productivity increases in excess of the 1% imputation typically applied were not likely from new programs. They accepted the Company's contentions that much of its new investment reflected increases in material costs or adding new facilities that would require greater inspection, maintenance, and repair; and that the productivity of significant numbers of new employees would be lower initially, pending training. The judges also agreed that most of the productivity gains from expenditures over the last five years would be captured in Test Year spending levels. They found insufficient record basis to conclude that productivity gains of 2% or 3% were likely to be realized in **[*56]** the Rate Year. The judges also explained that, if there were additional productivity gains over the 1% level, the Company would have the incentive to capture them in the short run, which would benefit ratepayers for the long term. They also noted that in these circumstances limiting the productivity imputation to 1% would leave the Company with some minimal upside earnings potential. The judges believed such a result would be consistent with their overall conclusion that a rate plan that recognizes minimal reasonable costs, reasonably minimizes Company downside exposure, and does not eliminate all upside earnings potential is advisable in light of economic uncertainty, relatively high capital costs, the Company's large construction program, and the benefit of preserving the Company's credit rating.

1. Positions of the Parties

---

[47] Such an extrapolation admittedly would amount to the same thing as just using the actual attrition rate experienced for the first year for the 2007 class.

[48] DPS Staff's BoE, p. 14.

[49] ″...[T]here is no record basis for selecting a five-year average; the data provided by Con Edison only incorporates four year's [sic]of GOLD program classes that have actually completed the program.″ Ibid., p. 13.

DPS Staff and the NYC Government Customers take exception, supporting productivity imputations of 2% (an additional $ 10.6 million over the 1% level) and 3% ($ 21.6 million more than the Company), respectively. [50] Both parties ground their recommended imputation levels on the recent and proposed substantial increases in the Company's investments in infrastructure [*57] and electric O&M, which they contend will provide significantly increased opportunity for productivity savings beyond the 1% typical imputation. They note the Company's concession that its rate filing did not specifically identify and quantify productivity savings from its capital and O&M programs in most circumstances (e.g., Tr. 4161). Although they acknowledge that some of the productivity gains from capital and O&M expenditures over the recent years will have been captured in Test Year data, DPS Staff and the NYC Government customers maintain that historic investments and continuing expenditures through the subsequent 27 months of Linking Period [51] and Rate Year will produce additional unidentified and unquantified savings, for which the productivity imputation is designed to provide a surrogate. DPS Staff does not rest its position on any specific analysis of the Company's capital and O&M expenditure proposals, but the expectation that those investments will increase reliability, enhance customer service, and increase operational efficiency. The New York City Government Customers point to their witness' identification of specific projects and programs, amounting to about [*58] $ 500 million in capital and $ 100 million in O&M expenditures in the Rate Year, that could provide the opportunity for increased productivity. The NYC Government Customers also argue that the recommended decision held to a 1% productivity imputation in order to give the Company an opportunity for excess earnings.

The Company opposes both DPS Staff's and the NYC Government Customers' exceptions. [52] The Company contends that DPS Staff does not support its proposed productivity figure with any study, data, or even example, nor does it identify the extent to which reduced costs would occur in the Rate Year. It challenges the NYC Government Customers' analysis of projects and programs as superficial, comprising review of Company white papers and noting next to their titles which ones their witness concluded would have some [*59] potential for producing savings in the Rate Year. The Company argues that much of the increased spending is driven by increased costs for materials and by expansion of facilities to meet load growth, neither of which would increase productivity opportunities. It notes that additional facilities for load growth, rather than increasing efficiency, add to work load and the need for inspection, maintenance, and repair. The Company also says its employee turnover, with substantial numbers of newer employees replacing more experienced retiring personnel, lowers productivity initially, pending training.

2. Discussion

DPS Staff's and the NYC Government Customers' contentions over whether the Company has adequately identified productivity savings specifically in its rate request are not particularly relevant. The usual 1% productivity adjustment applies in the absence of clear and convincing evidence that potential productivity improvements have been factored into a company's forecast [*60] of rate year operations. [53]

The arguments back and forth among the parties, as well as the evidence in the record, tend toward the qualitative rather than quantitative. This is unsurprising, given that the productivity imputation is intended to substitute for identifiable, quantifiable savings. DPS Staff's proposal is based on the position that 1% imputations have been applied during "normal" infrastructure investment times, while the Company's investment levels have been considerably higher over recent years than in the past and will continue to be so over the next five years. DPS Staff considers a single percentage point increase in the imputation, to 2%, to be a conservative means to recognize the potential from the increased level of investment, but it is not directly linked to any specific analysis of recent or projected Company infrastructure investment.

The NYC Government Customers have identified [*61] particular projects and programs where they think productivity gains can be achieved, and there are identifiable Company investment levels associated with those projects and programs.

---

[50] DPS Staff's BoE, pp. 14-16, and the NYC Government Customers' BoE, pp. 8-14.

[51] The "Linking Period" is the 15-month period from the end of the Test Year to the beginning of the Rate Year.

[52] The Company's BOE, pp. 12-18.

[53] Case 27567, Spring Valley Water Company, Inc. -- Water Rates, Opinion No. 80-16 (issued April 24, 1980), p. 14.

Even conceding that some savings might be achievable from those projects, however, there is no way to extrapolate the extent to which any savings that might arise would fall within the typical 1% imputation or might materially exceed that level -- especially approaching a 200% increase over that level. The NYC Government Customers' witness merely constructed a table showing each new Company project or program and, if the associated Company white paper mentioned any possibility of greater reliability or efficiency, labeled that project or program as a source of additional productivity, but with no analysis of the amount of savings that might be realized from any particular project or program.

Some of the productivity savings from increased investment in the years prior to the Test Year should have been captured in Test Year expenses. Nonetheless, a significant portion of investment in those prior years, plus expenditures in the Linking Period and the Rate Year, can reasonably be expected to provide substantial **[*62]** additional productivity gains in excess of the 1% imputation level. The Company argues that potential should be discounted somewhat for higher material costs and expansion of facilities to meet new load, but it too sheds no quantitative light on the issue. In our judgment, increasing the productivity imputation to 2% will reasonably reflect both the increased levels of investment and the discount for higher material costs and expansion of facilities for new load, even without expecting greater productivity from workforce expansion.

The Company argues that, if it does realize productivity savings greater than 1% in the Rate Year, it will retain the benefit of the additional savings only for the short term, after which they would be captured in a test year and soon begin redounding to the benefit of ratepayers for the long term. Consumers faced with current harsh economic realities will find the prospect of savings two or three years down the line, after the crisis may have passed, of small comfort, and no help in paying their bills now. Fair and reasonable rates should be fashioned in a way that better reflects the existing harsh economic environment and requires the Company, as a **[*63]** good corporate citizen, to act in ways that better contribute to improving that environment and demonstrate a commitment to operating as efficiently as possible in providing electric delivery service. We conclude that, in addition to reflecting the Company's greatly increased capital investment levels, a 2% productivity imputation will help achieve that goal and better balance the interests of ratepayers and the Company.

C. <u>Labor Escalation</u>

1. <u>Wage Progression Increases</u>

The Company's union employees receive wage progression increases twice a year until they reach the top of pay grade. The judges recommended adoption of DPS Staff's proposal to disallow $ 6.998 million in union employee wage progression increases for the Rate Year. They found DPS Staff had clearly established that the Company overstated its costs of wage progression increases, because it applied the costs of those increases to all union employees, even though many of those employees indisputably are at the top of grade and do not receive progression increases. They also agreed with DPS Staff's argument that annual savings from one employee retiring at the top of grade could offset the annual wage progression **[*64]** increases of several employees who have not yet reached that level. The recommended decision found that the Company had made no effort to provide evidentiary support for a reasonable level of wage progression increases to include in its cost of service and that progression increases should therefore be excluded from calculation of the labor escalation rate.

The Company excepts. [54] It claims that its rate filing included two wage progressions for all union employees who have not reached their maximum salary levels. The Company maintains DPS Staff's theory, accepted by the recommended decision, that retirements will offset the costs for replacements and their progressions is unsupported on the record. It also contends that most union employees hired over the last several years are not near their maximum pay rate, and that more union employees are being hired than are leaving, with their ranks increasing by 10% from 2004 through August 2008.

DPS Staff opposes the Company's exception. [55] **[*65]** It contends that the Company's labor escalation calculation included wage progression increases for all union employees, both those who have already reached the maximum pay level and those

---

[54] The Company's BoE, p. 13.

[55] DPS Staff's BOE, pp. 8-11.

who have not, thus overestimating the costs of wage progression increases. DPS Staff argues that although the Company says it has hired about 3,000 new employees receiving wage progressions, it has failed to provide the number of union employees who have already reached the top of grade and will not receive progressions. It also agrees with the recommended decision that the Company had the obligation to establish for the record the reasonable level of wage progressions to include in its cost of service, but did not even attempt to do so.

We note initially that the Company has not disputed DPS Staff's testimony that the vast majority of wage progression increases do not represent incremental costs for the Company. They are included in the Test Year labor cost (Tr. 2673-74). Nonetheless, the Company **[*66]** states in its brief on exceptions that, at very least, its rate filing also "included two annual wage progressions for all union employees that have not reached the maximum salary in their title." If this contention is intended to mean that the Company included progression increases for only those employees, it is not correct. DPS Staff has correctly pointed out that the Company's filing applied progression increases to the average union salary at December 2007 (Ex. 5, Sched. 2, p. 4), then multiplied that average salary by the entire number of union employees projected for the Rate Year (ibid., p. 2). The Company's own exhibit demonstrates that it included wage progression increases for all union employees, including those at the top of their pay grades and thus ineligible for progression increases. The Company acknowledged that about one-third of its employees are eligible for retirement (Tr. 371). It has not taken issue with DPS Staff's contention that most of these employees can reasonably be assumed to be at the top of pay grade and ineligible for wage progression increases. [56] For these reasons, the record clearly shows the Company's rate request overstates the wage **[*67]** progression costs that it will incur in the Rate Year.

The Company is correct that the recommended decision erred in finding the record sufficient to support DPS Staff's attempted demonstration that savings from one retiree being replaced by a new employee would be sufficient to offset the two annual wage progressions for 12 employees. The record does not in fact establish that Company union employees reach the top of grade in twelve years. Still, DPS Staff's argument is correct as a general matter, because it is reasonable to assume that employees take at least several years to move from the bottom of pay grade to the top and that retirements and other vacancies of union employees at top of grade are virtually certain to offset all incremental wage progression increases. [57]

[*68]

To sum up, the record clearly establishes that the Company's rate request includes wage progression costs it will not incur because (1) they double count progression increases already captured in the Test Year and (2) they are calculated for employees at the top of grade who are ineligible for progressions. In addition, the record supports the reasonable conclusion that the Company will experience savings from employees leaving the Company at top of salary grade that will more than offset the costs of wage progressions for new hires, even with an increasing union workforce. We deny the Company's exception.

2. End of Test Year Employment Count

In developing its labor escalation rate, the Company used its employee count for December 2007, the last month of the Test Year, to calculate Rate Year payroll costs. The recommended decision endorsed a DPS Staff adjustment (a $ 5.153 million reduction) [58] to use the average Test Year employee level to calculate Rate Year payroll. The 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 **[*69]** 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. The judges also found persuasive DPS Staff's contention that the Company's labor expense proposal for the Rate Year represents almost a 26% increase over the Test Year level, far out of line with the Company's average labor expense increase of less than 1% from 2004 to 2007.

The Company takes exception, contending that, because its employee count has been rising consistently over the past several years, the year-end count for the Test Year provides a more current, informed, and accurate representation of the

---

[56] DPS Staff's Initial Brief, p. 73.

[57] See Appendix III, Wage Progression Increases Example.

[58] DPS Staff's BOE, p. 10.

number of employees during the Rate Year than does the average count for the entire Test Year. [59] It maintains that using the 12-month average Test Year count will deny it Rate Year funding for the 143 employees comprising the difference between the one-year average count and the end of Test Year count, who it states will likely be employed [*70] throughout the Rate Year.

DPS Staff counters that using the average number of employees for the full Test Year, rather than just one particular month, more accurately reflects the Company's payroll costs for the entire Rate Year. [60] Using the average for the entire year, DPS Staff asserts, better tracks fluctuations that occur in the Company's staffing level over the course of each year, including the Test Year and the Rate Year. It argues that because the actual employee count fluctuates over the course of the year and reaches its highest level in December, using the December employee count will produce an overstated rate allowance.

As the recommended decision states, we are determining the cost of delivery service and resulting rates for the entire Rate Year, not just one particular [*71] month. The Company's approach assumes that its payroll will remain at a constant level, the highest level experienced in any month of the Test Year, for the entire Rate Year. The Company's exception argues only that the 143 additional employees reflected in the December 2007 count, but not the average Test Year count, are ″most likely″ to remain employed over the whole Rate Year. In fact, the Company's payroll will fluctuate over the course of the Rate Year as employees are hired or leave the Company's employ, just as it does every year. The use of an average count for the Test Year as a whole would better track that fluctuation, which includes the overall growth in employment on which the Company's position relies. We deny the Company's exception.

D. Normalization (Vacancy) Adjustment

The Company made a normalization adjustment to provide full Rate Year funding for some of the positions vacant during the historic Test Year. The judges recommended adoption of a DPS Staff counter-adjustment eliminating the Company's adjustment. They found that the Company admitted its normalization would provide funding for positions that were vacant for up to 11 months of the Test Year, if those [*72] positions were not vacant in the final month, which would in effect require ratepayers to fund non-existent costs of vacant positions. The judges also agreed with DPS Staff that average attrition in the Test Year should be reflected in the attrition predicted for the Rate Year and that the Company's adjustment failed to take sufficient account of attrition. They noted DPS Staff's citation of record evidence that the Company can be expected to experience about 1,000 vacancies during the Rate Year, which will continue about two months on average. The savings for those vacancies over that average period would amount to Rate Year savings of more than $ 12.8 million, much greater than the Company's vacancy normalization adjustment, which is about $ 7.3 million, or $ 7.9 million after escalation. Finally, the judges stated that they were not convinced the effects of the current economic downturn and Company efforts to attract and retain employees would eliminate or reverse such a large differential.

The Company takes exception. [61] It contends that its normalization does not attempt to capture all positions vacant in the Test Year, but only those filled by the end of the Test Year, which [*73] it argues are likely to remain filled through the end of the Rate Year. Although the Company acknowledges that its normalization would provide funding for positions vacant up to 11 months during the Test Year, it states that the normalization would also deny it funding for some positions that were filled for most of the Test Year, so long as they were vacant in the last month. Thus, it argues, some, but not all of the Test Year vacancies will be filled during the Rate Year and the Company is entitled to funding for them. The Company also repeats its argument that attrition should be lower in the Rate Year than the Test Year because of its steps to attract and retain employees and recent experience that the economic situation is causing employees to stay longer.

DPS Staff opposes the exception. [62] It agrees with the recommended decision's findings that average attrition in the Test Year should be reflected in the Rate Year and that the approximately 1,000 vacancies the Company can [*74] be expected

---

[59] The Company's BoE, pp. 14-15.

[60] DPS Staff's BOE, pp. 10-11.

[61] The Company's BoE, pp. 15-16.

[62] DPS Staff's BOE, pp. 11-13.

to experience in the Rate Year will provide savings significantly greater than the amount of the Company's normalization. DPS Staff adds that the Company's Rate Year labor forecast fails to take attrition and related labor expense savings for the Rate Year into account at all. It also states that there is no record evidence demonstrating how the Company's normalization level was determined, whether for positions vacant for 11 months of the Test Year but filled by the last month, or, as the Company now argues, for those filled for most of the Test Year but vacant in the last month. DPS Staff dismisses the Company's argument about the economic downturn leading to employees staying with the Company longer, because the only record evidence it cites relates solely to GOLD Program associates, not to Company employees generally. As for the Company's argument about its efforts to attract and retain employees, DPS Staff says those steps come with costs reflected in the revenue request and reiterates the recommended decision's finding that those efforts and the economic downturn are insufficient to eliminate the differential between the Company's normalization and the savings it **[*75]** will realize from vacancies in the Rate Year.

The Company claims on exception that its normalization seeks to capture only those positions filled by the end of the Test Year. Its reply brief to the judges, however, stated that it also included some additional positions. [63] Moreover, the Company provides no citation to the record to back up its claim that its normalization would deny funding for some positions that were filled for most of the Test Year if they were vacant during the final month. There does not appear to be any record basis for the claim. DPS Staff's point that there is no record evidence demonstrating how the Company's normalization was determined is correct. [64] Its argument that the Company's Rate Year labor forecast does not take attrition or resulting savings into account is also correct.

[*76]

The Company does not challenge the recommended decision's finding that the Company can be expected to realize $ 12.8 million in savings from attrition during the Rate Year, far more than necessary to offset its $ 7.9 million normalization adjustment, except to argue that the recommended decision should have given greater weight to the Company's claims that its efforts to attract and retain employees and the economic downturn will cut into the attrition level. DPS Staff correctly observes that the Company's testimony about experience with the effect of the economic downturn in reducing attrition relates only to the GOLD Program. Although the current economic turmoil might create some additional incentive for employees to stay longer than they otherwise would have, the Company's normalization amount is 38.3% less than the amount of savings it can be expected to realize from attrition in the Rate Year, based upon the attrition level experienced in the Test Year. The Company's claim that the results of its efforts to attract and retain employees and the current economic situation will cause a reduction in attrition is unquantified and entirely subjective. That those factors would produce **[*77]** nearly a 40% drop in attrition appears highly unlikely and thus unreasonable to assume. We adopt the judges' recommendation.

E. Variable Pay

The recommended decision concluded that funding the Company sought for its incentive variable pay plan for non-officer managers should be disallowed. The judges found nothing inherently wrong with an incentive pay plan from the ratepayer's perspective, but that the key questions were how a plan is designed and what implications it holds for the interests of ratepayers compared to those of stockholders. They considered the view that a variable pay incentive plan must be justified by specific, quantifiable productivity-associated savings inconsistent with the productivity imputation, which assumes many types of efficiencies occur in a utility's operations that are by nature difficult or impossible to identify and quantify specifically. They also noted that the Company's variable pay plan included several performance indicators that address goals for safety, environmental protection, and customer service that cannot readily be measured by dollar savings, as well as targets that further Commission performance requirements for reliability and **[*78]** customer service that benefit ratepayers.

---

[63] The Company's Reply Brief, p. 38.

[64] The Company's Initial Brief, p. 92, also claims that a list of normalizations at Tr. 2308 ″demonstrates that the requested amount for vacancies is less than the actual level of vacancies″ in the historic Test Year. There is no such list at that transcript page or that section of the Company's accounting panel's testimony, nor does Exhibit 274, referenced at Tr. 2308, contain any such list.

The recommended decision favored disallowing funding for the Company's variable pay program, however, because it is focused predominantly on achievement of a net income target. The judges explained that, regardless of performance on other measures, no manager receives any variable pay whatsoever unless the Company meets or exceeds 90% of its internally generated annual net income target. They found the net income factor overwhelms all other performance measures, benefits shareholders in the near and long terms, and holds only the possibility of some eventual benefit for ratepayers. They also noted that if the variable pay plan is funded and the Company misses the net income mark, all the funds go unspent and inure to the benefit of shareholders. For all these reasons, the judges recommended disallowance in this proceeding, but suggested that the Company might modify the plan to focus on benefits to ratepayers if it expected ratepayers to bear the cost of the plan in the future.

1. Positions of the Parties

The Company takes exception to the judges' recommendation. [65] It claims that the judges found the variable pay plan to be a reasonable **[*79]** and necessary business expense incurred to provide safe and adequate service. The Company then argues contradictorily that: (a) having found some of the plan's performance indicators would benefit ratepayers, the judges erred in failing to recommend allowance of at least some of the plan's costs; but (b) it is improper to try to segregate and quantify customer and shareholder benefits of the plan, citing *Abrams v. Public Service Commission*. [66] In addition, the Company maintains that the net income factor also provides benefits to ratepayers, because operating well financially shows investors and customers the Company is managing the business well and focusing on costs and quality of service, and mitigates size and frequency of rate requests, as well. The Company also contends that eliminating the net income target could cause employees to focus exclusively on performance targets at an unreasonable level of cost, resulting in higher future rates. In any event, the Company insists, it should be allowed recovery of 35%-50% of variable pay plan costs to reflect the 30% of the plan that relates to non-financial targets, plus a portion of the remainder related to financial measures. **[*80]** In the alternative, it proposes that it be allowed the opportunity to submit a modified plan, responding to the judges' concern with the net income threshold, in this proceeding, so that it could implement the plan for the Rate Year.

DPS Staff opposes the Company's exception. [67] It disputes the Company's contention that the recommended decision found the variable pay plan to be a necessary business **[*81]** expense. DPS Staff argues that the *Abrams* case dealt with cost recovery for an abandoned capital project, not discretionary incentive programs, and affirmed the Commission's broad discretion to consider all relevant factors and use a wide variety of methods to achieve just and reasonable rates balancing ratepayer and investor interests. In addition, DPS Staff disputes the claim that meeting the net income target demonstrates to investors and customers that the Company is managing its business well and controlling costs to mitigate the size and frequency of rate requests. It points to the judges' findings that higher earnings over the three years ended March 31, 2008, were not the result of productivity gains, but likely due to higher than forecast sales, as a result of warmer than normal weather, and over-recovery for property taxes. [68] DPS Staff adds that the frequency and size of the Company's recent and anticipated electric rate requests belie its claim.

[*82]

---

[65] The Company's BoE, pp. 17-20. In a letter dated March 25, 2009, addressing updates to several expense items, the Company indicated it was withdrawing its request for variable pay, but would revise its plan and seek funding in future cases. The parties' exceptions are therefore moot. We discuss the recommended decision and exceptions regardless, to clarify our position on the issues raised and provide guidance for the future.

[66] 67 NY 2d 205 (1986). The Company cites the case generally, without reference to any particular point in the decision that it believes supports its argument.

[67] DPS Staff's BOE, pp. 14-17.

[68] R.D., p. 79. The recommended decision accepted the Company's contentions on the reasons for higher than forecast earnings, including the argument that productivity was unlikely to have caused the over-earnings because its O&M expenses were also higher than forecast in those years.

NYECC also opposes the Company's exception. [69] NYECC agrees with the recommended decision that the plan is designed to benefit shareholders primarily and therefore should be funded by shareholders, not ratepayers. Like DPS Staff, NYECC argues that the *Abrams* case is inapposite. It contends that *Abrams*, in fact, runs counter to the Company's argument and underscores that this Commission has broad discretion to consider those factors it finds relevant, ignore those it judges not so, and give each factor the weight it deems proper. [70]

DPS Staff itself excepts to two of the judges' conclusions. [71] First, it protests the judges' finding that requiring any variable pay plan to be justified by specific, quantifiable productivity savings reflected in the cost of electric delivery service is illogical and unreasonable in light of the productivity imputation, which seeks to capture savings difficult to identify and quantify. **[*83]** DPS Staff maintains this requirement is a matter of Commission policy, because variable pay plans related to financial parameters can be used to increase shareholder returns, driving cost cutting measures that improve short-term profitability but threaten negative service and financial effects for customers in the long run, citing the opinion in Case 90-G-0734. [72] There, the Commission stated that, if the goals of a utility's incentive compensation plan relate to financial parameters and are met, cost savings not reflected in the revenue requirement will offset plan costs and make it self-supporting, thus giving the company a windfall at ratepayer expense. Here, DPS Staff says, the net income factor in the Company's plan dominates all other elements, providing an incentive to managers to improve financial performance in ways that might not benefit ratepayers, but run counter to their interests. Second, DPS Staff objects to the judges' invitation to the Company to revise the plan in a way that solves the problem with dominance of financial goals rather than targets that will benefit customers, because this proceeding is too far advanced to allow the Company to do so without denying **[*84]** due process to other parties. DPS Staff notes that we denied funding for the identical variable pay plan in the Company's last electric case, but, rather than redesign the plan to satisfy concerns identified in the 2008 Rate Order, the Company simply recycled the program funding request here.

The Company opposes DPS Staff's exception. [73] Beyond repeating its arguments in support of its own exception, the Company adds, first, that DPS Staff misinterprets the National Fuel Gas opinion. The Company distinguishes that case on the ground that here its variable pay plan is tied to several operating performance indicators, rather than just financial parameters. It also argues that, because of operating targets that can provide benefit to ratepayers, disallowing all costs of the Company's plan will unjustly benefit ratepayers. The Company takes the position that **[*85]** insisting the variable pay plan be self-supporting based on specific, quantifiable productivity savings ignores the performance parameters that the judges see as furthering customer interests but not readily measurable in dollars saved. It claims that the mix of financial and performance goals in the plan keeps managers focused on meeting reliability, safety, and customer service targets in a cost-effective manner and on achieving budget goals reflected in its revenue requirement, rather than on cost savings beyond those reflected in the revenue requirement.

2. Discussion

The Company is wrong when it states that the recommended decision found its variable pay plan to be a reasonable and necessary business expense in providing safe and adequate service. The judges found only that performance incentive plans are ″a common means to improve corporate performance and competitiveness.″ Nothing in the recommended decision suggests that the Company's particular incentive pay plan, in **[*86]** its current form, is either reasonable or necessary, or even that it contributes to safe and adequate service, although the judges did note some positive aspects to the plan. That the recommended decision noted some of the performance indicators in the plan could benefit ratepayers does not warrant any cost allowance for the Company. Assuming that those criteria could provide ratepayer benefit, what remains is an enormous net income hurdle that must be overcome before customers could benefit from any of the other features of the plan. If the Company believes it would be unjust for ratepayers to benefit from some features of the plan without bearing

---

69 NYECC's BOE, pp. 2-4.

70 Citing 67 NY 2d at 211-212.

71 DPS Staff's BoE, pp. 14-19.

72 Case 90-G-0734 et al., National Fuel Gas Distribution Corp. -- Rates, Opinion 91-16 (issued July 19, 1991), pp. 7-8.

73 The Company's BOE, pp. 18-22.

a portion of the plan's cost, nothing requires it to continue the plan in its current form.

The Company's reliance on the *Abrams* case for the proposition that we may not segregate and quantify ratepayer and shareholder benefits of the variable pay plan not only erroneously rests on the ground that the judges found the plan reasonable and necessary, but is seriously misplaced in any event. As DPS Staff and NYECC maintain, *Abrams* confirms this Commission's broad discretion to weigh and apply any of a wide range of factors and methods **[*87]** if the end result provides just and reasonable rates, balancing the interests of ratepayers and shareholders. [74] The Company's argument that the net income target benefits ratepayers as well as shareholders is not persuasive. There is no assurance ratepayers will receive any benefit whatsoever from the Company achieving its net income target.

The Company's own arguments on the productivity imputation are instructive. As DPS Staff points out, the Company maintains that its overearnings to the tune of $ 100 million a year in the rate years ending in 2006 through 2008 were not the result of Company excellent performance in enhancing productivity, but its good fortune in experiencing lower property taxes than forecast and warmer weather that drove higher sales than forecast, even in the face of higher O&M expenses than forecast. Those results certainly benefited shareholders. They provided no short-or long-term customer benefits, however, and did nothing to demonstrate **[*88]** the Company was managing its business well. Moreover, those results did nothing to show the Company was controlling costs to mitigate the size and frequency of rate increases, because two successive large rate increase requests followed immediately on their heels. In addition, as the recommended decision points out, if the Company fails to meet the net income threshold, none of the funding for the variable pay plan goes to benefit ratepayers. Rather, it inures entirely to the benefit of shareholders.

The Company's argument that the mix of performance and financial parameters in its plan keeps its managers focused on meeting operating parameters that benefit ratepayers in a cost-effective manner also fails. For one thing, the Company's explanation of the reasons for its overearnings experience during the rate years ending in 2006 through 2008 shows the weakness of its claim. In addition, the net income threshold for receiving any incentive pay ensures that managers will see meeting that threshold as more important than achieving any of the operating goals, especially since a maximum of only 30 percent of the potentially achievable pay depends on meeting the non-financial targets.

To **[*89]** the extent that the recommended decision holds out the prospect that a variable pay incentive plan including financial parameters, such as the net income factor, if properly structured and balanced with performance factors that promote reliability, safety, good environmental stewardship, and good customer service, might be acceptable, it is inconsistent with the policy set forth in the National Fuel Gas case. The Company's contention that National Fuel Gas does not apply in this case because its plan is not based exclusively on financial parameters is not correct. Nothing in the National Fuel Gas decision suggests it is limited in such a way, rather than applicable to any plan that includes financial parameters. Moreover, given the dominance of the net income parameter in the Company's variable pay plan, it is based nearly exclusively on financial parameters, suffers the same defects, and should be treated identically. If 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 include financial parameters.

On the other hand, DPS Staff's **[*90]** position goes beyond the policy in National Fuel Gas. DPS Staff has taken the position in this proceeding that any incentive pay plan must be self-supporting, with specific, quantifiable savings reflected in a utility's cost of service. National Fuel Gas requires such a demonstration only where "the goals are related to financial parameters." [75] The recommended decision correctly points out that performance indicators that address goals for safety, environmental protection, and customer service cannot readily be measured by dollar savings; others might further performance requirements for reliability and customer service that benefit ratepayers. Some of these types of performance measures might provide the kind of difficult to identify or quantify savings intended to be captured by the productivity imputation. We do not see that it would be categorically unjust or unreasonable for ratepayers to bear the costs of an

---

[74] 67 NY 2d at 211-212, 215.

[75] Case 90-G-0734 et al., supra, p. 8.

incentive plan limited to such factors and not including financial parameters. [76]

[*91]

As noted earlier, the Company has withdrawn its variable pay plan request now and the Company's and other parties' exceptions are therefore moot.

F. Other Incentive Compensation (Non-Officer and Officer Long-Term Compensation)

The Company provides long-term incentive compensation for officers and non-officer managers in the form of performance-based restricted stock (PBRS) units and time-based restricted stock units. PBRS performance targets are based 50% on the variable pay plan parameters and 50% on the incremental value an equity investor receives by holding one share of common stock over a period of time. The judges found that, because 50% of the long-term incentive plan for officers and non-officer managers is infected by the same financial parameters as the variable pay plan and the other 50% rests exclusively on shareholder return, ratepayer funding of the long-term incentive plan is even more objectionable than in the case of the variable pay plan. The judges therefore recommended adopting DPS Staff's adjustment to disallow funding for the long-term incentive plan.

The Company takes exception for the same reasons it put forward concerning the incentive variable pay plan. [*92] [77] DPS Staff and NYECC oppose on the same grounds on which they opposed the Company's variable pay plan exception. [78]

The issues for the long-term incentive plan are the same as for the variable pay plan except, as the recommended decision explains, that the long-term incentive plan is even more heavily based on financial parameters that benefit shareholders rather than ratepayers. For the reasons explained in section IV(E) above, we deny the Company's exception.

G. Directors' Compensation

The Company provides 1,500 shares annually to each director on its board as compensation for service. Shares must be held until the director no longer serves. The recommended decision [*93] endorsed a DPS Staff adjustment to disallow the associated annual cost of $ 0.690 million. The judges found that the compensation mechanism clearly furthers the interests of shareholders and has no direct relationship to providing reliable, reasonably priced service, concluding that ratepayers thus should not fund the expense. They noted that the Company could readily compensate directors in some way other than shares of stock, particularly stock that must be held until they leave the board.

The Company takes exception. [79] It contends that the stock awards are a legitimate cost of doing business and achieving good corporate governance, necessary to attract and retain qualified directors, and part of a compensation package similar to those of comparable companies. It claims the awards are made for service, not tied to Company performance, and thus

---

[76] We express no opinion on the acceptability of the various non-financial parameters in the Company's variable pay plan or how they might function in any revised plan the Company might propose. We do not think the record is sufficiently developed for that purpose. In 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. Finally, an acceptable plan would have to be shown not to provide excessive overall compensation and benefits compared to the overall compensation and benefits packages of similarly situated companies.

[77] The Company's BoE, pp. 20-21. It is not clear whether the Company's March 25, 2009, letter that, among other things, withdrew its request for funding its variable pay plan intended to include this long-term incentive compensation funding request. Thus, we consider its exception.

[78] DPS Staff's BOE, pp. 14-17; NYECC's BOE, pp. 2-4.

[79] The Company's BoE, pp. 21-22.

constitute compensation for service, not an incentive plan. DPS Staff and NYECC oppose on the same grounds on which they opposed the Company's variable pay plan exception. [80]

[*94]

The Company's argument that the stock awards are not tied to the Company's performance and merely compensation for service, rather than an incentive plan, is incorrect. Because the compensation is in the form of stock, it provides greater benefit to the director, all other things being equal, if the Company performs well financially, to the benefit of shareholders independent of any benefit to ratepayers. The Company provides no reason why it cannot compensate directors in some other form that is not aligned with the interests of shareholders but will still be sufficient to attract and retain competent directors, if it wishes ratepayers to bear the cost. If it chooses to retain this form of compensation, then the shareholders with whose interests it is aligned should shoulder the cost. We therefore deny the Company's exception.

V. EXPENSES -- OTHER O&M

A. Pensions/OPEBs Expense Level

The recommended decision included a total recommendation of $ 145.2 million for pension and other post-employment benefits (OPEBs) expense. The recommendation included the Company's original filing request of $ 112.2 million, plus $ 2.8 million based on new collective bargaining agreements. **[*95]** In addition, the judges included a $ 30.2 million placeholder reflecting only a partial update for one known change, pending receipt of a full update including known changes for all pertinent variables for 2008 in the Company's brief on exceptions. The recommended decision also reflected a three-year amortization of the then-projected $ 19.28 million deferred pension/OPEBs expense for the Linking Period, amounting to $ 6.43 million for the Rate Year.

In its brief on exceptions, the Company now forecasts a pension/OPEBs expense level of $ 206.99 million. [81] The Company states that the update is based on information from Buck Consultants using actual 2008 year-end data, including a reduction in the discount rate from 6% to 5.75% and actual return on assets of negative 28%, compared to the original assumption of positive 8.5%. The Company now calculates the deferred Linking Period pension/OPEBs expense as $ 45.78 million, or $ 15.26 million in the Rate Year, assuming three-year amortization.

[*96]

DPS Staff concurs with the Company's update except for one element. [82] DPS Staff states that the Company's update is incomplete, in that it employs the Company's old 2008 labor capitalization rate of 35.5%, rather than the Company's new 38% rate for 2009. Completing the update by correcting for the labor capitalization rate results in a Rate Year pension/OPEBs expense level of $ 199.8 million, DPS Staff states, a $ 54.6 million increase over the level reflected in the recommended decision. DPS Staff also notes that the labor capitalization rate affects calculation of the Linking Period deferral. The correction lowers the deferral amount from the Company's projected $ 45.78 million to $ 44.38 million, increasing the Rate Year allowance from $ 6.43 million to $ 14.79 million. DPS Staff also suggests that, given the size of the increased deferral amount under a three-year amortization, the Commission should consider an amortization period of up to 10 years.

We will adopt the Company's **[*97]** update for pension/OPEBs expense in the Rate Year and the Linking Period deferral, as corrected and completed to include the Company's current labor capitalization rate. (In any event, we note that pension/OPEBs expense is subject to full true-up.) We prefer not to add another category of current expenses being deferred for the longer term, however, and will maintain the three-year amortization period for deferred pension/OPEBs expense.

B. Municipal Infrastructure Support Expense Level

---

80 DPS Staff's BOE, pp. 14-17; NYECC's BOE, pp. 2-4.

81 The Company's BoE, pp. 22-23.

82 DPS Staff's BOE, pp. 17-18.

The Company presented a $ 74.4 million updated request for municipal infrastructure or "interference" support work needed in response to construction by New York City in lower Manhattan. DPS Staff proposed a $ 17.8 million reduction, to $ 56.6 million. The Company's forecast relied on use of the City's average "commitment target" levels [83] published in January of 2003 through 2007 and average of actual subsequent expenditures to commitment target levels. DPS Staff's approach used the City's average actual annual expenditure levels for the same period, adjusted for general inflation. DPS Staff also proposed a one-way reconciliation mechanism under which the Company would defer for the benefit **[*98]** of ratepayers any actual cost savings the Company realizes compared to the forecast amount, but absorb any cost overruns. The Company urged a two-way true-up, preferably, or otherwise none at all.

The judges found that, except for an 18% shortfall in the City's most recent year, its January commitment projections have been quite close to actual expenditures. Based on the January 2008 City projection the Company forecast a large increase in Rate Year expense compared to historic growth rates and 2007 Test Year expense. The judges noted that even in normal circumstances, projecting municipal infrastructure interference costs is difficult, and there is no good evidence on the record whether the current economic downturn is likely to increase or decrease the City's expenditure level. **[*99]** Under DPS Staff's forecast and a downward-only reconciliation, if the Company's forecast proves correct it would have a $ 20 million shortfall, with the possibility of future recovery if it filed a deferral petition. On the other hand, ratepayers would be out $ 20 million, with no clear way to be made whole, if the Company's forecast and no reconciliation mechanism are adopted but DPS Staff's forecast is correct. The recommended decision also observes that, although the Company's actual municipal infrastructure support expenditures are driven largely by the level of construction carried out by New York City, the Company can influence the efficiency with which its work is carried out.

Taking these considerations into account, the judges recommended against adoption of DPS Staff's forecast method and adjustment, but in favor of its proposed one-way downward reconciliation method. They also suggested that if other updated forecasts are considered at the time of our decision, the City's January 2009 construction forecast might also reasonably be taken into account.

1. Positions of the Parties

DPS Staff excepts to the recommendation to use the Company's forecast. [84] It contends that, **[*100]** while the City's relevant actual infrastructure expenditures and the Company's actual interference expense grew less than 1% and 0.5%, respectively, from 2003 through 2007, the Company's Rate Year forecast is $ 23.4 million, or 46%, higher than Test Year expense, which is unreasonable in light of the economic downturn. It points to a May 2008 press release from the Mayor saying the City would reduce its capital budget by 20% for the 2009-2012 period (Tr. 2512) and a post-record November 2008 City Council budget note setting forth significant capital commitment reductions for the same period in relevant categories. DPS Staff maintains the judges' observation that the economic downturn could increase or decrease the City's expenditures is unsupported by evidence and speculative. Additionally, DPS Staff says a report it recently received from the Company confirms its Rate Year interference forecast, by showing the Company's actual 2008 interference expense to be only $ 0.6 million greater than DPS Staff's estimate using its own method, but more than $ 10 million below the Company's internal estimate using the Company's method. DPS Staff concludes by stating that, should we adopt the **[*101]** Company's methodology, we should substitute the City's actual commitments in 2008 for the Company's forecast and, as the judges recommended, update the City's fiscal year 2009 forecasts using the City's January 2009 commitment plan.

The Company responds, underscoring the judges' findings about the difficulty of predicting interference costs even in better economic circumstances and the uncertainty over whether City infrastructure expenditures will increase or decrease in the current economy. [85] It counters DPS Staff's reference to the Mayor's May 2008 press releases and the post-record City Council budget note by referring to a recent presentation by the mayor saying no reductions in the City's capital

---

[83] The percentage of overall projected infrastructure expenditures in the City's total commitment plan expected to be engineered, bid, and awarded each June-July City fiscal year, given that not all projects in the plan will be undertaken.

[84] DPS Staff's BoE, pp. 9-11.

[85] The Company's BOE, pp. 8-10.

commitment plan for 2009 are currently planned. The Company objects to DPS Staff's use of a five-year historic average plus general inflation when materially lower than a forecast based on the "best available information," because there is no basis for assuming we would adhere to that **[*102]** approach in the future if faced with information suggesting the result would overestimate interference costs. It argues we rejected such a purely historical approach in our 2008 Rate Order, in the face of DPS Staff and Company support of a higher estimate based upon their knowledge and review of City plans. The Company contends consistent application of DPS Staff's method here with downward-only reconciliation will result in under-collection of interference costs over time.

The Company concludes by offering a revision of its own forecast using the City's actual 2008 commitments, as DPS Staff suggested on exceptions, and the City's January 2009 commitment plan, as the judges and DPS Staff suggested. It states that the revised forecast drops to $ 72.5 million from the Company's prior forecast of $ 74.4 million. The Company objects to reflecting the update in its cost of electric delivery service, however, for reasons it has generally explained for updates at this stage of the proceeding. **[*103]**

For its own part, the Company excepts to the judges' recommendation of downward-only true-up. [86] It cites the judges' acknowledgement of the difficulty of forecasting interference costs, especially in the current economy (alluding to press reports about possible stimulation through increased governmental spending on infrastructure), its considerable lack of control over the costs, and inconsistency with the judges' recommendation of bilateral reconciliation for property taxes. The Company also says the record contains no evidence to support the suggestion that a two-way reconciliation reduces or eliminates its incentive to control interference costs, but shows its aggressive efforts to do so. It also contends it has had bilateral mechanisms in place for interference costs in prior rate plans, with no allegations it has failed to seek to minimize those costs.

DPS Staff opposes the Company's exception. [87] Its only argument, however, relates solely to its own forecast method. DPS Staff **[*104]** says that, because it did not adjust its forecast further to account for the impact of the economic downturn (criticizing the Company's reference to unspecified press reports), its forecast is conservative (presumably, on the high side) and thus one-way true-up is warranted. Presumably, its position implies that, because the judges' recommendation is more conservatively high, it warrants downward-only reconciliation even more.

2. Discussion

Given the current economic downturn, we conclude it is unlikely that the Company will incur municipal infrastructure support expense approximately $ 17.8 million higher than the inflation-adjusted historic average of $ 56.6 million. The record also shows that the Company's approach in a recent year yielded a forecast $ 18 million higher than the actual O&M expense. Application of DPS Staff's approach also yields better results based on a comparison with 2008 actuals. The Company's forecast also rests on more variables than DPS Staff's, increasing **[*105]** the chances of error.

In reaching this conclusion, we give no weight to competing post-record releases from the Mayor and City Council about the magnitude of New York City's construction program in the coming year. We also have no way of knowing today how, if at all, the City's actual construction in the coming year will be affected by the economic stimulus package, which might provide significant support for municipal and other government infrastructure spending.

The judges recommended the Company's forecast in light of their separate recommendation to apply a one-way, downward-only reconciliation to municipal infrastructure O&M costs. Under that mechanism, revenues allowed for projected municipal infrastructure O&M that proves greater than the actual would be held for the future benefit of ratepayers. Given the extent to which the Company's municipal infrastructure operation and maintenance expenses are driven primarily by the City's plans and only secondarily by the efficiency with which the Company completes the necessary work, we decline to adopt a one-way, downward-only reconciliation for this expense category.

C. T&D Non-Labor Program Expense

---

[86] The Company's BoE, pp. 23-24.

[87] DPS Staff's BOE, p. 18.

1. Five-Year Underground [*106] Inspection Program

The judges recommended against a DPS Staff adjustment intended to disallow $ 16.7 million for an increase of 35,000 in the estimated number of underground structures still requiring inspection. They found a lack of evidentiary support for DPS Staff's contention that the additional inspections were an artifact of double counting from errors in reconciling databases and under-scheduling unique inspections and determined that the Company had provided sufficient evidence in support of its updated estimate. The recommended decision did not address a DPS Staff claim in its initial brief speculating that the Company's management of the inspection program might be inadequate.

The judges also recommended against the Company's request for an additional $ 6.6 million for repairs of defects found during underground inspections. The Company proposed that level of funding based on a DPS Staff proposal in Case 04-M-0159 for the times to be allowed for completing such repairs. Our order in that case issued shortly after the parties filed trial briefs in this proceeding. [88] The judges noted that the Safety Standards Order extended the times for two of three categories of repairs, [*107] increasing the time for Level II priority repairs by 100% and for Level III priority repairs by 50% over the times DPS Staff had proposed and the Company assumed in making its estimate. [89] Because the judges could not evaluate the extent to which the Company would need any additional funding for repairs, given the longer allowed repair times, they recommended against the Company's update request.

a. Positions of the Parties

DPS Staff takes exception to the recommendation against its proposed $ 16.7 million adjustment for additional inspections. On exception, DPS Staff says the additional funding should be denied because (a) the Company poorly managed the inspection program, by not planning properly, waiting too long to begin the program, and not addressing an issue with its inspection tracking [*108] database; and (b) additional funding was allowed in the Company's last electric rate case to hire additional mechanics to address remaining inspections, but the Company used contractors instead and only to perform inspections, not make repairs. [90] The Company responds that DPS Staff merely rehashes arguments it made to the judges that were rejected, provides no explanation of how the recommended decision's analysis errs, and adds irrelevant argument about contractors versus employees. [91]

For its part, the Company excepts to the judges' recommendation against the $ 6.6 million for repairs discovered during inspections. [92] It maintains that because the Safety Standards Order only extends deadlines for completing repairs, but does not reduce the work to be performed, their recommendation provides no funding for mandated work. The Company acknowledges that the extension will reduce its Rate Year costs, but not to zero. It proposes allowance of [*109] $ 3 million as a reasonable proxy, reducing its original estimate by more than half. It maintains the changes flowing from the Safety Standards Order constitute changed circumstances it could not have anticipated and that some reasonable allowance for repairs is warranted.

DPS Staff opposes the Company's proposal. [93] It reviews the three levels of repairs and their deadlines: Level I, within one week; Level II within one year; and Level III, within three years. DPS Staff also states the Test Year includes funding for repairs of the Level I type. It contends that the Company has provided no evidence in support of its $ 3 million proposal.

b. Discussion

To begin, we note that DPS Staff's argument about Company mismanagement of the underground inspection program fails

---

[88] Case 04-M-0159 et al., Safety of Electric Transmission and Distribution Systems, Order Adopting Changes to Electric Safety Standards (issued December 15, 2008)(Safety Standards Order).

[89] Id., pp. 15-18.

[90] DPS Staff's BoE, pp. 20-21.

[91] The Company's BOE, pp. 27-28.

[92] The Company's BoE, pp. 25-27.

[93] DPS Staff's BOE, p. 19.

to address any of [*110] the reasons set forth in the recommended decision for accepting the Company's estimate of the number of additional inspections needed, on which the funding estimate is based. In addition, its argument about the Company hiring contractors instead of employees to carry out underground inspections is irrelevant to the issue of the Company's estimate of the number of additional inspections needed, on which the funding estimate is based. Thus, we see no basis for granting DPS Staff's exception.

The Company has now provided updated information on the number of inspections it will have to conduct during the Rate Year, however. Its latest annual report on stray voltage and facility inspections indicates that, rather than 94,000 inspections, it will conduct about 75,900 inspections during the Rate Year as it completes its initial five-year inspection cycle and embarks on the next inspection round. [94] We will therefore use that number as the basis for determining a reasonable allowance for Rate Year inspections.

[*111]

The record does not include a total cost figure for the 75,900 inspections that can now be expected to be carried out in the Rate Year. The Company's original filing estimated a cost of $ 23.8 million to perform 59,000 inspections, yielding an average cost of $ 403 per inspection. Its update estimated $ 40.5 million to conduct 94,000 inspections, for an average of $ 431 per inspection. These are only mathematically derived unit costs, however. The record does not include any direct information on an appropriate overall or unit cost for 75,900 inspections. Both the $ 403/inspection figure and the $ 431/inspection figure are derived in the same manner from total cost estimates supported by the Company. The Company urges the use of the higher figure because of changes to the scope of work associated with inspections that have increased the efforts associated, on average, with each inspection.

The Company is also requesting funding for repairs of conditions discovered during underground inspections, however, despite the Safety Standards Order's extensions of deadlines for Level II and Level III repairs. We understand the judges' reluctance to recommend funding for repairs, since they [*112] lacked specific information on an alternative to the Company's $ 6.6 million pre-Safety Standards Order request. On the other hand, the Company made a good faith effort to estimate the costs of required repairs during the hearings. It was disadvantaged by the fact that our decision in the Safety Standards Order issued only after the hearings ended and trial briefs were submitted in this proceeding.

Given the extended three-year deadline for Level III repairs, there might be no need for any Level III work in the Rate Year. The Company can reasonably be expected to have some additional costs for Level II repairs, although they are likely to be significantly less than it had estimated for the Rate Year. [95] On the other hand, there also appears to be duplication in the Company's estimates for inspections and repairs, since the work scope the Company cites for the changes to its specifications for inspections, which entail additional repair work, overlaps the scope covered by its separate estimate for costs of repairs (Ex.324, pp. 10-11). To minimize the chance of duplication while recognizing the potential for additional repair costs, we find it reasonable to use the $ 403/inspection [*113] unit cost derived from the Company's original filing, applied to the 75,900 inspections now projected for the Rate Year, together with the $ 3 million it now requests for repairs of defects detected during inspections. The total allowance will therefore be $ 33.6 million.

One additional consideration remains. The 75,900 inspections in the Rate Year are greater than the 56,500 annual inspections the Company will have to carry out on a continuing basis in the future. To moderate the effect of those

---

[94] Consolidated Edison Company of New York, Inc., 2008 Stray Voltage Detection and Electric Facility Inspections Report (filed January 15, 2009), p. 47, Table 12. The Company has 82,400 inspections remaining to complete in its first five-year round of inspections, which runs through the end of calendar 2009. It will then begin its second five-year round, and beginning in calendar 2010 will have to inspect an average of 56,500 per year of its 282,500 underground facilities. For the Rate Year, the number of inspections to be performed therefore is: 82,400(.75) + 56,500(.25) = 75,900.

[95] Level II defects detected in the current rate year would have to be repaired in the Rate Year. Those detected in the early month of Rate Year might well be the subject of repair work in the Rate Year, given the one-year deadline under the Safety Standards Order.

additional one-time costs, we are requiring that the costs of the incremental inspections for the Rate Year ($ 7.8 million for 19,400 inspections) be collected through a two-year amortization. [96] Accordingly, the total Rate Year allowance for five-year underground [*114] inspections and repairs is $ 29.7 million.

2. Structural Integrity/Station Betterment

DPS Staff proposed to disallow $ 0.765 million of the Company's overall request for funding for structural integrity/station betterment work at substations. The judges disagreed, finding that DPS Staff did not contest the need for certain work for which cost estimates were not available or the Company's contentions that facility maintenance and repair work is continually being identified and more projects will be identified during the Rate Year. Instead, the judges recommended a disallowance of $ 375,000 on the ground that the Company should have been able to do better at estimating costs of painting and concrete work at a number of substations. [*115]

DPS Staff excepts, maintaining that the Statement of Policy on Test Periods requires cost projections that are readily verifiable and that there are no cost estimates from the Company or identified known changes to support the $ 765,000 of requested funding that it challenged. [97] The Company argues in response that it identified the need for the projects, that DPS Staff did not contest the need for the work or that the work is of a continually emerging nature, that detailed estimates for individual substation projects were still being developed, and that its estimates represented approximate costs based on historical expenditures for similar work scopes (Ex. 169 (redacted), pp. 867-70). [98]

We agree with the judges that the Company could, and should, have done a better job of estimating the costs of these substation maintenance and repair projects. The Company's contention that its estimates represented approximate costs based on historical [*116] expenditures for similar work scopes and that such substation maintenance work is continually being identified implies that it has the experiential base, and should have the resulting cost information, to have provided more detailed specific support for the 29 substation projects in question for which it provided no specific support in response to DPS Staff discovery. Since it did not provide that support, we do not adopt the judges' recommendation, but disallow the recommended $ 375,000.

3. Mobile Stray Voltage Testing

DPS Staff proposed a $ 414,000 disallowance to the Company's request for mobile stray voltage testing. The judges recommended against the adjustment, finding that DPS Staff's estimated Rate Year cost failed to account for monthly variations in the number of vehicles required for each scan. The judges found the Company's estimate more reasonable because it is based upon competitively-bid costs for scans to be carried out over the full year 2008. The 2008 bid costs were significantly lower than they would have been if based upon Test Year costs, because competitive bidding reduced per-scan costs. DPS Staff excepts. [99] It claims that its estimate does take into account [*117] month-to-month variation in number of vehicles required for each scan because it was extrapolated from actual expenditures for the first five months of 2008. The Company did not respond.

DPS Staff's estimate is based on less reliable data than the Company's. DPS Staff provides no reasoned explanation of why an estimate extrapolated from only the first five months of the year can reliably be assumed to capture variation in number of vehicles required per scan for 12 months of the year. We agree with the recommended decision that, because the Company's forecast is based on competitive bidding for the scans to be carried out over the full year, it does reliably capture variation in number of vehicles required per-scan over the course of the entire year. DPS Staff's exception is denied.

---

[96] In accordance with our discussion of treatment for deferred overhaul and Local Law II expenditures, Section IX(E) infra, we authorize carrying charges for these expenses based on the other customer capital rate in the Rate Year and the Company's overall rate of return subsequently.

[97] DPS Staff's BoE, pp. 21-22.

[98] The Company's BOE, pp. 28-29.

[99] DPS Staff's BoE, pp. 22-23.

4. Annual Stray Voltage Testing

DPS Staff proposed to disallow just over $ 1 million of the Company's $ 8.9 million request for non-labor O&M costs of annual stray voltage testing. The judges recommended **[*118]** that the adjustment be rejected. They explained that the Company had presented reasoned arguments against DPS Staff's proposal, which DPS Staff had not addressed in brief.

DPS Staff takes exception, claiming that its adjustment is based on historic spending levels, historic hiring rates, or both and that it did brief those issues generally. [100] The Company opposes the exception, noting that the recommended decision summarized the Company's criticisms of DPS Staff's adjustment, which DPS Staff had failed to address. [101]

DPS Staff's adjustment was not based upon historical hiring practices at all, but only on its historic costs (non-labor) adjustment, which it says is based upon analysis of individual budget items. DPS Staff presented no specific analysis of annual stray voltage testing, simply a bare number representing the amount of its adjustment. In fact, DPS Staff failed to address in brief at the trial level the Company's reasons for objecting **[*119]** to the adjustment. It still presents no reasoned argument responding to the Company's criticism of the adjustment.

Our own review of the record indicates that the amount the Company has requested appears excessive. The Company spent $ 5.297 million in 2006 and $ 5.520 million in 2007 on annual stray voltage testing. It spent $ 1.6 million through the first four months of 2008, which, if annualized and escalated by a generous $ 2 million for more activity during the summer, would result in about $ 6.8 million for the full year. A trend line analysis based on these figures produces a reasonable allowance of $ 7.5 million, or a downward adjustment of $ 1.4 million from the level reflected in the recommended decision. Although this allowance does not explicitly account for a potential increase in contractor costs, we note the Company asserts that the additional contractor resources will also assist it in performing repairs required by the Safety Standards Order, [102] for which we have already provided additional funding in the context of five-year underground inspections. Our allowance here provides an additional $ 0.7 million over the annualized and escalated amount for 2008, which we **[*120]** conclude is reasonable.

5. Maintenance Associated with Capital Work

DPS Staff proposed a $ 3 million adjustment to maintenance associated with capital work (Ex. 173, p. 5). Noting the Company's contention that DPS Staff gave no reason for the adjustment and that DPS Staff did not address the issue in brief, the judges recommended that the Company's full request be approved. DPS Staff excepts, claiming that its adjustment was based upon historic spending levels, historic hiring rates, or both and that it briefed those issues generically. [103] The Company objects that DPS Staff did not explain the basis for its adjustment in testimony or in brief and even admits in its brief on exceptions that it did not address this adjustment or the particular basis for it specifically. [104]

[*121]

The judges' recommendation is understandable in light of DPS Staff's failure to address this issue and the Company's arguments specifically in its trial briefs. DPS Staff still has not identified even in its brief on exceptions the specific basis for its adjustment or addressed the Company's reasons for opposition set forth in its initial trial brief. Nonetheless, although not cited anywhere by DPS Staff, further review of the record indicates there is testimony identifying this adjustment as part of DPS Staff's historic hiring practices adjustment ($ 2.920 million for labor and $ 0.104 million for associated material and supplies)(Tr. 3012-13). Thus, as in the case of the emergency management positions discussed in IV(A)(2)(f) above, to maintain consistency we will apply the judges' recommended historic hiring practices adjustment and disallow 55% of

---

100 DPS Staff's BoE, p. 23.

101 The Company's BOE, pp. 29-30.

102 The Company's Initial Brief, p. 149.

103 DPS Staff's BoE, p. 23.

104 The Company's BOE, p. 30.

the requested funding ($ 2.772 million -- $ 2.677 million for labor and $ 0.095 million for associated materials and supplies).

D. Shared Services Non-Labor Program Expenses

1. West 28th Street

The recommended decision disagrees with a DPS Staff proposal to disallow $ 6.828 million the Company requested for relocation of its [*122] West 28th Street Work-Out Services Center to accommodate New Jersey Transit's construction of two new rail tunnels. The judges found the best evidence on the record shows the project likely to proceed in 2009, driving the Company's associated costs. The judges recommended the Company's requested funding, subject to deferral of all reimbursements from New Jersey Transit for the benefit of ratepayers.

DPS Staff takes exception on the grounds that there is insufficient evidence the project will progress or affect the Company as projected; and that, in any event, the recommendation does not provide adequate protection for ratepayers. [105] It argues that the project could be delayed or the Company might not have to relocate all of its facility. DPS Staff notes that the Company itself suggested the costs associated with the project be reflected in its cost of electric delivery service subject to full reconciliation. Finally, DPS Staff maintains that we should require the Company to pursue cost reimbursement from New Jersey Transit aggressively.

[*123]

The Company opposes DPS Staff's argument that the project might not proceed during the Rate Year, citing a record of decision issued by the Federal Transit Administration approving it. [106] The Company agrees to full reconciliation of the total actual moving and relocation costs to the amount allowed in rates, net of reimbursements, as long as reconciliation occurs after all costs have been paid and all reimbursements have been received, which it says might result in carryover of costs and reimbursements beyond the Rate Year. The Company cites the recommended decision's finding of no evidence that it would not pursue reimbursement aggressively and insists that it has done that so far.

Notwithstanding the judges' recommendation and the contentions and counterpoints of the parties, we note that nothing in the Company's arguments suggests New Jersey Transit should not reimburse the Company for the full costs it might incur for relocation of the West 28th Street facilities. Consequently, [*124] it is reasonable for the Company to seek reimbursement of its costs from New Jersey Transit in the first instance, rather than their imposition on ratepayers. The Company may defer for future recovery those costs that it can show it reasonably incurred to accommodate the project and used its best efforts to have reimbursed, without success. This approach also will obviate DPS Staff concerns about whether relocation will occur during the Rate Year or whether the Company will have adequate incentive to seek cost reimbursement from New Jersey Transit.

2. Central Field Services - Vehicle Fuel

The judges rejected all of the parties' proposed vehicle fuel cost estimates as unreliable, because of the extreme drop in petroleum and vehicle fuel prices over the latter part of 2008. They recommended determination of vehicle fuel cost for the Rate Year on the basis of the latest available Energy Information Administration (EIA) Short-Term Energy Outlook (STEO) monthly report projections of annual average regional retail vehicle fuel prices for 2009, adjusted downward by $ 0.30 per gallon to reflect the Company's bulk fuel purchase savings.

On exceptions, the Company states that it does not [*125] object to use of the latest available STEO monthly projections, adjusted as recommended to reflect its bulk fuel purchase savings, but insists that regional prices should be used and objects to the fact that the placeholder the judges included in calculating the recommended decision's cost of electric delivery

---

[105] DPS Staff's BoE, pp. 23-24.

[106] The Company's BOE, pp. 31-32.

service was based on national rather than regional price projections. [107] DPS Staff and NYECC do not except to the recommended decision, but oppose the use of regional rather than national prices. [108] DPS Staff claims the Company provides no references to the retail prices it wishes to use and that regional data were available before and throughout the proceeding, so that substituting regional data now would not be for a "known change."

DPS Staff's and NYECC's objection to the use of regional fuel price projections is not well taken. The Company made its argument for use of regional prices in its reply trial brief **[*126]** and in the recommended decision the judges endorsed using regional prices from the EIA STEO. Neither DPS Staff nor NYECC took exception to that recommendation and their opposition amounts to interposing an exception tardily. In any event, the East Coast regional gasoline price projection in EIA's STEO report for March 10, 2009, is two cents lower than its national average price projection; and no regional price projection for diesel fuel appears to be available in that report. The STEO report projects an average 2009 retail price for regular grade gasoline, including taxes, in the East Coast region of $ 1.94 per gallon. [109] It projects a national average 2009 retail price for on-highway diesel fuel, including taxes, of $ 2.19 per gallon. [110] Adjusting by $ 0.30 per gallon yields prices to the Company for its discounted bulk fuel purchases of $ 1.64 per gallon and $ 1.89 per gallon, respectively; and a total vehicle fuel allowance of $ 2.355 million. [111] We will include this amount, which is $ 654,000 less than the $ 3.0 million placeholder in the recommended decision, in the Company's cost of electric delivery service.

[*127]

E. Informational & Institutional Advertising

Long-standing Commission policy on informational and institutional advertising limits expenditures for that purpose to the range of 0.04% to 0.10% of a utility's operating revenues. [112] The Company sought an allowance of $ 17.573 million for its informational and institutional advertising program, amounting to 0.211% of total electric operating revenues under its September 2008 updated rate request. It cited language in the 2008 Rate Order where we indicated that, if it thought the standard Policy Statement allowance would be inadequate, it could submit program plans for review with its request for additional funding. **[*128]** [113] DPS Staff proposed to disallow all but $ 6.7 million. The judges recommended an allowance of $ 12.931 million, providing for all of the Company's request but $ 4.642 million targeted for informing customers and the public about its work on infrastructure development.

The judges analyzed the Company's contentions about higher costs and greater difficulty of reaching target audiences in its service territory and found that the record did not provide sufficient evidence to determine whether the Company's per capita costs for reaching its audiences are incrementally higher than in other parts of the State or whether the Advertising Policy Statement is in or out of date any more for the Company than for other utilities in New York. With respect to the $ 8.8 million the Company budgeted for energy conservation **[*129]** tips they determined that energy conservation is an important Commission-supported message and did not accept DPS Staff's position that this part of the budget costs too much. They noted that the EEPS case [114] is considering the extent to which funds should be allowed for program-specific

---

107 The Company's BoE, pp. 27-28.

108 DPS Staff's BOE, pp. 19-20; NYECC's BOE, pp. 4-6.

109 U.S. Energy Information Administration Short-Term Energy Outlook Report, March 10, 2009, Table 4c - U.S. Regional Motor Gasoline Prices and Inventories (http://www.eia.doe.gov/emeu/steo/pub/mar09.pdf).

110 Ibid., Table 2 - U.S. Energy Nominal Prices.

111 The Company's electric operations allowance is determined using the same formula set forth in n. 248, p. 151, of the recommended decision: [(1,798,639 gal. diesel x $ 1.89/gal.) + (1,806,636 gal. gasoline x $ 1.64)] x 37.0%. (Since these volume figures relate to all of the Company's operations, the 37% factor adjusts for the share applicable to electric operations.)

112 17 NYPSC 1R, Statement of Policy on Advertising and Promotional Activities of Public Utilities (issued February 25, 1977) (Advertising Policy Statement), pp. 11R-15R.

113 2008 Rate Order, pp. 47-48.

114 Case 07-M-0548, Energy Efficiency Portfolio Standard (EEPS).

energy efficiency marketing, and that the allowance here for energy conservation tips should be reduced if the energy conservation tips funding requested here duplicates funding expected there. They found that the emergency preparedness and supplier diversity portions of the Company's proposed budget ($ 1.839 million each) are consistent with good public policy, no party presented any specific reason to reduce the proposed level of funding, and DPS Staff had suggested emergency preparedness deserved even more. They rejected all proposed funding for information to tell customers and the public how rates underwrite improvements in infrastructure, as a subject customers are not likely to wish to pay nearly $ 5 million a year to hear about in average times, which constitutes a luxury in an economic downturn.

[*130]

1. Positions of the Parties

The Company takes exception to the elimination of funding proposed for disseminating information on how it is investing rate revenues in infrastructure improvement. [115] It maintains that the Advertising Policy Statement recognizes this category of advertising as in the public interest and a legitimate business expense recoverable in rates, which should not have been dismissed merely because the judges thought it unnecessary. It adds that infrastructure advertising also provides additional opportunity to provide its contact information to customers and the public. With respect to energy conservation tips, the Company says that the advertising proposed here addresses energy efficiency generally and does not include specific marketing for specific programs. The latter would be covered only in the EEPS case and coordinated with its general energy conservation advertising to avoid overlap.

DPS Staff takes exception on the grounds that the recommended decision [*131] errs by supporting funding in excess of the 0.04% to 0.10% of operating revenues range allowed under the Advertising Policy Statement and by engaging in programmatic review of the four proposed advertising categories, which it states the Advertising Policy Statement was intended to end. [116] DPS Staff maintains that, although it did not make specific recommendations on relative priorities of the several advertising categories, it did offer guidance, including an increase to emergency preparedness and the view that energy conservation advertising would better support the State's goals if focused on specific programs, implying funding should be reduced here and concentrated on EEPS case programs.

Although DPS Staff also agrees with the Company that infrastructure advertising is specifically allowed by the Advertising Policy Statement, it opposes the Company's proposal to restore all funding for infrastructure advertising. [117] Instead, it asserts its proposed level of $ 6.7 million is [*132] sufficient for all of the Company's informational advertising needs and consistent with its historic spending levels, including infrastructure advertising. DPS Staff notes that the 0.04% to 0.10% of operating revenues range in the Advertising Policy Statement would result in a budget range of $ 3 million to $ 7.5 million for the Company, but that under that Statement the allowed percentage within the range should be inversely proportional to the size of the utility.

The Company opposes DPS Staff's exception. [118] It contends the recommended decision accepted the Company's baseline premise that it was responding to our indication in its last electric rate case that it was free to make its case for a higher allowance than would be permitted under the Advertising Policy Statement and that it has done so with specific and detailed programs to address areas of major concern to its customers, the public, and this Commission. The Company asserts that the recommended decision found DPS Staff's [*133] proposed adjustment would require cuts to its energy conservation, emergency preparedness, and supplier diversity advertising programs with no explanation of why such reductions would be reasonable. The Company argues that DPS Staff's criticism of the level of proposed spending on energy conservation tips is inconsistent with the Policy Statement's intent to avoid scrutiny of particular advertising and, in any event, that Statement expressly recognizes energy conservation advertising as proper subject matter. Finally, the Company says the recommended decision did distinguish between its general conservation advertising allowable in this case and its energy

---

[115] The Company's BoE, pp. 28-29.

[116] DPS Staff's BoE, pp. 25-27.

[117] DPS Staff's BOE, pp. 20-21.

[118] The Company's BOE, pp. 33-35.

efficiency program-specific advertising to be addressed in the EEPS case. The Company reiterates that its programs will complement each other, not overlap.

2. Discussion

The Company's and DPS Staff's insistence on the Advertising Policy Statement intent to do away with program or advertisement-specific review of informational [*134] advertising would be correct if the level of spending the Company proposed fell within the spending limits set forth in that Policy Statement. The Policy Statement set a limit on informational advertising expenditures in order to avoid specific review of individual advertising areas and particular ads. But here the Company proposes spending at a level more than 100% greater than permissible under the Policy Statement, based upon specific proposed justifications for specific programs. Nothing in the Policy Statement indicates any intent to preclude program-specific review of informational advertising proposals that fall outside the scope of its spending limits. Thus, the judges' review of the merits of the individual program categories was both permissible and necessary, under the belief that we had previously recognized the possibility of allowing funding beyond the range allowed under the Policy Statement.

The Company's and DPS Staff's argument that the Advertising Policy Statement specifically recognizes spending on infrastructure advertising as a legitimate expense is beside the point. The Policy Statement recognizes a number of different types of informational advertising as legitimate [*135] business expenses, but it nonetheless imposes limits on spending on them that can be recovered from ratepayers. Here, the Company proposes to depart from the limitations of the Policy Statement. If it seeks approval of an expense allowance far in excess of that permitted under the Policy Statement, then it is subject to review and determination of how much of which of the proposed categories of expenditure should be allowed as reasonable.

In the 2008 Rate Order, however, we reiterated our concern over the subjective nature of evaluating informational and institutional advertising and noted the continuing merit of the Advertising Policy Statement. [119] The arguments of the parties over the Company's proposals in this case, together with the analysis in the recommended decision, serve to underscore the quagmire that having to engage in such a subjective evaluation creates. It was precisely to avoid these kinds of subjective disputes, and the commitment of resources necessary to review and evaluate them, that this Commission originally adopted the Policy Statement. Rather than see future proceedings flounder in similar morasses, we renew our commitment to the Advertising Policy Statement [*136] for the same reasons this Commission originally adopted it. Accordingly, rather than grant the Company's exception or adopt the judges' recommendation, and in light of the Company's overall plans for informational advertising as presented in this case, we will increase the allowance within the Policy Statement range to 0.08% of the Company's electric operating revenues.

F. Employee Welfare Programs

The Company requested $ 517,000 to fund a work - home wellness program for its employees. The judges adopted a DPS Staff proposed adjustment to eliminate that funding. They noted that the requested funding increase applies not only to new program elements, but also to expansion of existing elements to serve more employees. Thus, they found that the Company should have been able, [*137] but had not even tried, to project offsetting savings in the Rate Year.

The Company excepts. [120] It maintains there is no basis for assuming savings will fully offset the costs of the work - home wellness program. The Company says DPS Staff did not attempt to quantify savings from the program or provide any evidence such a projection could be made. It suggests that the 1% productivity imputation the judges recommended for capturing unquantifiable savings should be considered to capture unquantifiable savings from this program. It also argues that the recommended decision does not explain why a reduced health insurance projection in its update for this proceeding should not be attributed in part to the program. The Company maintains customers will benefit in intangible ways from the program and should not be able to receive its full benefits without contributing to its costs.

---

[119] We did not intend to suggest there that we would be open to departure from the range established in the Policy Statement, but only the 0.06% (inadvertently stated as 0.6%) standard allowance for a company of Consolidated Edison's size.

[120] The Company's BoE, pp. 29-30.

DPS Staff opposes the exception. [121] DPS Staff contends that literature the Company introduced shows that [*138] there should be health care cost savings in the Rate Year. It argues that the Company has had a number of employee welfare programs in place that, as DPS Staff maintains, should have produced savings such as the health insurance reductions reflected in the Company's update filing, demonstrating that the expanded work-home wellness program should produce off-setting savings that the Company had the opportunity to project but did not. In addition, DPS Staff suggests that discretionary programs like this one should be rejected if savings do not fully offset their costs, because of the current economic climate and the impact of a rate increase on customers.

We find unpersuasive the Company's arguments that cost savings might not fully offset increased work-home welfare program costs and that DPS Staff failed to quantify potential savings or demonstrate that savings could be quantified. The recommended decision did not find that cost savings would fully offset increased costs. It did find [*139] that the requested increase applies to expansion of existing program elements to serve more employees. Thus, based on experience, the Company should have been able to project some offsetting savings in the Rate Year. It should have presented evidence of the extent of cost savings that could reasonably be expected in the Rate Year or a plausible explanation of why such savings are not quantifiable. It did not. Moreover, since the Company has not shown why savings from the expansion of the program are not quantifiable, its argument that the unquantifiable savings from the program are captured by the productivity imputation is irrelevant.

Nor did the judges have the obligation to show why health insurance savings in the Company's update should not be attributed in part to the existing work-home wellness program. The Company had the obligation to show that the program did contribute in part to those health insurance savings, if it believed that to be true. In any event, it is not clear how those particular past savings could reasonably be attributed even in part to the expansion of the program for which the Company requests funding in the Rate Year.

Finally, we note that the Company is [*140] not required to expand the work-home wellness program and bear the increased costs without a contribution from ratepayers, if it believes ratepayers will enjoy benefits from program expansion without contributing to its costs. Otherwise, in these challenging economic times, the Company should be looking for additional ways to economize, rather than ways to expand discretionary programs. We deny the Company's exception.

G. Insurance

1. Directors and Officers Liability Insurance

The Company sought $ 4.007 million for its electric operations' share of $ 300 million in directors and officers liability (D&O) insurance coverage. The recommended decision found that the Company's level of coverage was excessive in relation to that of other comparable companies and recommended a coverage limit of $ 200 million as reasonable, but conservative. The judges rejected a DPS Staff proposal to allow only 10% of the allocable premium costs, to cover legal defense, as focused too narrowly on where money from a successful claim would flow and on the possibility of covered acts close to illegal or fraudulent that ratepayers should not have to pay through premiums funded in rates. Instead, the [*141] judges recommended an allowance of 90% of the premium cost for $ 200 million of coverage, which they calculated as $ 2.404 million (with a related adjustment to rate base for prepaid insurance).

a. Positions of the Parties

The Company excepts for three reasons. [122] First, it challenges the recommended decision's finding that $ 200 million in coverage is sufficient. The Company cites advice from insurance brokers that $ 300 million is prudent; refers to a peer group study showing its coverage level is bracketed by two other utilities whose capitalizations bracket its own; lists factors distinguishing it from other companies, included in broader surveys, that face different risks; and points out survey results showing utilities to be the business class most susceptible to D&O claims (Tr. 1820-21, 1824-25; Ex. 260, p. 53; and Ex. 294).

---

[121] DPS Staff's BOE, pp.21-22.

[122] The Company's BoE, pp. 31-34.

Second, the Company takes issue with the limitation of recovery to only 90% of premium costs allocable to electric operations. The Company maintains [*142] the requirement that it bear 10% of the cost is unsupported by any explanation and arbitrary. It contends that the Company showed D&O coverage to be a necessary and legitimate business expense; that the recommended decision recognized the nearly universal purchase of D&O coverage by all different kinds of companies and the benefit it provides to ratepayers in facilitating attraction of competent directors and officers. The Company states that the record contains no support for allocating responsibility for the D&O premium between ratepayers and investors and notes that the judges rejected DPS Staff's attempt to do so on the basis of financial benefit or the argument that coverage might extend to acts close to fraudulent or illegal (Tr. 1766, 1810-17).

Finally, the Company contends that the recommended decision incorrectly calculated the amount of its adjustment to the premium allowance for the lower coverage level of $ 200 million. It explains that premiums are not determined on a proportional basis, as the recommended decision presumed, but on a declining layer basis as coverage levels increase (Ex. 396-A, response to CPB 20). Thus, the Company calculates the allowance for the judge's [*143] recommendation of funding for 90% of the portion of the premium for $ 200 million in coverage allocable to its electric department should be $ 2.9 million. If we accept rate recovery of the full allocable cost for the electric department of the premium for $ 200 million, the Company calculates the allowance should be $ 3.2 million.

NYECC opposes the Company's exception on proper coverage level and contends the recommended decision's result is supported by the record. It argues that a 2007 study by Towers Perrin of public companies with assets or market capitalization greater than $ 10 billion shows, as the judges found, the Company is over-insured by $ 131 million to $ 154 million in carrying $ 300 million in coverage (Ex. 260, pp. 14-15). NYECC also points to the Company's own peer group surveys of utility D&O coverage as showing the Company has been over-insured by $ 33 million to $ 150 million over the period from 2004 through 2006, and that most of the Company's peer companies had coverage limits as a percentage of market capitalization significantly lower than the Company did (Ex. 396-B). NYECC contends that, although the Company listed a number of factors that ″could″ affect [*144] the amount of appropriate coverage for it compared to other companies, there is no evidence those factors applied to the Company more than others in the peer group or that those other companies do not face risks comparable to those the Company faces. It dismisses the Company's reference to advice of insurance experts on the ground the experts did not submit testimony and were not subject to cross-examination. NYECC discounts the contention that the 2007 Towers Perrin study identifies utilities as more ″susceptible″ to D&O claims than other classes of businesses by citing the study's very expansive definition of susceptibility and pointing out that, under that definition, the Company itself has zero susceptibility to claims.

Opposing the Company's arguments about the calculation of the premium allowance in the recommended decision, NYECC supports the allowance in the recommended decision on the grounds that the 2007 Towers Perrin shows the premium the Company would pay in the Rate Year for $ 300 million in D&O coverage is excessive compared to other public companies with assets or market capitalization of more than $ 10 billion and should be lower because of the Company's more favorable [*145] zero claim susceptibility and claim frequency for the last 10 years and that the trend in premiums is decreasing (Ex. 260, pp. 6, 33, 34, 52, 53).

DPS Staff excepts to the judges' recommendation that 90% of the electric department's share of the D&O premium be reflected in rates. [123] DPS Staff maintains that its proposed allowance of only 10% of the applicable premium amount is appropriate because if a court finds a director or officer committed a wrongful act, that act need not be found illegal or fraudulent to be found imprudent. It argues that it would be unreasonable to require ratepayers to pay for a court judgment resulting from a wrongful act by a director or officer, therefore neither should the cost of insurance to protect against such payment be borne by ratepayers.

The Company opposes DPS Staff's exception. [124] It says DPS Staff focuses on whether imprudent acts might be covered by D&O insurance, ignoring the recommended decision's acknowledgement that the insurance can [*146] cover acts that are ″less than perfect but not imprudent.″ The Company states that despite incidents covered by prudence proceedings, the

---

[123] DPS Staff's BoE, pp. 27-28.

[124] The Company's BOE, pp. 22-25.

Company has faced no D&O insurance claims in the last 10 years and its premiums have not increased as a result of the prudence incidents (Tr. 1769, 1811-12; Ex. 397, sheet 4). If a prudence proceeding did cause a premium increase, the Company maintains, the issue would be whether ratepayers should bear the resulting increased cost of insurance, not the basic cost in the absence of imprudence, claiming that in the 2008 Rate Order we rejected similar attempts to link D&O insurance costs to incidents and prudence investigations. [125] The Company says DPS Staff does not dispute that nearly all companies have D&O insurance, it is necessary to attract and retain directors and officers, and is similar to protection provided to public officials through taxpayer indemnification. [126] The Company repeats its argument that there is no basis for trying to separate ratepayer and investor benefits from D&O insurance and that we have historically recognized insurance cost as a fundamental business cost reducing the risk and cost of utility service. The Company **[*147]** concludes by contending that in the 2008 Rate Order we entertained the possibility of a future cap on D&O insurance, but never suggested it was not a legitimate business expense fully recoverable in rates. [127]

b. Discussion

There is substantial evidence in the form of surveys of various public companies and Company-designated peer group utilities to support the recommendation that the Company's coverage is higher than reasonable and should be lowered by about $ 100 million, to $ 200 million. The Company's claims about factors that might affect it compared to other companies might distinguish a number of companies in the general survey, but are not credible with respect to the utilities in the group the Company itself selected and designated as peers.

The Company focuses **[*148]** on only two of more than 22 companies in the peer group in Ex. 294. [128] Those two companies are not a representative sample. Looking at only those two ignores other utilities with greater market capitalization and equivalent or lower coverage than the Company's. As NYECC suggests, there is no evidence that the factors the Company argues could affect the amount of appropriate coverage for it compared to others apply to the Company significantly differently from others in the peer group, especially those 11 companies with market capitalization over $ 10 billion (which the Company emphasizes as an important threshold), or that the risks those other companies face are significantly different from those the Company faces. For those 11 companies, the mean coverage as a percentage of market capitalization was 1.63% and median coverage as a percentage of market capitalization was 1.48%. Applying those percentages to the Company's $ 10.3 billion capitalization for 2004 indicates the Company was over-insured by about $ 80-$ 100 million at the time. Using the same comparison for the entire 22-member peer group suggests the Company was over-insured in 2004 by about $ 15 million to $ 80 million. **[*149]**

Results for 2005 and 2006 (Ex. 396-B), show that the extent of the Company's over-insurance compared to similar utilities has been increasing. For 2005, looking at the 16 companies in Consolidated Edison's peer group with over $ 10 billion capitalization, the mean and median coverage as percentages of market capitalization were 1.36% and 1.32%, respectively. Applying those percentages to the Company's $ 11.3 billion capitalization for 2005 indicates the Company was over-insured by about $ 150 million at that time. Using the same comparison for the entire 23-member peer group indicates that the Company was over-insured by about $ 90 million (mean) to $ 155 million (median). For 2006, the 16 companies in Consolidated Edison's peer group with over $ 10 billion capitalization had mean and median coverage as percentages of market capitalization of 1.20% and 1.15%, respectively. Applying those percentages to the Company's $ 12.3 billion capitalization for 2006 **[*150]** indicates the Company was over-insured by about $ 140 million to $ 150 million. Using the same comparison for the entire 22-member peer group suggests that the Company was over-insured by about $ 110 million (mean) to $ 160 million (median). Thus, comparison of the Company's peer group coverage levels to its own supports the judges' finding that the Company was substantially over-insured. Their recommendation of a coverage limit of $ 200 million is reasonable, but conservative, and we adopt it.

Turning to the percentage limit on recovery of the premium allocable to electric operations, DPS Staff's argument for its proposed 90% disallowance focuses too narrowly on the possibility of coverage for imprudent acts. As the recommended

---

[125] Citing 2008 Rate Order, p. 51.

[126] Citing Public Officers Law §§ 17-18.

[127] Citing 2008 Rate Order, pp. 51-52.

[128] Exhibit 294 is the same as the table for 2004 in Ex. 396B.

decision notes, D&O insurance, like other forms of liability insurance, can cover acts that are not perfect, but do not rise to the level of fraud, illegality, or imprudence. In such circumstances, in the absence of insurance ratepayers might otherwise have to bear resulting costs beyond just the legal defense costs DPS Staff's proposed 10% allowance is intended to address. Moreover, as the Company argues, the record shows it has experienced no claims on its [*151] D&O insurance over the last 10 years, despite prudence incidents. On 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. [129]

[*152]

We agree with the Company that the premium share should be recalculated, reflecting the decreasing cost premiums for the multiple layers of coverage that comprise its overall D&O insurance package (Ex. 396-A, response to CPB 20). NYECC's purported opposition actually does not respond to the Company's point about miscalculation of the cost effect of the recommended reduction in coverage level, but rather argues that the premiums the Company is paying are excessive and should be adjusted downward. NYECC made the same argument to the judges, but they were not persuaded, and NYECC did not except timely. Thus, we adopt the Company's recalculation of the cost of $ 200 million in coverage as 80% of the $ 4.007 million cost of $ 300 million in coverage, or $ 3.206 million. Of that amount, we will allow 50%, or $ 1.603 million, as the share allocable to ratepayers. (The related adjustment to rate base for prepaid insurance is revised accordingly.)

2. Other Insurance Escalation Rate

The Company applied a 5% escalation factor to project Rate Year premiums for other insurance, such as property, workers' compensation, business travel, and crime, while DPS Staff advocated escalation by the [*153] gross domestic product (GDP) inflation rate of 2.7%. The judges recommended the Company's percentage as accounting for the current financial situation of the insurance industry and historic loss experience.

DPS Staff takes exception. [130] It maintains that the Company's adverse historic loss experience relates only to excess liability coverage and the recent steam pipe rupture incident, the effects of which have been isolated by the cap we imposed on such insurance. [131] With respect to considerations such as the current financial situation, including the AIG bailout, and other factors the Company cited, DPS Staff states that the Company's position rests solely on internal discussions with its risk management department, unsupported by any empirical evidence or analysis. DPS Staff discounts the recommended decision's reliance on Company reference to hurricane experience and increased heat potential under global warming as unsupported in the record, relating only to property insurance, which is less than 10% of total insurance costs, and, in any event, not a new phenomenon but well-known and factored into the industry's risk assumptions and thus premiums. DPS Staff emphasizes that the [*154] Company's insurance expense has actually decreased in each of the three most recent years and the GDP factor is used to escalate most other O&M items.

The Company responds in opposition that its proposed escalation rate was based not only on the judgment of its internal risk management department, but talks with insurers, in light of overall market risk, taking into account recent hurricanes, the current financial crisis in the insurance industry, recent claims in the utility industry, and the Company's own historic

---

129 The Company's allusion to its argument on variable pay, referring to the *Abrams* case, supra, as precluding a balancing of customer and investor interests, has no more merit here than it did there.

130 DPS Staff's BoE, pp. 27-30.

131 Case 08-S-0153, Consolidated Edison Company of New York, Inc. - Steam Pipe Rupture Prudence, Order Adopting the Joint Proposal (issued November 13, 2008).

loss factor (Tr. 2322-23). [132] The Company contends that its own property insurance rates have been affected by the risk of hurricanes and its prime insurance rates were affected by filing a claim for customer payments a collection agent failed to remit. [133]

[*155]

The Company's argument about adverse effects of its own historic loss experience is not overwhelming. The record does not actually address any specific impact of hurricanes on the Company's own claim history, but only the general effect of hurricanes on the insurance industry. (Beyond that, the Company points only to the single incident where it filed a claim for recovery of its loss on a collection agent's failure to turn over payments received.) The risk of hurricanes, even in the context of increased heat potential from global warming, seems sufficiently well known that it is reasonable to conclude that current premiums reflect it. Moreover, the argument that hurricanes would affect only property insurance, which is but 10% of the Company's total insurance expense, seems well taken.

DPS Staff does not address the Company's testimony that general utility industry claims experience will drive premiums up higher than the general inflation [*156] rate. The Company's testimony amounts to just one line, however, and does not include any explanation of the experience to which it refers. In addition, the Company's own insurance premiums have dropped in each of the last three years.

We see no good reason on the record to treat the costs of the Company's general insurance differently from the way we treated health insurance costs in the 2008 Rate Order and the way the judges recommended health insurance costs be treated here. Our standard practice groups these costs with a number of other costs that might increase or decrease. As we explained in the 2008 Rate Order, we expect the Company, like other utilities, to manage the grouped costs as a whole within the general rate of inflation. We grant DPS Staff's exception.

H. Research & Development Capitalization Adjustment

The Company sought $ 20.025 million for research and development (R&D). [134] DPS Staff proposed an adjustment of $ 2.731 million to reflect capitalization of a portion of the R&D expenditures. The judges found both parties' arguments on the issue cryptic and declined to make a recommendation. Solely as a placeholder, their recommended cost of electric delivery [*157] service reflected an adjustment half way between the two parties' proposals.

DPS Staff takes exception, explaining that a portion of R&D projects will prove successful and, according to accounting rules, must be capitalized. [135] Although the projects to be funded for the Rate Year are the same as those for which the 2008 Rate Order authorized funding after applying a capitalization adjustment, DPS Staff maintains that a similar capitalization adjustment must be made for the Rate Year to reflect the portion of Rate Year spending on projects that can be expected [*158] to prove successful. Since all of the projects for which the Company seeks funding are the same as in its last electric rate case, DPS Staff applied the same capitalization ratio that the 2008 Rate Order applied to the Company's R&D request.

In opposition to DPS Staff's exception, the Company begins by reiterating that the projects to which DPS Staff applies its proposed adjustment are the same ones to which the adjustment was applied in the last electric rate case. [136] It contends

---

[132] The Company's BOE, pp. 25-27.

[133] Citing Case 04-M-0629, Consolidated Edison Company of New York, Inc. - Deferral of Uncollected Revenues Due to Failure of CashPoint, filed May 14, 2004.

[134] The Company's witness on R&D testified that it was requesting $ 19 million (Tr. 3428), the same amount allowed in the 2008 Rate Order after accepting a $ 2.7 million capitalization adjustment. Its accounting panel presented a request of $ 20.025 million. The difference represents the Company's application of its 7.78% labor escalation and 5.19% general escalation to forecast total R&D expenditures for the Rate Year to the base amount (Ex. 5, Sched. 1, p. 3).

[135] DPS Staff's BoE, pp. 31-32.

[136] The Company's BOE, pp. 35-37.

its request in this case has effectively already accepted that adjustment again here by requesting only $ 19 million, the amount we approved then after deducting $ 2.7 million for capitalization. Thus, the Company argues that DPS Staff's proposed adjustment is duplicative. The Company contends that, in any event, DPS Staff's proposed adjustment amounts to a capitalization rate of 13.5% ($ 2.7 million on a $ 20 million program), far out of proportion to the historic rate of 4.6% that the Company has realized [*159] on its R&D expenditures over the last five years.

The Company also takes exception. [137] Although it maintains any adjustment at all is unwarranted, it limits its exception to the level of the adjustment reflected in the recommended decision. It observes that its total R&D capitalization credits for the last five years amounted to only $ 2.3 million, an annual average of just $ 465,000 (Tr. 3463). Thus, it contends, even assuming a capitalization adjustment is justified, the $ 1.365 million placeholder in the recommended decision is grossly overstated and results in a lower level of rate relief than we allowed for the same level of activity in the 2008 Rate Order. The Company maintains any adjustment should be no more than $ 465,000.

In response to the Company's argument that the placeholder [*160] reflected in the recommended decision (and, by implication, the greater adjustment DPS Staff proposes) is much higher than the $ 465,000 in annual capitalization credits its R&D program has realized on average over the last five years, DPS Staff says that the Rate Year forecast R&D expenditures are nearly twice the Test Year level and thus higher capitalization amounts for successful projects may reasonably be anticipated in the Rate Year. [138]

The Company has not cited anything in its accounting exhibits or elsewhere in the record that shows it has already capitalized the $ 2.7 million. Therefore, we cannot conclude that it has already reflected a sufficient capitalization adjustment in its request.

DPS Staff's proposed $ 2.731 million adjustment represents a 13.5% capitalization rate on the Company's $ 20.35 million request. The recommended decision's placeholder of $ 1.365 million represents a 6.7% capitalization rate. Both ratios significantly exceed the capitalization rate the Company [*161] has averaged in recent years. Nothing in the record suggests any change in circumstances that would lead to a higher rate of capitalization in the Rate Year than has prevailed over the recent historical period. Thus, DPS Staff's proposed adjustment seems excessive, while the judges' amount was only a temporary placeholder rather than a recommendation on the merits.

On the other hand, the Company's proposed capitalization amount of $ 465,000 based solely on the average dollar amount (rather than percentage) of R&D expenditures capitalized over the last five years is too low, given that the proposed level of R&D expenditures in the Rate Year is approximately double the average level for the last five years, including the Test Year. We find it reasonable to assume that a similar relationship will prevail in the Rate Year as has over the recent historical period. Since the Rate Year spending level for R&D will be approximately double the average recent historical spending level, we conclude that a capitalization adjustment of twice the average capitalization amount over the same period, or $ 930,000, should be applied to the Company's R&D expenditures.

I. Regulatory Commission Expense [*162]

DPS Staff proposed a downward adjustment of $ 677,000 to remove two cost items from the three-year historic average for regulatory commission expenses, arguing they are non-recurring: the 2003 electric rate case and the 2007 electric emergency outage response program audit. The recommended decision found it pointless to normalize the cost of one rate case out of the historic expense average, only to add back rate case expenses in the Rate Year. The judges also found that, although the specific Vantage emergency outage preparedness audit costs were non-recurring, a similar type of review of plant in service is currently under way and it is reasonable to expect replacement costs in the Rate Year for comparable sorts of audit or review.

---

[137] The Company's BoE, p. 34.

[138] DPS Staff's BOE, p. 23.

DPS Staff excepts to the judges' recommendation against its normalization of emergency preparedness audit costs. [139] It maintains that the recommended decision found that costs of the ″comprehensive management audit″ of the Company would be replaced by similar costs. DPS Staff argues that conclusion erred, because the 2008 Rate Order included a special recovery mechanism for comprehensive management audit actual costs, up to $ 1.36 million, as incurred, **[*163]** outside base rates through the Monthly Adjustment Clause.

The Company responds that DPS Staff misconstrues the recommended decision. [140] It points out that the recommended decision refers to the audit of plant in service pursuant to our 2008 Rate Order's requirement for review of its capital expenditures; and that by the reference to ″temporary rates″ the judges meant rates being collected subject to refund under that order. The ″comprehensive management audit″ for which DPS Staff cites a special cost recovery mechanism was not undertaken pursuant to the 2008 Rate Order, the Company notes, but was initiated in Case 08-M-0152. The Company argues that there is no special cost recovery mechanism for the capital expenditure review or a number of other regulatory investigations it cites **[*164]** from the recent past. Thus, the Company says, the judges' conclusion and recommendation were correct.

DPS Staff does refer to the wrong audit, as the Company argues. The judges' references to the 2008 Rate Order and plant in service and temporary rates can only reasonably be interpreted to refer to the review of capital expenditures subject to refund in that order, not to the comprehensive management audit that is just drawing to a close now. As the judges anticipated, the Company will incur costs of other, similar regulatory reviews in the Rate Year, which would replace the costs of the Vantage emergency preparedness costs captured in the Test Year and for which there is no special recovery mechanism. The judges' expectation has been fulfilled already, since we have recently initiated a prudence proceeding in connection with allegations of kickbacks from some Company contractors to some of its employees, for which the Company will incur costs in the Rate Year. [141] We deny DPS Staff's **[*165]** exception.

J. <u>Energy Efficiency Related Programs</u>

The judges recommended against DPS Staff proposals that $ 0.400 million in costs of energy efficiency R&D, about $ 2.5 million in O&M expenses related to demand side management and energy efficiency programs administration, training, market research, and website development costs and smart electric technologies pilot programs, and capital investment of about $ 2.1 million in 2009 and $ 1.1 million in 2010 for information technology infrastructure to support planning, implementation, and evaluation of energy technology programs all be disallowed in this case and instead be considered in the EEPS case. The recommended decision found that: nothing in our June 2008 order in that **[*166]** case [142] precluded consideration of recovery of energy efficiency infrastructure costs in base rates; and that the Company needs basic infrastructure to administer its existing demand response programs and will very likely need that infrastructure for expanded energy efficiency programs.

DPS Staff takes exception. [143] First, it states that, given the continuing EEPS proceeding, it did not review underlying EEPS program costs in this case. Second, DPS Staff argues that the extent to which administrative costs the Company requests

---

[139] DPS Staff BoE, p. 32. Although DPS Staff's Brief on Exceptions cites the figure $ 1.1 million, its trial brief and the transcript indicate the adjustment amounted to $ 0.667 million. Tr. 2725-26; DPS Staff's Initial Brief, p. 144.

[140] The Company's BOE, pp. 37-38.

[141] Case 09-M-0114, <u>Consolidated Edison Company of New York, Inc. - Prudence of Certain Capital Program and Operation and Maintenance Expenditures</u> , Order Commencing Prudence Proceeding and Requiring Report (issued February 12, 2009). This subject is discussed further in XI (N) below.

[142] Case 07-M-0548, <u>supra</u>, Order Establishing Energy Efficiency Portfolio Standard and Approving Programs (issued June 23, 2008) (EEPS Order).

[143] DPS Staff's BoE, pp. 32-33.

here in base rates have been addressed in the EEPS case by means of our January 2009 ″Fast Track″ Order [144] is unclear. It claims that allowing base rate recovery will hamper comprehensive measurement of EEPS program costs and benefits targeted in the Fast Track Order, possibly leading to double recovery of costs and difficulty in measuring energy [*167] savings of particular programs.

The Company responds in opposition, first, noting that DPS Staff fails to take exception to the recommended decision's rejection of its arguments below and instead raises arguments not made before. [145] Responding to those new arguments, the Company says that DPS Staff had ample opportunity to review the costs in question in this proceeding and its decision not to do so provides no justification for deferring those costs to the EEPS case, which would be prejudicial to the Company. With respect to DPS Staff's arguments based on the Fast Track Order, the Company contends that: DPS Staff points to no aspect of the order that is unclear; the order does not address basic administrative costs for infrastructure [*168] or recovery of those costs; and the administrative costs included in the order are for the specific, limited Fast Track programs, not basic infrastructure to support efficiency and demand response generally. It adds that DPS Staff neither explains nor supports the claim that recovery of general administrative infrastructure costs here could result in double recovery. Finally, the Company denies DPS Staff's contention that allowing base rate recovery will impede comprehensive measurement of program costs and benefits targeted in the Fast Track order as unfounded and unexplained. It notes that the recommended decision took no position on how these costs should be treated in evaluating cost-effectiveness of the Company's energy efficiency programs, leaving their consideration for measurement purposes open.

The 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 [*169] 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.

K. Correction for System Benefit Charge Expenses

On exceptions, the Company advises that its updated $ 819.024 million revenue request as of the time of the hearings reflects $ 24 million of system benefit charge (SBC) revenues, but not an offsetting expense of the same amount to reflect that all the SBC revenues will be turned over to the New York State Energy Research and Development Authority. Accordingly, it suggests the final revenue requirement determination should be corrected to reflect this expense. [146]

DPS Staff has no objection to the proposed correction, [*170] [147] and it is reflected in our revenue requirement calculations.

VI. TAXES OTHER THAN INCOME TAXES

A. Property Tax Expense Level

Property tax expense increases are one of the major drivers of the Company's request for increased electric revenues. At the time trial arguments were submitted to the judges, the Company was requesting $ 1.031 billion for the Rate Year or $ 86.7 million more than DPS Staff supported.

Much of the difference between the two parties was eliminated when, going beyond the 7% increase the Company had forecast and that DPS Staff had opposed, New York City increased its property taxes in the middle of a tax year by 7.5% effective January 1, 2009. DPS Staff does not dispute the update. As to the balance in dispute, the judges:

---

144 Cases 08-E-1007 et al., Consolidated Edison Company of New York, Inc. - ″Fast Track″, Order Approving ″Fast Track″ Utility-Administered Electric Energy Efficiency Programs with Modifications (issued January 16, 2009)(Fast Track Order).

145 The Company's BOE, pp. 38-40.

146 The Company's BoE, pp. 24-25.

147 DPS Staff's BOE, p. 38, n. 32.

1. Agreed that property tax expense forecasts based on five-year historic averages were previously adopted for the Company, but found that this occurred primarily in the context of the adoption of the terms of joint proposals. [*171] A forecast based on a five-year historic average was also adopted in the 2008 Rate Order, in the context of a litigated rate case. But that order did not discuss expressly whether this is the exclusive method that ought to be used to forecast property tax expense. It stated that ″the best estimate″ ought to be used.

2. Suggested that there is nothing inherently wrong with relying on information in addition to historic rates of change, whether that other information supports a forecast property tax expense increase or decrease. The likely impact of the current economic downturn on municipal taxing authorities is an example of such information, because taxing authorities will be under pressure to make up lost revenues.

3. Recommended, in sum, that the property tax expense allowance in these cases be based on the latest known actual information, including the latest known Handy Whitman Index, and the Company's forecast for other variables for which known information would not be available.

The Company excepts to a $ 14.299 million downward adjustment in the recommended decision based on use of the latest Handy Whitman Index, observing that no explanation was provided for ignoring [*172] its estimate of future changes in the Handy Whitman Index. [148] It simultaneously states that this exception may be moot because it received from New York City on January 23, 2009 tentative assessments for Real Estate of Utility Corporation (REUC) property that may make it unnecessary to use its forecast.

The Company argues that in the event we decline to rely on the recent information, we should adopt in the alternative the Company's forecast for a 9.5% increase in the Handy Whitman Index as that forecast is based on five-years of actual data (2%, 12%, 6%, 9%, and 8% [149]) in the period 2003 through 2007 with no adjustment for judgment being necessary.

DPS Staff does not reply.

Our property tax expense allowance reflects the actual assessed values for utility property that were issued by New York [*173] City on January 23, 2009. This moots the Company's exception.

DPS Staff also excepts insofar as the judges recommended reliance on the Company's forecast for the portion of property tax expense that will not be known at the time of our decision. DPS Staff's arguments in support of a downward revenue requirement adjustment of approximately $ 11.5 million are as follows: [150]

a. A property tax expense forecast based on a five-year historic average was adopted in the 2008 Rate Order. The issue was litigated in that case and the judges' recommendation was adopted.

b. The reference in the 2008 Rate Order to use of the best estimate was in connection with a discussion about property tax expense reconciliation. The best estimate in that case was based on the five-year historic average.

c. It makes sense to rely on a consistent method (using a five-year historic average) because actual tax rates that differ from the forecasts will be reflected in future forecasts, ultimately making ratepayers and the Company whole for differences between forecasts and actuals.

[*174]

The Company opposes DPS Staff's exception for the following reasons: [151]

a. The recommended decision is correct that there was no Commission deliberation on this issue in the Company's last electric rate case because no exception was taken to the judges' related recommendations. Decisions to use

[148] The Company's BoE, pp. 35-36.

[149] Tr. 2744.

[150] DPS Staff's BoE, pp. 34-35.

[151] The Company's BOE, pp. 40-42.

a forecast based on a five-year average prior to that time were in the context of cases in which the property tax expense terms of joint proposals were adopted.

b. The five-year average DPS Staff relied on in the Company's last and current electric rate cases were computed differently, undermining DPS Staff's contention that a consistent approach ought to be used.

c. That the statement in the 2008 Rate Order endorsing use of the "best estimate" was in a section concerning the reconciliation of estimated and actual property taxes does not undermine the stated principle.

d. DPS Staff's exception ignores the judges' conclusion that we would not and should not ignore information pointing to a decrease in property tax expense that differs from historic average rates of change.

e. DPS Staff is inconsistent to reject use of a five-year average to forecast changes in the Handy Whitman **[*175]** Index but to insist that a five-year average must otherwise be used to forecast other components of property tax expense.

We stand by the prior holding that the best estimate should be employed when forecasting future property tax expense. Current expectations are that there is and will continue to be pressure on taxing authorities to increase revenues through new or higher taxes to replace revenues lost as a result of the economic downturn. We are also confident that if there were reasons to expect taxing authorities to be awash with cash, we would not feel bound to forecast based on historic rates of change. DPS Staff's exception is denied.

As noted above in Section III, our revenue requirement calculations reflect property tax expense updates provided by the Company, including some provided after the briefs on exceptions.

B. Reconciliation of Property Taxes

The judges noted that bilateral reconciliation of property tax expense was not adopted in the Company's last electric **[*176]** rate case but that such reconciliations have been allowed in all years of numerous multi-year rate plans, including the first year. Given the current economic upheaval, uncertainty about how long the upheaval will last, and about how municipal taxing authorities will respond, the judges supported the Company's bilateral reconciliation proposal in the current cases. [152] The judges suggested that such an approach would also be consistent with an overall regulatory approach of simultaneously minimizing the Company's downside earnings risk and its upside earnings potential. [153] Their recommendation reflected, among other things, that property tax expenses are very large, potentially volatile, and, to a great extent, beyond the Company's control. [154]

[*177]

DPS Staff excepts, arguing: [155]

a. Full or bilateral reconciliation of property tax expense is not appropriate as the expense is largely known and the Company would be left with no incentive to minimize the impact of this large expense that comprises 29% of the Company's delivery service revenue requirement.

b. The judges are inconsistent to ignore this problem while citing the Company's loss of an incentive to control costs as a reason for recommending against bilateral reconciliation of costs related to municipal infrastructure work (RD, p. 185).

---

[152] DPS Staff suggests the judges' reconciliation recommendation was broader, applying to all non-income taxes. However, the only litigated issue under non-income taxes concerned property taxes. The judges' reconciliation recommendation is limited to that issue.

[153] R.D., pp. 202-203.

[154] Id., p. 10.

[155] DPS Staff's BoE, pp. 35-36.

The Company opposes DPS Staff's exception, stating: [156]

a. There is uncontroverted evidence on the record about the Company's extensive efforts to minimize property tax expenses.

b. DPS Staff is inconsistent because it routinely supports bilateral reconciliation of property tax expense in the context of multi-year rate plans.

c. DPS Staff is inconsistent because if all of the actual Rate Year information were known, there **[*178]** would be no dispute about the level of Rate Year property tax expense.

Property tax expense is clearly one of the largest elements of the Company's cost of providing electric delivery service. Accordingly, the implications of being wrong in a forecast for this expense are likewise greater relative to other elements of revenue requirements, both for ratepayers and shareholders. Given the economic downturn, and relatively greater uncertainty about how long the downturn will last and how municipal taxing authorities will respond, full or bilateral reconciliation of property tax expense makes more sense in these cases than most.

We share DPS Staff's concern about removing an incentive for the Company to minimize its property tax expenses. However, the record in these cases shows that the Company has aggressively sought to minimize its property tax assessments. [157] Indeed, there is no assertion to the contrary. Moreover, our long standing policy is that a utility will be allowed to **[*179]** retain a share of property tax refunds, frequently in the 10-15% range, to the extent it can be established conclusively that the utility's efforts contributed to that outcome. Taking these two factors into account, we conclude that the Company already has and will retain an incentive to minimize its property tax assessments.

Given the magnitude of the Company's property taxes, the relative uncertainty about the impacts of the economic downturn that we consider unique, and that the Company will continue to have an incentive to minimize its property tax assessments, we are adopting the judges' recommendation for full or bilateral reconciliation of property taxes. Exceptions to the contrary are denied.

C. <u>2008 Property Tax Deferral</u>

The Company seeks permission to recover over three rate years a total of approximately $ 75 million of property taxes it is incurring in the current rate year in excess of what is currently allowed in electric rates. DPS Staff opposes the proposal, **[*180]** pending review of the Company's deferral petition in another case (08-M-0901).

The judges declined to support the Company proposal as it would require them to prejudge the outcome of the other case, which is not before them. [158] The judges urged that a decision be made in the other case, if possible, so that the results could be reflected here.

The Company excepts, arguing: [159]

a. It would be more reasonable to reflect the costs as being allowed, subject to possible reversal later, as this is what the Company did with respect to various credits reflected in its revenue requirement calculation, even though such credits may or may not come to fruition.

b. It would have to finance the approximately $ 75 million until the other case is resolved, increasing nominal costs that might have to be recovered from customers, and this argues for prompt resolution of the other case.

c. The Company introduced evidence projecting a return on equity of less than 9.1% in the current rate year, there

---

[156] The Company's BOE, pp. 42-43.

[157] Tr. 1550 and Exs. 35 and 36.

[158] R.D., p. 203.

[159] The Company's BoE, pp. 36-38.

is no [*181] evidence to the contrary, and the 9.1%, in any event, is clearly inadequate in light of current economic circumstances.

d. The Company's proposal is ameliorated to the extent it seeks recovery over three years of an amount forgone in one year.

DPS Staff replies as follows: [160]

a. As updated to reflect the mid-year 7.5% New York City property tax increase effective on January 1, 2009, the Company is now seeking deferral of $ 76.4 million in the separate case.

b. The Company conceded during the hearings that it earned 9.3% for the 12 months ending September 30, 2008. [161]

c. It would be unfair to customers to grant the Company's request while it is ″currently earning above its allowed ROE.″ [162]

d. There is nothing in the record to substantiate the Company's claim that its cost of common equity exceeds 9.1% and, in any event, adoption of such a contention would amount to improper retroactive ratemaking.

[*182]

A decision on the Company's deferral petition will be made in Case 08-M-0901. DPS Staff will not be able to offer a recommendation in that separate case until after the Company's actual earnings are known for the current rate year, or the 12 months ending March 31, 2009. Accordingly, it is not possible as a practical matter to decide the other case in time to reflect the results here. The judges' recommendation is adopted and the Company's exception is denied.

D. Minimizing Future Property Taxes

While we are fully satisfied with the resolution of the three key property tax issues litigated in these cases, an issue not raised by the parties is whether more needs to be done to bring the Company's total property tax expense more in line with that experienced by other utilities in big cities outside New York as well as by other New York utilities.

Publicly [*183] available information in 2007 FERC Form 1, for example, shows that the Company's property taxes are about 10% of its operating revenue while utilities in Pittsburgh, New Orleans, Tampa, Washington DC, Detroit, and Baltimore incurred property taxes in the range of 0.10% to 2.8% of operating revenues in the same period.

A similar comparison among New York electric utilities shows that more than 20% of the Company's total electric delivery revenue requirement comprises property tax expense while that percentage is in the range of approximately 8% to 12% for other electric and combination utilities in this state.

Going further, an examination of New York City tax rates for the residential (Class 1), large residential building (Class 2), utility property (Class 3), and commercial/industrial (Class 4) shows that Class 3 (of which the Company is approximately 75%) pays a high tax rate relative to the three other classes and that the cumulative tax rate for this class has jumped 33.8% over the last ten years compared to a 6.2% rate of increase for Class 4 over the same period.

In sum, it appears the Company's ratepayers are being forced to contribute a disproportionate share of the total [*184] property tax revenues in the Company's service territory, undermining the ability of many customers to pay for an essential service.

---

[160] DPS Staff's BOE, pp. 24-25.

[161] This reflects equity earnings in the last quarter of 2007 and the first quarter of 2008, both of which are prior to the current rate year.

[162] DPS Staff's BOE, p. 24. Given the prior note, the basis for this statement is not known.

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. For this reason, the Company is required to include in its next major electric rate case filing, or by not later than 30 calendar days after that filing, testimony explaining how its real property is defined and classified, the amount or value of its real property subject to such taxation, the general uses of such real property, the history of the value of its property and tax rates over the last ten tax years, whether and to what extent its tax rates are consistent with those paid by other New York City and Westchester businesses, and, to the extent there are inconsistencies in taxation, identifying actions that have been and could be taken to address the situation. We plan to review that information and any responsive submissions, on a schedule to be determined by the judge in the Company's next rate case. We believe the Company should be afforded an opportunity to enjoy a share of any net savings realized **[*185]** in the event any reclassification and reduction in the disparity compared to other tax classes results from its initiative, while holding the line or better on property tax assessments.

VII. <u>DEPRECIATION - PAYGO</u>

A. <u>Background</u>

Negative salvage costs are labor and other costs incurred to remove a piece of plant from service that exceed the positive salvage value of the piece of plant being removed. As a matter of principle, the current ratemaking approach is for the Company to accrue negative salvage costs and to recover such costs in rates gradually over the useful life of the piece of plant to be removed from service in the future. Estimates of future salvage costs are made for this purpose and updated from time to time so that the correct amount will be recovered from customers before the removal costs are actually incurred.

As a practical matter, however, rates are not always increased in lock step with updated estimates of future negative salvage costs because of concerns about the magnitude of the resulting revenue increase on current customers. This can lead to an increase in the size of a utility's depreciation reserve deficiency, an amount the Company is fully **[*186]** expected to be allowed to recover from ratepayers in the future.

There is record evidence that the Company has a depreciation reserve deficiency of at least $ 670 million as of the end of 2007. As part of its proposal to ameliorate impacts on customers in these cases, the Company postponed to the future a request to increase deprecation expense and revenues by approximately $ 55 million per year.

The NYC Government Customers and Westchester County had both proposed adoption of a new principle under which ratepayers would pay for negative salvage costs only after they are incurred by the Company, or on a pay-as-you-go or PAYGO basis. Two key effects of such a change in the short run are that the Company's $ 670 million depreciation reserve deficiency would be converted into a surplus of approximately $ 330 million and annual depreciation expense and revenue requirement could each be reduced by $ 70 million for about three years. The Company and DPS Staff oppose adoption of the new principle.

The judges recommended against adoption of the PAYGO method for the following reasons: [163]

> 1. Current customers should contribute to the future cost of removal of plant used to serve such **[*187]** customers today. To the extent some or all of such costs of removal are recovered in the future, they become an unwarranted burden on customers taking service at that time.
>
> 2. A $ 70 million electric revenue reduction that would be sustainable for approximately three years under PAYGO would be followed by incrementally greater electric revenue increases in year four and beyond. In other words, if ratepayers pay less now to cover negative salvage costs, they will at a later date need to pay more toward such costs.
>
> 3. PAYGO would increase the Company's external financing requirements by approximately $ 50 million per year and decrease internally-generated cash flow at a time when the Company is in the midst of a very large construction program.

---

[163] R.D., pp. 214-216.

4. The current method offers the advantages of spreading out cost recovery over time and of allowing for periodic updates to reflect changes in estimates of negative salvage costs and to reflect those updated estimates in rates as feasible.

5. Given existing circumstances, the Company has established that ratepayers enjoy tax advantages under the current approach that exceed those under the PAYGO method.

[*188]
B. The Arguments

The NYC Government Customers except, arguing: [164]

a. A rational, equitable way to reduce revenue requirement by $ 70 million annually in the short run should be embraced given the desperate economic situation facing the country.

b. PAYGO is used in several states, including New Jersey and Pennsylvania.

c. PAYGO is superior because the Company could be permitted to recover all of its current negative salvage costs in rates. The current approach, as applied, does not allow the Company full recovery in current rates for estimated future negative salvage costs.

d. A $ 70 million electric revenue decrease now for this item alone, followed by a $ 130 million revenue increase in three years, is superior to no revenue decrease now and annual revenue increases in the future of approximately $ 670 million for the Company to recover forecast increases in negative salvage costs as well as to amortize over 10 years a reserve deficiency that is projected to exceed $ 3.7 billion.

e. PAYGO would not contribute to intergenerational inequity because current customers would continue to be responsible for actual negative salvage costs incurred now and future customers [*189] would be responsible for actual negative salvage costs incurred in the future.

f. In any event, PAYGO does not create any intergenerational inequity in comparison to the existing approach, as applied, under which substantial increases in forecast negative salvage costs are not being recovered in rates currently. There is also no increase in intergenerational inequity for a change to PAYGO for the Company's ″mass accounts″ in which thousands or millions of pieces of plant are constantly being placed in and taken out of service in each rate year.

g. An incremental $ 50 million to be financed by the Company each year is dwarfed by the Company's $ 1.0 billion per year capital spending over the last five years.

h. Estimates of current negative salvage costs can be updated under PAYGO just as easily as forecasts of future negative salvage costs can be updated under the existing approach.

i. The judges' analysis of the income tax advantages is premised on current circumstances under which a large depreciation reserve deficiency has built up and forecast negative salvage costs are not being fully recovered in rates. The existing approach is not sustainable and an unreasonable basis [*190] for a proper comparison of the income tax implications of the two competing approaches.

j. The income tax analysis is also suspect because the Company flows through to customers all the tax benefits of negative salvage costs already paid for by ratepayers, but flows through to customers only a portion of the tax benefits of the PAYGO approach.

The Company and DPS Staff generally endorse the judges' recommendations. The Company emphasizes that the issue presented solely concerns the timing of negative salvage cost recovery and that there is no dispute about the total amount of negative salvage costs to be recovered ultimately. It also criticizes the NYC Government Customers' failure to

---

[164] The NYC Government Customers' BoE, pp. 14-23.

acknowledge the Company's proposal to ameliorate customers' bills now by delaying recovery of increasing negative salvage costs. DPS Staff adds that adoption of the PAYGO method would likely result in wide swings on the Company's income statement and increase the risk that the Company [*191] might not fully recover its actual negative salvage costs. The reasoning behind the latter contentions is not explained.

In response to the NYC Government Customers' arguments above, the Company and DPS Staff offer the following: [165]

a. NYC Government Customers cloud the issue by focusing on a $ 70 million revenue decrease and de-emphasizing that this will have to be made up by larger rate increases later.

b. The existing method is used in the vast majority of regulatory jurisdictions.

c. Whether the basic principle followed is that current or future customers should be responsible for the recovery of negative salvage costs for plant in use today, there can be a mismatch between costs incurred and costs recovered in rates depending on the level of rate recovery allowed by the Commission. The NYC Government Customers incorrectly suggest adoption of PAYGO guarantees current recovery of negative salvage costs as they are incurred. Indeed, those customers expressly acknowledge that there could be circumstances under which all current negative salvage costs might not be allowed in rates immediately even if PAYGO were adopted.

d. While the existing approach as applied does result [*192] in some intergenerational inequity, this problem would clearly be exacerbated by adoption of the PAYGO method.

e. Full flow through to ratepayers of the tax deduction effects of actual negative salvage costs is appropriate now because customers already paid such costs in rates. Such a flow through to ratepayers is not appropriate if PAYGO is adopted, because ratepayers will not have paid all of the underlying costs in the year in which they are incurred and deducted for income tax purposes.

C. Discussion

The most significant effect of adopting the PAYGO approach as a matter of policy would be that all negative salvage costs associated with plant now serving existing customers would be shifted to those who are Company customers at or after the time such negative salvage costs are actually incurred. We are not persuaded by the NYC Government Customers' arguments that such a shift in cost responsibility would be equitable.

Putting aside this [*193] problem, the NYC Government Customers have not established that the proposed policy change would be beneficial to customers over the long term as measured on a net present value basis today.

The NYC Government Customers are also wrong to compare the pros and cons of the current policy, as implemented to ameliorate ratepayer impacts, to the proposed policy assuming it would never be unnecessary to ameliorate ratepayer impacts. No basis has been provided for such an assumption.

Turning to the income tax implications of the proposed policy change, we are persuaded by the Company's arguments that customers that pay in advance a portion of negative salvage costs to be incurred in the future should enjoy the benefits of the associated income tax deduction. If ratepayers pay negative salvage costs after they are incurred, they should enjoy the benefits of any associated income tax deduction only to the extent they will have fully paid such costs in rates. In sum, the judges' recommendation is adopted and the exception of the NYC Government Customers is denied.

On a related matter, we note that the Company's depreciation reserve deficiency is growing and that this will continue during the [*194] Rate Year. The Company's next electric rate case filing must summarize its future expectation with respect to the build up of this reserve and identify the options and timetable it is considering for addressing it.

VIII. COST OF CAPITAL

This section considers issues concerning the Company's Rate Year cost of common equity. There are no exceptions concerning the judges' recommendations in support of a 48% equity capitalization ratio, forecast debt costs, or the reconciliation of debt costs. However, the latter two issues are also addressed below.

---

165 The Company's BOE, pp. 43-47 and DPS Staff's BOE, pp. 39-41.

A. The Cost of Common Equity and the Sharing Trigger and Cap

1. Background

Through the trial briefing stage, the Company supported an 11.0% equity return allowance (11.3% in the context of a three-year rate plan), but reflected only 10.0% in its May 2008 tariff filing. It is unusual for a utility to support one equity return in testimony and to reflect a lower one in the revenue request set forth in its tariff filing.

The revenue requirement difference between 10.0% and 11.0% is approximately $ 115 million per year. The Company described its 10.0% request as part of its proposal to ameliorate bill impacts on customers by approximately [*195] $ 426 million per year. [166]

DPS Staff, CPB, and Westchester each submitted testimony in support of equity return allowances for the Company of 9.5%, 9.91%, and 9.1%, respectively.

Just prior to issuance of the recommended decision, the judges asked the Company, DPS Staff, and CPB to provide updates using their proposed methodologies and recent information. The Company went beyond the judges' request, providing both updated information and a revised methodology, calculated an updated/ corrected cost of equity of 10.6%, and continued to support 11.0% and its request of 10.0%. DPS Staff used updated information to calculate 9.71%. CPB did not provide any update as its witness was out of the country at the time.

Based on their assessment of all the evidence and arguments, the judges estimated the Company's Rate Year cost of common equity would be 10.35%, subject to an [*196] upward adjustment to reflect the quarterly payment of dividends, and subject to further update based on information available at the time of our final decision. Given that the Company requested 10.0% at the time, that is the figure reflected in the judges' cost of service calculations.

The judges followed eight steps to derive the 10.35% and to recommend 10.0%:

1. Endorse use of the proxy group of utilities supported by DPS Staff and CPB and not contested by the Company.

2. Use a two-stage (or two-growth-rate) discounted cash flow (DCF) methodology, share price data for a proxy group of companies for the three months ending November 2008, short-term growth in dividends per Value Line, and a long-term growth rate of 5.6%. The result was 10.29%. It is the latter figure the judges recommended be adjusted using a model (not available to the judges) that reflects the payment of dividends quarterly as had been proposed by the Company rather than annually at the end of the year as had been proposed by DPS Staff.

3. Use the "traditional" Capital Asset Pricing Model (CAPM) and zero-beta CAPM methodologies for the same proxy group of companies, using a beta of 0.81, 30-year Treasury [*197] bond yields for the three months ending November 2008 as the risk-free rate, and a market risk premium based on the difference between a market return estimate for the S&P 500 and the risk free rate. The average of the 10.67% CAPM and 11.05% zero-beta CAPM is 10.86%.

4. Give no weight to the results of the Risk Premium Methodology the Company supported or to Westchester's proposal that we adopt in these cases the same 9.1% equity return allowance authorized for the Company in the 2008 Rate Order.

5. Average the DCF (10.29%) and CAPM (10.86%) results for a return of 10.58%.

6. Reduce the 10.58% by 26.5 basis points (to 10.315%) to reflect that the Company's credit rating is superior to the median credit rating for the proxy group of companies, while recognizing some uncertainty about support for DPS Staff's proposed 53 basis point credit quality adjustment.

---

[166] Ex. 209, pp. 48-49. As noted above, another $ 55 million of the amelioration proposal was to postpone recovery of increased negative salvage costs.

7. Increase the 10.315% by four basis points to 10.355% or 10.35%, to permit rate recovery of the Company's likely equity issuance costs.

8. Reflect a 10.0% cost of equity as this is what the Company had requested.

A common theme in the recommended decision's analysis of the DCF and CAPM issues, and the relative weighting **[*198]** of the results of each methodology, is that the judges gave little weight to arguments based on prior decisions of this Commission unless such arguments or the cited decisions explained the substantive reasons behind such prior decisions.

Going beyond the eight steps listed above, the judges recommended adoption of a 10.5% equity earnings sharing trigger, 100% Company retention of equity earnings up to and including 10.5%, 50%/50% equity earnings sharing between shareholders and ratepayers above 10.5% and below 11.0% (exclusive of any positive incentives authorized in these or other cases), and 100% ratepayer retention of equity earnings above 11.0%. The overall goal of the recommended sharing trigger and earnings cap was to give the Company some positive upside earnings potential (to help it maintain an S&P bond rating of ″A-″) while minimizing the Company's ability to earn more than its cost of equity by spending less on O&M expenses than allowed in rates or by achieving productivity savings far in excess of the 1% they had recommended.

The numerous exceptions to the judges' equity return recommendations are discussed in turn. Subject to any update at the time of the final decision, **[*199]** the Company's basic contention is that the return on equity should be higher than recommended, increasing electric revenue requirement by almost $ 71 million per year. DPS Staff is arguing, subject to any update at the time of the final decision, that the return on equity should be lower than recommended, reducing revenue requirement by almost $ 33 million per year. CPB's position is close to DPS Staff's, while Westchester argues the return on equity should be much lower, reducing revenue requirement by at least $ 107 million per year.

2. <u>The Role of Precedent in General</u>

CPB describes as ″most troubling″ the judges' suggestion that years of prior decisions should be given very little weight. CPB accurately explains that a generic proceeding was initiated years ago concerning various cost of capital issues. It says that the judges' recommendations in that case have been followed fairly consistently since that time and that this is reasonable to ensure similar issues are resolved consistently in various utility service territories through the state. CPB neither mentions nor comments on the distinction the judges made between arguments based solely on conclusions previously reached, **[*200]** without any explanation of why, and arguments based on evidence or precedent that explains why a particular outcome on an issue makes sense.

DPS Staff likewise criticizes the judges' ″unabashed disregard of Commission precedent″ that ″effectively rewards the Company's intransigence at the expense of well-reasoned and consistent Commission practice.″ [167] The judges' recommendations that ignore precedent, DPS Staff says, should all be rejected.

The Company replies that the Generic Financing case methodology was never formally adopted. Even if it was, the Company continues, that methodology should be reassessed when evidence is presented that modifications are necessary. The current economic downturn alone, it concludes, justifies a re-examination of that methodology. [168]

DPS Staff and **[*201]** CPB are both correct that this Commission's practice with respect to return on equity issues has been fairly consistent over a period of at least 14 years. Parties that seek a departure from that practice have a heavy burden that they cannot expect to meet simply by repeating arguments previously rejected.

An issue squarely presented in these cases, however, is whether parties arguing for a continuation of such practices, contrary to proposals to depart from them, need to provide substantive reasons for doing so, either through evidence or by citing to precedent that provides such reasons. [169] We hold that they do.

---

[167] DPS Staff's BoE, p. 36.

[168] The Company's BOE, pp. 47-48.

[169] Citations to precedent that do not provide such reasons is not adequate except as a secondary resource.

We readily acknowledge that this requires DPS Staff and other parties to explain positions that may seem reasonable to them, and that are consistent with long-standing practice. We can also appreciate that this might be frustrating given competing demands for resources. However, we have not prohibited [*202] utilities from supporting equity return requests in the manner they think proper. We also expect the judges to have a substantive basis for each of their recommendations, something they obviously were interested in providing for us on these issues. Accordingly, to the extent parties are criticizing the judges' refusal to recommend outcomes for which substantive reasons were not offered on the record or in precedent cited in trial briefs, we conclude those criticisms are unwarranted.

3. DCF Model Issues

The judges' DCF calculations reflect common stock share prices for the three months ending November 30, 2008. They declined to rely on six months of data, and recommended we do the same at the time of our decision, contrary to DPS Staff's and CPB's proposals. In support of this approach, the judges pointed to markedly changed circumstances in financial markets in the September-October 2008 period. They also declined to adopt the Company's proposal to use only a recent, spot share price, as it could be aberrational.

The judges' DCF recommendation also reflects DPS Staff's proposal to use a Value Lineforecast of dividend growth through 2012; the Company used a one-growth-rate [*203] model and had no competing recommendation. As to long-term or infinite growth expectations, the judges assumed a long-term growth rate of 5.6%, based on Gross Domestic Product growth of 3.4% from 1929 through 2007 plus an inflation rate of 2.2%. The 5.6% is higher than the 5.3% sustainable growth rate that had been proposed by DPS Staff. The judges declined to rely on the 5.3% as it was based on a forecast market return and the judges had been persuaded by the Company's argument that this would be unreasonably circular. The 5.6% is also lower than the 6.0% to 7.6% growth rate that had been proposed by the Company, agreeing with DPS's arguments that such growth rates are not sustainable in the long run.

Using these inputs and DPS Staff's two-growth-rate model, the judges' DCF result was 10.29%.

The Company had criticized DPS Staff's model to the extent it reflects the payment of dividends annually at the end of the year rather than quarterly as they are actually paid. The judges were persuaded by this Company argument, citing the absence of any substantive argument to the contrary. Accordingly, they invited the Company to quantify the effect of this change.

As to the recommendation [*204] to use three recent months of share prices, CPB has no objection to an update. However, it respectfully disagrees with the recommendations that the update be done using only three months of data, as six months of updated data is typically employed. [170] It observes that use of a longer period helps to reduce the effects of volatility and results in a better alignment with data used to forecast future growth. CPB notes as well that six months' data was used in another decision as recent as August 2006. [171]

DPS Staff does not say it is excepting, but offers the following: [172]

> a. It is indifferent to the recommendation to use three months of share data.
>
> b. However, it is not convinced that recent events warrant overturning a convention that has consistently been applied and that is undoubtedly incorporated into investors' [*205] return requirements for New York utilities.

---

[170] CPB's BoE, pp. 5-6.

[171] Case 05-E-1222, New York State Electric & Gas Corporation - Rates, Order Adopting Recommended Decision with Modifications (issued August 23, 2006), p. 96.

[172] DPS Staff's BoE, pp. 38-39.

c. On the other hand, the use of three months' data is not a radical shift and might even be preferred as the growth estimates in DPS Staff's model are updated every three months. [173]

d. The effect of such a change is de minimis, increasing DPS Staff's updated DCF estimate from 9.91% to 9.94%. [174]

The Company does not respond specifically to DPS Staff's and CPB's post-recommended decision arguments concerning share prices.

Turning to long-term or infinite growth expectations, CPB excepts to the proposed rejection of the use of retention growth on account of concerns about unreasonable **[*206]** circularity. [175] In support, it cites a 2007 rate order for Orange and Rockland Utilities, Inc. which states that while forecasts of future earnings used to project growth will consider the return that investors expect regulators to allow, those earnings forecasts also reflect investor expectations about a wide variety of other factors, unrelated to the allowed cost of equity. [176] CPB also states that it opposes use of a long-term growth rate based on Gross Domestic Product, but it offers no reasons.

DPS Staff also excepts, arguing a long-term growth expectation of 5.6% is out of line with the consensus long-run growth rate in the Nominal GDP of 4.8% for 2015-2019, including long-term growth of 2.7% and inflation of 2.1%. The judges are also inconsistent, DPS Staff continues, to rely on historic GDP growth while simultaneously rejecting **[*207]** the Company's 7.1% risk premium based on historic information for the same period. [177] Finally, as discussed in greater detail in connection with its arguments against averaging of the DCF and CAPM results, DPS Staff argues that it is reasonable to use an estimate of market returns to estimate retention growth to estimate the median cost of equity for the proxy group. Such circulatory is logical, it contends, as analysts' estimates of future dividends and earnings necessarily reflect assumptions regarding anticipated regulatory action. [178]

The Company does **[*208]** not respond specifically to these exceptions by CPB and DPS Staff.

Turning, finally, to whether dividends should be modeled as being paid quarterly or annually, the Company advises that, all other things being equal, the judges' 10.29% DCF result should be adjusted upward by 20 basis points, to 10.49%, to reflect the payment of quarterly dividends. [179]

CPB excepts, arguing the approach recommended by the judges has consistently been rejected going back to 1981. [180]

[*209]

---

[173] This may explain why DPS Staff filed testimony in early September 2008 based in part on share prices in the first six months of 2008.

[174] The .03% change is for the median in DPS Staff's proxy group. The effect of using three months data on the proxy group average DCF-derived equity return is to increase it from 9.73% to 9.96%.

[175] CPB's BoE, p. 7.

[176] Cases 06-E-1433 and 06-E-1547, Orange and Rockland Utilities, Inc. - Rates, Order Setting Permanent Rates, etc. (issued October 18, 2007), p. 10.

[177] DPS Staff's BoE, pp. 40-41. On the last point, DPS Staff is referring to the judges' recommendation to eschew reliance on the Company's market risk premium for the CAPM approach. The Company proposed a risk premium of 7.6% based on the average of a historic 7.1% and a projected 8.1%. Persuaded by DPS Staff arguments, the judges rejected the whole approach because the projected 8.1% was not reliable (R.D., p. 224).

[178] DPS Staff's BoE, pp. 40 and 44.

[179] The Company's BoE, pp. 49-50.

[180] CPB's BoE, p. 6, citing Cases 06-E-1433 and 06-E-1547, supra, Order Establishing Temporary Rates (issued October 18, 2007), p. 11. That order provides no explanation. However, it does state that this Commission would not reject use of current stock prices if historic data is stale. CPB also cites Cases 27561 and 27710, New York Telephone Company - Rates, Opinion No. 81-3 (issued January 19, 1981). That opinion, p. 26, refers to the judges rejecting an adjustment for quarterly dividends to which the utility did not except.

DPS Staff also excepts on the dividend issue, arguing that the judges have a fundamental misunderstanding of DPS Staff's model, confusing it with the standard annual form employed by the Company, as DPS Staff's model does not compute dividend yields. DPS Staff argues as well that it is not practical to apply a quarterly dividend adjustment to a DCF model that is not the standard form. In response to what it describes as the judges' invitation to provide further evidence as to why such an adjustment is warranted, DPS Staff cites the same 1981 precedent as CPB to the effect that investors earn a higher return from quarterly dividends only to the extent they are reinvested in Company shares. DPS Staff contends that regardless of whether or not such dividends are reinvested, regulators do not need to model for and provide an additional return. [181]

The Company replies that insistence on use of an annual **[*210]** dividend would have us improperly ignore the time value of money and bond math. [182] No further explanation is provided.

Our updated DCF estimate is based in part on DPS Staff's two-growth-rate model and proxy group, both of which are recommended by the judges. We conclude that the judges were properly concerned, in light of dramatic changes in financial markets in October and November 2008, about relying heavily on share price data preceding that period. We find it is appropriate under these circumstances to rely on a more recent time period, but not so short as to introduce undue volatility into the calculation. The three-month average is also logically consistent with the Value Lineforecasts that are published over a three-month period. It is reasonable in these circumstances to rely on the most recent data over a three-month period reasonably close to the Rate Year.

For growth, we are relying in the short run on the most recent Value Lineforecast of dividend growth for **[*211]** each company in the proxy group, as recommended by the judges, and an updated sustainable growth rate for each company in the proxy group (the median of which is 5.10%) as proposed by DPS Staff and CPB on exceptions. This is a fundamental measure of a company's growth. Dividends in excess of this level of growth would cause a company's equity balance to deteriorate and dividends less than this level of growth would cause the equity ratio to exceed reasonable levels.

We remain unconvinced by the Company's basic contention, endorsed by the judges, that it is unreasonably circular to assume a cost of equity to estimate retention growth to estimate the cost of equity. As this Commission stated on a prior occasion, while forecasts of future earnings used to project growth will consider the return that investors expect regulators to allow, those earnings forecasts will also reflect investor expectations about a wide variety of other factors, unrelated to the cost of common equity. In particular, we have previously pointed out that, "The retention growth component of the sustainable growth calculation relies on a prediction of expected future earned rates of return on common equity for a **[*212]** proxy group composed mainly of holding companies owning both regulated and unregulated businesses." [183]

We are not adopting the judges' recommendation that our DCF estimates reflect the payment of dividends quarterly rather than annually at the end of each year. Any extra return to be achieved on account of quarterly dividend reinvestment will be achieved by those who actually reinvest all their dividends in the Company's stock. Any additional allowance would be duplicative for those who actually reinvest dividends and unnecessarily generous to those who do not. Accordingly, the Company's proposed 20-basis point upward adjustment to our DCF results is rejected.

Taking all of the above into account, our updated DCF estimate for the proxy group is 10.47%.

4. The Capital Asset Pricing Model

Inputs to the judges' CAPM estimates include a beta of .81 for the proxy group, three months of recent yields **[*213]** on 30-year Treasury bonds for the risk-free rate, and a market risk premium based on the difference between the forecast

---

[181] DPS Staff's BoE, p. 39. DPS Staff is referring in part to page 33 of the Recommended Decision in Case 91-M-0509.

[182] The Company's BOE, p. 48.

[183] Cases 06-E-1433 and 06-E-1547, supra, Order Setting Permanent Rates, etc. (issued October 18, 2007), p. 10.

market return for the S&P 500 less the risk-free rate. [184]

The .81 beta employed by the judges is the average of the .80 proposed by DPS Staff and the .81 proposed by CPB. DPS Staff explains that the .80 it proposed was the median for the selected proxy group, that .81 was the average, and that the median is superior to the average because it diminishes the influence of any outlying individual results. [185] DPS Staff advises as well that in its December 2008 update, the median beta for the proxy group was .80 and the average beta was .77. The rounded average of these two figures, it notes, is .79 rather than the .81 used by the judges. In any event, DPS Staff proposes that the median be used based on market data available through February 2009.

[*214]

Turning to the risk-free rate, the Company argued it should be based on 30-year Treasury bonds alone, as they are more like common stocks, and that yields on 10-year Treasuries should be ignored for these purposes. The judges noted that no party offered a substantive response to this contention.

The recommended decision does not state a reason for using three rather than six months of yields on 30-year Treasuries. As in the case of the DCF analysis, presumably, the judges were concerned about relying too much on data prior to the sharp market downturn in October-November 2008.

As noted above, these inputs resulted in an average estimated cost of equity of 10.86% using the CAPM and zero-beta CAPM methods.

DPS Staff excepts, pointing out that it does not oppose use of 30-year Treasuries alone given that, over time, either approach will result in higher or lower returns. However, it argues 10-year and 30-year Treasury yields should both be used as this is the approach consistently followed for 14 years and that continuation of this approach will ensure unbiased results.

CPB also excepts, arguing we rejected exclusive use of 30-year Treasury bonds in the 2008 Rate Order and that the recommended **[*215]** decision does not provide an adequate reason to justify the proposed change in practice. [186]

The Company does not respond to any of these exceptions in detail, arguing generally that it is wrong to rely on the Generic Finance case approach in light of valid criticisms in this case and current and projected volatility in the markets.

Our "traditional" CAPM and zero-beta CAPM estimates are based on the updated (as of February 2009) median beta of .70 for the proxy group. Our risk-free rate of 2.90% is based on the average of 10-year and 30-year Treasury yields for the three months ending February 2009. Three months' data are being used for reasons discussed above. Both 10- and 30-year Treasuries are being employed to recognize that different investors have different time horizons for holding stocks. Stated differently, not all stockholders hold stocks for 30 or more years. Likewise, as recommended by the judges, our market risk premium of 10% is based on the difference between the March 9, 2009 **[*216]** estimated market return of 12.90% for the S&P 500, less the risk-free rate of 2.90%. Accordingly, our traditional CAPM and zero-beta CAPM results are 9.90% and 10.65%, respectively, or an average of 10.28%.

5. <u>Westchester's Exception</u>

On exceptions, Westchester County continues to support a 9.1% allowed return on equity, suggesting such an allowance would be consistent with the returns allowed in 2008 for Orange and Rockland Utilities, Inc. in the context of a three-year electric rate plan, and for KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island, respectively, in the context of five-year rate plans. Alternatively, it suggests the allowed equity return should be no higher than 9.5%.

---

[184] R.D., pp. 222-224.

[185] DPS Staff's BoE, pp. 41-42

[186] CPB's BoE, p. 8.

[187] Westchester asserts that the judges were overly influenced by the Company's testimony about the negative consequences of an inadequate rate of return. It suggests the 9.1% allowed in the 2008 Rate Order in response to the Company's 11.5% request had no dramatic consequences.

[*217]

Westchester goes on to suggest that when rate of return issues are decided, consideration should be given to the effects of the economic downturn on ratepayers and that, as indicated by share prices, the Company is weathering the economic downturn better than many other firms.

It states that a 9.1% equity return allowance, all other things being equal, will save ratepayers $ 107 million per year and that the Revenue Decoupling Mechanism (RDM) protects the Company's revenues and minimizes its risks.

The Company responds, arguing the judges properly rejected 9.1% as it lacked any analytical support and ignored changed circumstances since the 2008 Rate Order. [188] Consolidated Edison faults the County for failing to recognize that the economic downturn has increased capital costs and that the Company needs to maintain an "A" credit rating to provide safe and reliable service at a reasonable cost. Finally, the Company states that the 2008 downgrade significantly increased its commercial paper costs and that a further downgrade would not have a modest impact. No quantification is provided.

[*218]

The Company, DPS Staff and CPB have all introduced extensive testimony to the effect that financial circumstances in the Rate Year can be expected to differ from those we envisioned when the 2008 Rate Order was issued. Westchester basically argues that all of this evidence should be ignored on the grounds that the resulting equity return allowance would be higher. This contention is unreasonable on its face and Westchester's exception is denied.

6. Exceptions Concerning Weight

The judges recommended that the DCF and CAPM results be given equal weight because both involve the use of subjective judgment. [189]

DPS Staff excepts, arguing that of all the conclusions in the recommended decision concerning the cost of equity, this is perhaps the most ill-conceived. [190] DPS Staff renews its argument that the DCF method has been the principal equity costing method of regulators for many years (including in New York) because the stock price and yield data are readily available and comprise objective **[*219]** indicia of investors' immediate return requirements. DPS Staff acknowledges that it is more challenging to estimate growth and that this involves subjective judgment. According to DPS Staff, however, what the recommended decision fails to acknowledge is that the DCF methodology is nevertheless less subjective than the CAPM approach.

DPS Staff also expresses its suspicion that the recommendations on this issue were swayed by the Company's claims about the DCF underestimating investors' expectations when a firm's market to book ratio exceeds one, and it argues that there is precedent and good reason to reject such a supposition. It notes as well that the Company's updated and flawed CAPM (9.2%) and Risk Premium (9.1%) estimates have fallen by 170 and 90 basis points, respectively, undermining the Company's claims about increasing capital costs. [191]

[*220]

---

[187] Westchester's BoE, pp. 7-9.

[188] The Company's BOE, pp. 49-50.

[189] R.D., p. 226.

[190] DPS Staff's BOE, pp. 42-46.

[191] The Company's updated/ revised DCF estimate is 12.7%.

Finally, DPS Staff argues that one further example of the poorly conceived and inconsistent nature of the recommended decision's overall conclusion is that if the judges had used the same historical data in its DCF and CAPM analyses, the conclusion would have been 9.75% instead of 10.58%, exclusive of a credit quality adjustment and issuance costs.

CPB excepts to the recommended equal weighting of the DCF and CAPM results, [192] noting that the 2/3 DCF and 1/3 CAPM weighting was endorsed as recently as an October 18, 2007 rate order for Orange and Rockland Utilities, Inc. The conclusion at that time was that the 2/3 and 1/3 weightings are consistent with the recommended decision in the Generic Finance case, that the concerns raised at that time are addressed by the two-stage DCF model employed by DPS Staff, and that the DCF method offers the significant benefit of reliance on readily available, objective data. In that same order, CPB continues, continuing concerns were expressed about the CAPM method, pointing out that divestiture of generation should have reduced the riskiness of electric utilities in New York, but that betas of holding companies had gone up. The latter increase, [*221] according to that order, could reflect an increase in utility risk or an increase in risk because of holding company investments in non-utility businesses.

Citing the July 1994 recommended decision in the Generic Finance case that supported a convention of 2/3 weight to the DCF method and 1/3 weight to the CAPM method, and numerous decisions consistent with that recommendation in 14 subsequent years, the NYC Government Customers also except to the recommendation that the DCF and CAPM results be weighted equally. The fact that both methods involve some subjective judgment, the argument continues, is not a good reason to deviate from the preferred convention. [193]

The Company opposes these three exceptions, arguing: [194]

> a. While the approach recommended in 1994 in the Generic [*222] Finance case has been followed consistently, we should nevertheless be prepared to reassess that approach when presented with evidence suggesting modifications are needed to produce a fair rate of return.
>
> b. Current and projected volatility in capital markets alone justify reassessment of the Generic Finance case approach.
>
> c. There is evidence of deficiencies in the DCF, CAPM, and Risk Premium methods and that is why it is unreasonable to give more or less weight to any one method.

No good reason has been presented for us to conclude that the judges' recommendations on this issue rest in whole or in part on the Company's criticisms of the DCF method in instances when market-to-book ratios exceed one. Nevertheless, we are granting the exceptions of DPS Staff, CPB, and the NYC Government Customers.

As DPS Staff points out, the DCF relies on readily available data to make objective estimates of investors' return requirements. [195] While the DCF has one input of primary controversy [*223] (growth), two CAPM inputs (beta and the market risk premium) are dependent on estimates which are contested and volatile. Measures of beta have dropped from approximately .80 at the time of the recommended decision to .70 now (and dropping from .93 during Case 07-E-0523). [196] The market risk premium is also subject to great variability in short periods, changing from 8.1% at the time of the recommended decision to 10.0% currently. In fact, while we prefer a forward-looking market risk premium, the volatility of using just one, as DPS Staff does, raises concerns which should be addressed in future rate cases. For these reasons, we are according 2/3 weight to our DCF results and 1/3 weight to our average CAPM results, or 10.41% overall.

The Company presented a Risk Premium estimate of the cost of common equity. The judges rejected this approach, stating

---

[192] CPB's BoE, pp. 7-10.

[193] The NYC Government Customers' BoE, p. 25.

[194] The Company's BoE, pp. 47-48.

[195] DPS Staff's BoE, p. 43.

[196] Case 07-E-0523, Consolidated Edison Company of New York, Inc. - Electric Rates, Exhibit 254.

that it has not been shown **[*224]** to be relevant to the Company's level of risk. [197] We support this finding. As we have stated before, ″the significant differences among utilities and among the ways that allowed returns are set by regulatory commissions render such comparisons unreliable, absent careful effort and analysis to ensure comparability.″ [198]

7. Credit Quality Adjustment

The judges agreed it makes sense intuitively that the market segment and business risks are the same whether one is interested in purchasing the Company's bonds or common stock. However, the Company had introduced an exhibit (Ex. 296) that it had claimed clearly establishes that there is no correlation between credit quality ratings and equity returns and no party had countered that claim in whole or in part. Taking this and some other information into account, the judges recommended a credit quality adjustment of 26.5 basis **[*225]** points, one half what DPS Staff had proposed to recognize that the Company's credit rating is higher than that of the proxy group. [199]

The Company excepts, offering the following arguments: [200]

a. There is no record evidence demonstrating any relationship between credit quality (S&P bond ratings) and market-equity returns estimated using the DCF and CAPM approaches.

b. Page 1 of Ex. 296 examines the relationship between DPS Staff's DCF-derived equity returns and S&P bond ratings for the companies in DPS Staff's proxy group. It shows no credit quality adjustment is warranted. [201]

c. Page 2 of Ex. 296 examines the relationship between the beta component of the CAPM model and credit ratings and this shows no credit quality adjustment is warranted. [202]

d. The judges' intuition is grounded in consideration of Generally Accepted Accounting Principles (GAAP) book results while the DCF and CAPM are market-derived analyses. Given the use of market-derived estimating techniques, the generally-accepted **[*226]** efficient market hypothesis overrules GAAP. That hypothesis holds that all information about a security, including the credit rating of a security's issuer, is incorporated into the price of the security.

e. In the alternative, the magnitude of the recommended adjustment is excessive given that the supposed ″BBB″ companies in DPS Staff's proxy group are equally weighted in the Moody's ″A″ and ″BBB″ indices. [203]

f. DPS Staff's willingness to reduce its proposed adjustment during briefing serves to underscore the adjustment's inherent unreasonableness.

DPS Staff opposes the Company's exception, arguing: [204]

a. The Company's argument is undermined by the testimony of its own witness that ″market prices of debt capital and equity capital are set by supply and demand, and both are influenced by the relationship between the risk and return expected for the respective securities....″ (Tr. 3131).

---

197 R.D., p. 225.

198 Case 06-E-1433 and 06-E-1547, supra, Order Setting Permanent Rates, etc. (issued October 18, 2007), p. 14.

199 R.D., pp. 228-229.

200 The Company's BoE, pp. 40-42.

201 Id., pp. 40-41. The Company explains this argument in some technical detail, offering information that was not offered in testimony during the hearings.

202 An extra record explanation is again provided.

203 This is a simple summary of an argument the judges expressly declined to adopt in the recommended decision because the Company's explanation was very hard to follow.

204 DPS Staff's BOE, pp. 29-30.

b. Moody's and S&P regularly assess the risk of companies they rate and the Company's stronger credit rating means an investment in the Company is more secure and hence, less risky, than an investment in a portfolio of proxy group company stocks (Tr. 3353-54).

c. We should ignore the [*227] Company's alternative argument, based on the existence of seven A-rated operating company subsidiaries of BBB-rated holding companies in DPS Staff's proposed proxy group. DPS Staff says there is nothing surprising about the fact that some operating companies have credit ratings higher than their holding Company parents because the parents tend to be more highly leveraged and have riskier non-regulated subsidiary operations.

For some of the same reasons just listed and for additional reasons that follow, DPS Staff also excepts to the judges' credit [*228] quality adjustment recommendations: [205]

a. The judges should not have recommended a reduced adjustment due to a lack of correlation between debt costs and historical equity returns. The Company's argument is false because there is no caveat in financial theory to the effect that prospective returns must recognize past relationships between debt costs and achieved returns.

b. The 23.5% drop in the Dow Jones Utility Index from March 28, 2008 through January 20, 2009, and the increase in Consolidated Edison, Inc.'s share price from $ 39.45 to $ 39.50 during that time, confirms that the Company is considerably less risky than its utility peers.

c. Given the turmoil in the financial markets and the disparity between current credit spreads and those that existed on average over the past 20 years, it would not be unreasonable to adopt a credit quality adjustment of between 21 and 53 basis points.

The Company replies: [206]

a. Ex. 296 shows that DPS Staff's DCF-derived prospective returns are not correlated with the credit quality of the companies in DPS Staff's proxy group.

b. DPS Staff again fails to produce any academic support for its position.

[*229]

We are adopting a credit quality adjustment of .41% based on the recent five year average spreads between the Company's bond ratings and those of the proxy group. [207] A seminal ratemaking principle is that allowed returns should be commensurate with risk. Bond ratings are a way to measure differences in risk. Investors recognize bond ratings as a basis for distinguishing higher or lower yields for debt. Equity is subordinate to debt, and it therefore follows that these risk differences would exist and be magnified for equity holders.

The Company's' arguments to the effect that no credit quality adjustment is warranted are undermined by and contrary to the testimony of its own witnesses. One of its witnesses, for example, testified that "investors will differentiate [*230] between the risks they assume. For several years, investors have made relatively little distinction in the cost of capital, based on the risk of those entities. This willful ignorance of risk no longer exists and we can expect the aggressive distinction of risk to persist for a significant period." [208] Another Company witness also testified that market prices of debt and equity capital are set by supply and demand, and both are influenced by the risk and return expected for their respective securities and the risks expected from the overall menu of available securities. [209] The Company's exception is denied.

---

205 DPS Staff's BoE, pp. 46-49.

206 The Company's BOE, p. 49.

207 DPS Staff's updated adjustment as of February 2009 is 130 basis points using the same methodology as in DPS Staff's direct case.

208 Tr. 1831-32.

209 Tr. 3131.

8. The Company's Revised Request for 10.6%

The Company now requests a 10.6% return on common equity, arguing: [210]

a. 10.6% is consistent with the judges' 10.58% return exclusive of any adjustment for credit quality and issuance costs.

b. 10.6% is the amount reflected in the Company's update/ correction filing in late December 2008.

c. It is compelled to increase [*231] its request because it now seems likely that capital costs will remain higher given the poor economy, that credit markets will remain stressed and volatile, and as it must maintain access to needed capital on reasonable term.

d. Some of the judges' expense and rate base adjustments would result in the disallowance of reasonable business costs and its proposal to ameliorate its rate filing, including the request for a 10.0% return on equity, was expressly conditioned on their being no such disallowances.

DPS Staff replies as follows: [211]

a. The Company is inconsistent to argue that capital costs have risen substantially while requesting 10.6% instead of the 11.0% supported in the Company's direct case.

b. DPS Staff's updated 9.7% (as of December 2008) shows a 60 basis point increase since the 2008 Rate Order and a 20 basis point increase since its direct testimony was filed in early September 2008.

c. Recent trades of 10-year debentures issued by the Company in December to yield 7.125% are now yielding only 5.7%, an indication that capital costs in the fixed-income market will not necessarily be higher throughout the Rate Year. Likewise, yields on the Company's most recent [*232] 30-year debt issuance decreased from 6.75% in April 2008 to approximately 6.0%. [212]

d. The indicated dividend yield requirements on Consolidated Edison, Inc.'s common stock is down from 5.9% in March 2008 to 5.8% as of February 3, 2009.

e. While Value Line and Zacks were forecasting long-term growth of 4.5% and 3.2% when the Company filed its case, they now forecast growth of 1% and 2.1%, respectively.

f. In sum, the financial turmoil has had dramatic, negative effects on many firms, but not on financially strong, low-risk companies like Consolidated Edison.

g. The Company's recent debt issuance with an authorized equity return that is 60 basis points lower than the return now recommended by DPS Staff proves that the Company continues to have unfettered access to capital markets.

h. The Company just announced its 35th consecutive annual common equity dividend increase. This is a strong indication that the Company's parent expects continued access to equity markets.

i. The judges did not create any increased risks for the Company as they recommended 97% of the $ 654 million initially requested by the Company.

j. The revenue requirement effect of the Company's 10.6% [*233] compared to DPS Staff's 9.7% is approximately $ 103 million.

The County opposes the Company's exception for the following reasons: [213]

---

[210] The Company's BoE, pp. 38-40.

[211] DPS Staff's BOE, pp. 25-29.

[212] DPS Staff acknowledges that these comparisons do not reflect issuance premiums for any new debt.

[213] Westchester's BOE, pp. 4-7.

a. The Connecticut Department of Public Utility Control issued an order on February 4, 2009, rejecting a request by United Illuminating for a $ 51.4 million revenue increase. Instead, it ordered a rate decrease based in part on a determination that 8.75% is a reasonable cost of equity.

b. The Statement of Policy (referring to the Statement of Policy Concerning Evidence of Economic Impact in Rate Cases (issued January 14, 1980)) clearly recognizes that this Commission can reject any rate of return even it if conflicts with its usual practice of setting an allowed rate of return at the lowest level within a range of reasonableness.

c. Lowering the return on equity to a more reasonable 9.0% properly [*234] balances the interests of shareholders and ratepayers and would be reasonable at this time.

Our overall equity return conclusions are based in part on our review of the Company's evidence and arguments in support of an 11.0% return on equity and need not be reevaluated in light of the recent change in the Company's request for a return of 10.6%.

Going beyond that fundamental point, the judges' recommendations to disallow certain costs on grounds that such costs are unreasonable or should not be borne by ratepayers do not constitute a reason on which we would rely to increase the allowed return on common equity. Rather, it is incumbent on the Company to avoid unreasonable costs or to bear full financial responsibility for its decision to do otherwise. Another factor ignored in the Company's recent request is that it is based in part on proposed methodological changes that went beyond the updates requested by the judges and, thus, is procedurally improper.

As noted above, there is [*235] uncertainty about the future in light of the recent economic downturn. Dealing with that uncertainty is a major consideration in these cases. The Company suggests it is a given that credit markets will remain stressed and volatile. For reasons discussed by DPS Staff and noted above, the Company's suggestion is inconsistent with some current information about trades in the secondary market and analysts' decreased estimates of growth. Turning, finally, to Westchester's arguments, that another utility in another state was recently awarded an 8.75% return on common equity says nothing about how we should decide this rate case. There has been no presentation concerning the comparability of the Company and United Illuminating. Likewise, the Statement of Policy on Economic Impacts discusses issues on which parties might file evidence but does not suggest how such issues ought to be resolved. The County's arguments are rejected.

9. ROE Conclusion

As discussed above, we are according 2/3 weight to our DCF result of 10.47% for the proxy group and 1/3 weight to our average CAPM results of 10.28% for the proxy group, or a weighted cost of equity for the proxy group of 10.41%. [214] This overall [*236] result is being adjusted downward by 41 basis points to reflect the credit quality difference between the Company and the median of the proxy group and increased by four basis points as recommended by the judges for issuance costs. The 10.04% result is rounded to 10.0%. [215]

This return on equity, in conjunction with the 48% equity ratio and other risk-reducing provisions adopted here, should allow the Company to maintain its financial integrity, given that it matches what the Company claimed for most of these cases was needed to ensure access to capital on reasonable terms. It said we must, ". . . adopt an ROE of at least 10.0%, so as to preserve the Company's "A" [*237] rating and permit it to raise common stock capital."

10. Earnings Sharing Trigger and Cap

The judges recommended that we give serious consideration to an earnings sharing trigger and cap in light of several key factors. First, the Company has shown that for the current rate year it sees nothing wrong with asking for and receiving

214 This unadjusted result is roughly equivalent to the average electric utility allowed ROE of 10.38% reported by Regulatory Research Associates for 2008 and the first quarter of 2009.

215 No RDM adjustment is proposed or is being made to the ROE since the risk reducing effects of the RDM are already reflected in the Company's credit ratings.

funds in rates to fill new positions, not filling a large number of those positions, and not establishing how the funds were used. Stated differently, the Company showed that it could increase its rate of return simply by not filling positions that it had claimed were needed to maintain reliable and otherwise reasonable electric service. Second, the judges concluded that earned rates of return in excess of allowed rates of return in past years likely contributed to the Company's achievement of an ″A-″ credit rating. The judges thought that adoption of a Revenue Decoupling Mechanism in the Company's last case decreased the chances the Company would be able to earn above its allowed rate of return in the future. Meanwhile, the judges noted that both the Company and DPS Staff proposed that this rate case be decided in a manner intended to ensure the Company's [*238] maintenance of an ″A-″ credit rating. Third, the judges thought it more difficult than usual to estimate what level of productivity the Company might reasonably be able to achieve in the Rate Year. Fourth, the judges thought that the current economic downturn is a unique circumstance that warrants protecting ratepayers against excessive utility earnings.

Taking all of these factors into account, the judges reasoned that an earnings sharing trigger and cap mechanism would give the Company some limited upside earnings potential--to help it retain its ″A-″ credit rating--while limiting the Company's ability to convert revenues intended to match expenses into rates of return in excess of what is allowed. [216]

The Company excepts, offering the following arguments: [217]

a. The judges' recommendation introduces substantial regulatory risk and should not be adopted.

b. No party made such a proposal and the cost of capital experts in these cases have not had an opportunity to make recommendations [*239] in the context of such a proposal.

c. There is no basis in the record for assuming the Company will achieve productivity greater than 1% or $ 10.6 million per year.

d. While joint proposals frequently call for earnings sharing triggers and caps, this Commission has never adopted such a mechanism in the context of a one-year rate plan. [218]

e. Public Service Law (PSL) § 66(20) authorizes refunds for over-earnings in a 12-month period only after the over-earnings occurs and only after there has been an opportunity to consider all of the relevant factors, including whether actual capital costs are higher than when last estimated.

f. No statute expressly authorizes the disposition of equity earnings in excess of those allowed except as provided in PSL § 66(20).

g. The judges did not adequately explain how earnings would be calculated. This is a further reason to conclude that PSL § 66(20) governs.

h. Alternatively, the earnings sharing trigger should be 100 basis points above the allowed equity return, suggesting this is typical in cases with joint proposals.

The County opposes the Company's exception, [*240] arguing: [219]

a. The recommended sharing trigger and cap are reasonable.

b. The effect of increasing the earnings sharing cap from 50 to 100 basis points above the allowed return is an extra $ 60 million of earnings for shareholders, an amount it considers unnecessary.

No party responds to the Company's legal argument. DPS Staff does not comment on the recommended earnings sharing trigger and cap.

---

216 R.D., pp. 234-235 and 10-11.

217 The Company's BoE, pp. 42-49.

218 This is the same basic argument DPS Staff makes with respect to the reconciliation of property tax expenses, an argument with which the Company disagrees in that instance.

219 Westchester's BOE, pp. 7-6

As discussed elsewhere in this order, it is very important that the Company have strong incentives to operate efficiently given the electric rates we set. The recommended equity earnings sharing trigger and cap would minimize that incentive and we conclude this would be contrary to the interests of ratepayers in the short- and long-run. Furthermore, in the context [*241] of an RDM and downside true-ups for capital investment, an earnings sharing mechanism would not be balanced. Accordingly, the Company's exception is granted. However, we do not reach the questions of whether we lack statutory authority to adopt the judges' recommendation or whether such a mechanism must be proposed through the testimony of one or more parties before it could be adopted.

B. Cost of Debt

The judges noted the Company plans to issue at least $ 1.1 billion of debt before the end of the Rate Year, in addition to $ 600 million of 10-year debt issued in December 2008. (In fact, the Company issued $ 750 million of additional debt on March 23, 2009.) The judges also discussed the agreement of the Company and DPS Staff that debt costs be updated at the time of our decision and recommended DPS Staff's approach for such an update. That forecast method calls for use of the latest Moody's determination of spreads above Treasuries for similarly-rated utility debt as well as a premium for new issuance. The judges also endorsed the agreement of the Company and DPS Staff that actual and forecast debt costs for the Rate Year should be trued up in light of market uncertainty. [220] [*242]

Using the latest debt yields including issuance costs, the updated Rate Year cost of long-term debt is 5.79% compared to the 5.96% reflected in the recommended decision. Appendix IV shows the derivation of the 5.79%.

For purposes of the reconciliation, Appendix IV will be replicated using actual data and determining the revenue requirement effect of the difference between what was authorized and incurred will be subject to true-up. It is solely the overall cost rate of debt which should be reconciled, and not the amount of debt outstanding. We note that such a true-up of debt costs in a one-year litigated rate case is unusual. However, given the special circumstances created by the upheaval in the financial markets recently, such a mechanism is warranted. In light of recent volatility, it is currently difficult to estimate accurately what auction rate debt costs and spreads to Treasuries will be in effect when the Company issues additional debt. This reconciliation protects both the Company [*243] and customers by removing the risk of a very inaccurate estimate of such costs.

C. Overall Rate of Return

Given the 10.00% updated cost of common equity, the 5.79% updated cost of long-term debt, the updated customer deposit rate of 4.85% (up from 3.75%) and the judges' uncontested capitalization ratio recommendations, the Company's overall allowed rate of return in the Rate Year is 7.79%, calculated as follows:

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. RATE OF RETURN REQUIRED FOR THE RATE YEAR TWELVE MONTHS ENDING MARCH 31, 2010

PER COMMISSION

	Average Capitalization %	**Cost Rate %**	**Weighted Cost Rate %**
	Percent		
Long Term Debt	49.60%	5.79%	2.87%
Preferred Stock	1.10%	5.34%	0.06%
Customer Deposits	1.30%	4.85%	0.06%

[220] R.D., pp. 236-238.

	Average Capitalization %	Cost Rate %	Weighted Cost Rate %
	Percent		
Common Equity	48.00%	10.00%	4.80%
Total	100.00%		7.79%

IX. RATE BASE

A. Lower Allowance for Infrastructure

1. Transmission and Distribution

a. Introduction

The Company initially forecast a transmission and distribution (T&D) capital budget of $ 1.723 billion in 2009 and $ 1.596 billion in 2010. The dollar impact of this investment on Rate Year plant in service has not been specified.

DPS Staff proposed **[*244]** a general downward adjustment to Rate Year plant in service of $ 125.769 million and a related downward adjustment to Rate Year T&D expenses. The basic premise underlying these adjustments is that for many of the Company's capital programs and projects, the Company historically invested or expended fewer dollars than it had budgeted. On that basis, DPS Staff projects that the Company will do likewise in the Rate Year, meaning that rates based on the Company's T&D forecasts would be unnecessarily high. This is referred to as DPS Staff's historic spending adjustment.

DPS Staff also proposed adjustments to eight specific T&D programs or projects for reasons going beyond its historic spending adjustment. It proposed as well that the costs of two T&D projects or programs be considered in other cases.

The Company disagreed in large part with DPS Staff's proposed adjustments but accepted some, both at the hearings and in its trial briefs. In its initial trial brief, the Company also reported the results of its updated forecast of approximately $ 1.623 billion T&D investment in 2009, or approximately $ 100 million lower than its earlier forecast.

The judges recommended against adoption of **[*245]** DPS Staff's historic spending adjustment because the Company provided very extensive support for its planned expenditures. DPS Staff's adjustment, on the other hand, was premised solely on what the Company had invested or spent in the past years compared to Company budgets for those years and the judges concluded that approach would be a departure from the 1977 Statement of Policy on Test Periods in Major Rate Proceedings. Outside of the DPS Staff's specific adjustments discussed separately below, the judges noted, DPS Staff did not offer any substantive basis for questioning the Company's planned Rate Year T&D investment and expenses. [221] Indeed, for some projects and programs, DPS Staff expressly agreed that the Company's plans were substantively reasonable. The judges also thought it unwise to adopt a low estimate of T&D investment given their separate recommendation to adopt DPS Staff's proposals that the revenue requirement effects of planned T&D and other capital investment reflected in rates but not actually made be deferred with interest for the future benefit of ratepayers. [222]

[*246]

---

[221] R.D., pp. 265-266.

[222] Id., pp. 299-301.

Turning to DPS Staff's proposed adjustments to specific projects or programs, the judges recommended adoption of three of DPS Staff's proposed specific adjustments, recommended outcomes between the two parties' positions for three issues, and recommended adoption of the Company's position on four issues. [223]

The judges made reference to some DPS Staff T&D adjustments that the Company agreed to during the hearings and initial briefs. However, only the former are reflected in the cost of service calculations attached to the recommended decision.

As to the $ 100 million reduction in forecast 2009 T&D plant investment, the judges did not reflect it in their cost of service calculations, in small part because they did not believe they had enough detail or time for that change to be reflected in Rate Year plant in service and in large part because the referenced Policy Statement **[*247]** provides that updates of forecasts will be accepted only if they are provided up to the time that DPS Staff's direct case is cross-examined. The latter occurred in October 2008 and the update in the Company's initial trial brief was provided on November 21, 2008.

The sections that follow pertain to: DPS Staff's historic spending adjustment; some of DPS Staff's issue-specific adjustments; the proper treatment of DPS Staff's adjustments accepted by the Company; and the Company's $ 100 million T&D budget forecast update.

b. <u>DPS Staff's Historic Spending Adjustment</u>

For the reasons that follow, DPS Staff excepts to the recommendation against its historic spending adjustment: [224]

a. DPS Staff's proposed T&D O&M adjustment is $ 22.528 million, not $ 40 million as reported by the judges.

b. Historic cost analysis is a principal evaluation tool accepted for many years. Denying parties the opportunity to evaluate, draw conclusions, and advance recommendations based on historic performance seriously handicaps parties and imposes an unfair bias in favor of utilities.

c. The judges are inconsistent to recommend DPS Staff's historic hiring practices adjustment while rejecting DPS Staff's **[*248]** historic spending adjustment for T&D capital and expense items.

d. The Company under-spent its 2008 electric operations budget by over $ 100 million and its 2008 common operations budget by $ 49 million. The implication is that this is a further reason to believe that DPS Staff's historic spending adjustment is reasonable.

e. The Policy Statement on Test Periods in Major Rate Proceedings holds that rate case forecasts must be developed from a historical base and that parties should be able to retrace a utility's projections to the historical base.

f. The historic relationship between budgeted and actual expenditures provides a reasonable guide as to what the Company will likely spend in the future.

g. Contrary to the judges' claim, DPS Staff's adjustments are not based solely on an analysis of historic costs. The record shows that DPS Staff investigated each capital and O&M project and program and that such review led to the proposed adjustments (Tr. 2998, 3003, and 3007).

h. That DPS Staff agrees some projects and programs are needed is not decisive because the Company in past years invested or spent less than budgeted amounts even on projects or programs that were unquestionably **[*249]** needed.

i. The Company admits it would be grossly unfair to ratepayers to pay rates based on projections of investments and expenses that are higher than actual. Adoption of the recommended decision will permit such a situation to exist.

---

[223] <u>Id</u>., pp. 266-267.

[224] DPS Staff's BoE, pp. 50-53.

Finally, in a separate part of its brief, DPS Staff argues that the effect of rejecting its historic expenditure adjustment is to shift the burden of proof from the Company to other parties. [225]

The Company opposes DPS Staff's exception for the following reasons: [226]

a. The judges did not deny the parties the opportunity to evaluate, draw conclusions, and advance recommendations based on the Company's historic performance. They held that adjustments based solely on historic performance did not overcome the Company's extensive [*250] evidentiary presentation in support of its Rate Year programs and projects.

b. The Statement of Policy on Test Periods in Major Rate Proceedings says that the goal of ratemaking is to ascertain revenues, expenses, and other conditions in the Rate Year and, to that end, that historic data, emerging actual results, and projected changes in operations and costs should be considered. DPS Staff's adjustment is based solely on historic data.

c. Adjustments based solely on historic performance were rejected in the 2008 Rate Order because they did not account for prospective planning and the assessment of needs based on aging infrastructure and demand growth. DPS Staff's proposal suffers from the same problems.

d. DPS Staff's adjustment is inconsistent with its urging the Company to be more aggressive and proactive in the replacement and upgrade of aging infrastructure (Tr. 2996-97). The Company's projections account for this information.

e. The record shows that the Company fully met its burden of proof in support of T&D investment and expenses.

f. The $ 100 million under run in 2008 electric operations capital expenditures was primarily attributable to long term projects not scheduled [*251] to be included in net plant in service until after the Rate Year. In any event, the associated revenue requirement is and would continue to be subject to reconciliation and this fully protects ratepayer interests.

We are adopting DPS Staff's historic spending adjustment. Consideration of historic information is clearly appropriate under the referenced Policy Statement. Such information establishes a pattern of under-spending by the Company compared to forecasts. Emerging actual information is also appropriately considered under the referenced Policy Statement and a $ 100 million reduction in actual 2008 T&D capital spending reported post-recommended decision is consistent with the historic pattern underlying DPS Staff's proposal. The remaining question is whether DPS Staff or other parties must disagree with the Company's forecast on a program or project specific basis in order for us to determine whether the Company will continue to under-spend in the Rate Year. We conclude not, [*252] because the Company has generally under-spent even as to projects and programs as to which there is no question of need.

We cannot agree with the Company's argument that a generalized adjustment to estimated T&D expenditures, such as the historic spending adjustment urged by DPS Staff here, was rejected in the Company's last electric rate case. The Company's argument notwithstanding, the 2008 Rate Order recognized the potential validity of such an adjustment. [227] Indeed, in that decision we adopted an adjustment based, at least in part, on a ″slippage″ analysis provided by DPS Staff, the same type of analysis presented here. While we also based our adjustment in the 2008 Rate Order on our need to restrict spending to mitigate rate increases, the Company is simply wrong to assert that the 2008 Rate Order rejected the use of a generalized adjustment to estimated T&D investment.

In reaching this conclusion, we agree with the judges that the precise basis for DPS Staff's proposed [*253] adjustment is the comparison it made between budgeted and actual T&D investment amounts in past years. That utilities are required to forecast Rate Year revenue needs working off of an historic Test Year also has nothing to do with this issue. We agree

225 DPS Staff's Boe, p. 3, including n. 4.

226 The Company's BOE, pp. 50-56.

227 The 2008 Rate Order, pp. 91-92.

with the judges, moreover, that the risk to ratepayers of over-forecasting the Company's actual investment is not high in light of their recommended one-way downward only reconciliation. [228] However, we are concerned about setting T&D construction targets too high and removing or minimizing the Company's incentive to operate efficiently. For this reason, a lower investment estimate is warranted. [229]

c. DPS Staff's Project- or Program-Specific Adjustments

(i) Emergent Transmission Reliability [*254]

The Company proposed to invest $ 10 million per year in emergent transmission reliability. Based on the results of an annual review of transmission feeder operations, the money would be used to address reliability concerns for some transmission equipment before it fails. DPS Staff proposed that the entire $ 10 million per year be disallowed. The judges recommended an annual allowance of $ 2.9 million based on the Company's historic investment for this purpose. [230]

DPS Staff excepts, arguing an historic average is not appropriate as there is no historic pattern and there have been no such expenditures since 2004. [231] The Company should simply invest what it needs and the Company's actual costs could be evaluated for reasonableness after the fact and a prospective rate allowance, if appropriate, could be provided in a future case.

[*255]

The Company replies that it spent $ 8.8 million on emergent work in 2005 (Tr. 3806) and that DPS Staff has not addressed much less rebutted the transmission feeder reliability concerns that give rise to the planned 2009 investment. [232] The Company also argues that the absence of any expenditure after 2005 does not negate or trump the reliability concerns arising from recent feeder performance.

DPS Staff's exception is granted. Exhibit 169, p. 18, a discovery response prepared by the Company, shows no outlays in this category in the period 2004 through 2007 and this was pointed out in DPS Staff's trial briefs. [233] To the extent the Company is arguing that specific work needs to be done in response to recent operational problems, this is not established by any of the evidence it cites. There is also an open question of fact about whether the $ 8.8 million project the Company identifies was for emergent transmission reliability work or for work needed in another category. Any failure [*256] of proof in that regard is properly assigned to the Company.

(ii) Work Management Systems

The Company plans to begin a project in 2009 to develop a consolidated electric construction work management system. The projected investment is $ 1.5 million in 2009, $ 13.5 million in 2010, and the total projected cost is $ 65.280 million through 2012. DPS Staff proposed to disallow $ 6.5 million of the 2010 figure. [234]

---

228 That reconciliation recommendation clearly distinguished DPS Staff's proposal here and its separate historic hiring adjustment proposal.

229 We consider separately the issue of whether to reflect the $ 100 million reduction in the Company's forecast T&D investment.

230 R.D., pp. 248-250 and 267.

231 DPS Staff's BoE, p. 56.

232 The Company's BOE, p. 57.

233 DPS Staff's Initial Brief, p. 224.

234 Contrary to the recommended decision, p. 264, DPS Staff proposed no adjustment to the $ 1.5 million for 2009. Ex. 172, p. 7 of 8, near the bottom. The total project figure is shown in Ex. 70, p. 2.

The judges recommended against DPS Staff's adjustment on the grounds that its opinion of how soon this project needs to be completed amounted to improper micro-management of the Company. [235]

[*257]

DPS Staff excepts, arguing that the judges' recommendation is not supported and is potentially harmful to the rate making process. [236] Determining if and when certain investment is needed is a typical part of its function, according to DPS Staff. As its witness testified, DPS Staff says, its proposal would help to reduce impacts on customers while the existing work management system remains operational.

The Company opposes DPS Staff's exception, asserting that the 2008 Rate Order directed the Company to aggressively act to manage costs and prioritize projects to achieve the necessary improvements at the least possible cost to customers. [237] Adopting DPS Staff's adjustment, it says, would delay the roll-out of the consolidated work management software platform for electric operations (i.e., distribution) from 2012 to 2016.

[*258]

Our rate year revenue requirement is based in part on capital investment in this project of $ 1.5 million in 2009 and $ 7.0 million in 2010. We agree that this project should go forward. However, we are informed that a report based on an ongoing audit of the Company will touch on the Company's plans, the extent to which they are reasonable, and the extent to which cost offsets are likely. [238] That report is expected to be provided in the coming months and we will address this issue further in the Company's next electric rate case.

d. Corrections and Updates

The Company advises that the recommended decision incorrectly failed to reflect three DPS Staff adjustments to capital expenditures programs that the Company accepted. The adjustments total $ .586 million in 2009 and again in 2010. [239] In its brief opposing exceptions, the Company states that there are nine DPS Staff adjustments that were accepted by the Company **[*259]** that are not reflected in the recommended decision, including the three referenced above. The nine downward adjustments to planned capital expenditures total $ 6.75 million in 2009 and $ 3.75 million in 2010. [240]

These corrections are uncontested and are reflected in our revenue requirement determination.

As noted above, the judges did not reflect in their cost of service calculation a $ 100 million dollar reduction in the Company's 2009 capital investment budget. The budget update was reported for the first time in the Company's initial trial brief, some details were provided much later, and the judges thought they did not have enough information or time to determine in early January 2009 how the updates might affect plant in service in the Rate Year. [241] Even if they had the requisite time and information, the judges recommended against reflecting the update unless we would be inclined to consider updates of forecasts that would tend to **[*260]** support a greater revenue increase.

---

[235] R.D., pp. 268 and 269.

[236] DPS Staff's BoE, p. 55.

[237] The Company's BOE, pp. 56-57.

[238] This information was not available to or considered by the judges in the recommended decision.

[239] The Company's BoE, p. 25.

[240] The Company's BOE, p. 50, n. 47.

[241] R.D., p. 241.

DPS Staff excepts, arguing the $ 100 million reduction is described in the Company's trial brief as a material known change in the Company's capital budget not a change in estimate as characterized in the recommended decision. [242] DPS Staff goes on to note that the Company under-spent its 2008 T&D budget by $ 100 million and its 2008 common operations budget by $ 49 million. This significant under-spending, according to DPS Staff, should also be recognized so that rates will not be set too high.

Taking these DPS Staff arguments in order, the Company notes that the Rate Year revenue requirement impact of the $ 100 million T&D budget reduction for 2009 is about $ 5 million. The Company also reports that the 2009 T&D budget has been further updated, reflecting another [*261] $ 11 million reduction (for a total of $ 111 million) but states that net plant in service in the Rate Year is not affected beyond the $ 5 million just mentioned.

As to whether the updated projection should be reflected in the final decision, the Company opposes DPS Staff's proposal, arguing: [243]

a. We should tread lightly with the use of new estimates other than those for which there is a consensus.

b. Customers are already protected because the Company does not oppose continuation of the T&D net plant downward-only reconciliation. [244]

c. If DPS Staff's proposal is adopted, this should be done subject to the caveat that in future proceedings, budget updates going the other way will also be reflected.

The Company opposes consideration of reductions in its actual 2008 investment [*262] for the following reasons:

a. The Company report relied upon by DPS Staff and attached to DPS Staff's brief on exceptions is not part of the record. Erroneous conclusions might be drawn from this report and the Company would have no opportunity to respond.

b. The impact on net plant in service in the Rate Year is $ 6.5 million, reducing Rate Year revenue requirement by $ 1.6 million.

c. $ 115 million of the under-run is related to the delayed in-service dates for the M-29 feeder and the York and Elmsford substations.

d. DPS Staff's proposal does not account for the possibility that net plant investment from now through the end of the Rate Year may be higher than forecast.

e. If DPS Staff's proposed update is reflected, it should be subject to the understanding that in a future proceeding where the Company's actual capital expenditures immediately before the Rate Year are higher than previously forecast, the higher actuals will likewise be reflected.

The Statement of Policy on Test Periods in Major Rate Proceedings (17 NY PSC 25-R, 28-R) states that revisions in known cost rates (such as for wage and tax increases), to the extent they are material, may be made as late [*263] as the Company's brief on exceptions. The stated reason for accepting changes this late is that they are easy for DPS Staff and other parties to verify and to note any disagreement in their briefs opposing exceptions. The referenced policy statement also discusses changes in estimates and states that they will be entertained when based on data not available at the time of the original filing and if presented not later than at the hearing at which DPS Staff's case is cross-examined or, in this instance, in mid-October 2008. We agree that an updated forecast would not typically be reflected at this time under the terms of the referenced policy statement. However, there is no objection by any party other than the Company. The information is also

---

242 DPS Staff's BoE, p. 51.

243 The Company's BOE, pp. 58-59.

244 The Company's decision to accept continuation of a downward-only T&D reconciliation, however, is expressly conditioned on our adopting the judges' T&D capital forecast for 2009 and 2010.

properly seen as Company-provided information requested at the hearings. Given that the new information reduces revenue requirement, moreover, reflecting the Company's own updated forecast is not likely to frustrate the ratepayer protection affected by the rate case process generally. Finally, we note we are also reflecting numerous cost updates that were provided after the briefs on exceptions, contrary to the express terms of the Statement **[*264]** of Policy on Test Periods in Major Rate Proceedings. The net effect of these is to increase substantially the Company's revenue requirement. In this context, it would not be fair to ignore the Company's updated T&D forecast.

As to the 2008 actuals, these comprise actual results that bridge the gap between the historical Test Year and the forecast Rate Year. The existing T&D reconciliation term addresses them for the current rate year, but not for the Rate Year at issue here and that is why they are properly reflected.

2. <u>General Equipment</u>

The Company's rate request is based in part on its projected investment in general equipment--vehicles, computers, lab equipment, furniture, tools, and communications equipment--of approximately $ 77 and $ 74 million in 2009 and 2010, respectively. The Company's May 2008 filing includes at least two exhibits (Exs. 5 and 11) showing the planned monthly rate of investment but there was no testimony to support it. During the discovery process, DPS Staff asked the Company (DPS 318) for the location of any testimony in support and, if none, for an explanation of the forecast. The Company provided neither in a response that basically described the categories **[*265]** of general equipment and set forth the Company's projections for each by calendar year. [245]

DPS Staff filed testimony and exhibits in early September to the effect that the forecast investment should be disallowed as unsupported. It later became apparent that DPS Staff was also proposing a prospective disallowance of any return on general equipment acquired by the Company in the Linking Period of January 1, 2008 through March 31, 2009 (the period from the end of the historic Test Year, December 31, 2007, to the beginning of the Rate Year, April 1, 2009). [246]

The Company sought to augment its support for its forecast general equipment investment in the form of update/ rebuttal testimony filed in late September 2008. A **[*266]** Company witness acknowledged on cross-examination that the further information was available in May 2008, when the Company's direct case was filed. DPS Staff moved to strike and the motion was granted in a ruling issued November 4, 2008.

In their trial briefs, DPS Staff continued to support a full disallowance and the Company sought the exact opposite. In the recommended decision, the judges: [247]

> 1. Agreed in general that the overriding goal of ratemaking is to determine the Company's revenue needs in light of information presented timely and in a procedurally correct manner.
>
> 2. Noted that there are prior decisions holding that DPS Staff and intervenors have an obligation to identify and invite a utility to flesh out those aspects of its rate filing that are deficient as a precondition to proposing a disallowance concerning those aspects.
>
> 3. Recommended for a variety of reasons that DPS Staff and intervenors be relieved of any such obligation on a prospective basis and that consideration be given to adopting specific filings standards that must be met before the 11-month suspension period would start to run. (The latter would require legislation).
>
> 4. Held that the minimum **[*267]** requirements set forth in the 1977 Statement of Policy on Test Periods in Major Rate Proceedings--the provision of testimony and exhibits justifying quantities, assumptions, expectations, activity changes, etc. (17 NYPSC 25-R, 26-R)--apply to general equipment.
>
> 5. Found that there is no conclusive record evidence about whether the Company provided the same level of proof for general equipment in past cases without any objection and concluded, in any event, that parties cannot waive the referenced Policy Statement.

---

[245] Ex. 190, pp. 61-66.

[246] The 25-day extension of the suspension date, through April 30, 2009, does not change the Rate Year.

[247] R.D., pp. 277-279.

6. Expressed mixed feelings about whether the Company's request for general equipment should be disallowed. While it was apparent to them that something needs to be done to ensure Consolidated Edison's future filings are more complete, the judges were concerned about disallowing all the planned investment in the absence of some proof that the Company does not need new vehicles, computers and the like to provide reasonable quality delivery service in the Rate Year. In other words, disallowing all planned general equipment investment might be counter-productive for ratepayers.

7. Recommended a disallowance of $ 2 million of rate case expense as a deterrence and inclusion [*268] of the Company's forecast of general plant in rate base.

DPS Staff excepts, offering the following arguments: [248]

a. The recommended decision is inconsistent to the extent it cites numerous procedural reasons why the Company's general plant forecast might be ignored and nevertheless recommends, aside from the recommended $ 2 million rate case expense disallowance, that the Company's forecast for general equipment be reflected fully in rates.

b. 16 NYCRR Part 61 places the burden of proof on the utility; there is no burden on DPS Staff to prove that the Company does not need general equipment in the Rate Year.

c. There is no evidence in the record that the Company needs to purchase general equipment during the Rate Year.

d. The approach taken by the Company denies DPS Staff and other parties the opportunity to test the need, timing and costs of the Company's planned investment in general equipment.

[*269]

The Company opposes DPS Staff's exception, as follows: [249]

a. DPS Staff does not dispute the judges' premise that the Company needs general equipment to provide safe and reliable delivery service in the Rate Year.

b. As the judges expressly stated in the November 4, 2008 ruling, there is no shift in the burden of proof to DPS Staff and the other parties.

c. In the Company's last electric rate case, a proposed CPB adjustment based on dissatisfaction with Company discovery responses was rejected on the grounds that CPB had failed to exhaust its remedies in the discovery process (e.g., file a motion to compel a satisfactory response). The Company relied on this precedent and followed past practice and, thus, DPS Staff's draconian proposal is unwarranted, especially as there is no allegation that the Company did not stand ready to provide the additional information.

d. Rate case proceedings should not be a game of "gotcha" and DPS Staff's approach for the general plant category differs from one it followed for other cost elements. The Company assumed its response to DPS Staff's discovery request DPS-318 was reasonable because DPS Staff did not object or ask any follow-up [*270] questions.

e. DPS Staff provides no reason why the historic average spending should not be relied upon for a Rate year forecast. Exhibit 5, included in the Company's direct case, includes plant balances, amortization and depreciation, including for various categories of general plant on a monthly basis for the Linking Period and the Rate Year.

f. There is other evidence on the record that supports the Company's projections for general equipment. Exhibit 344 shows historical costs by general equipment category for 2005, 2006, and 2007 and 2008 through August.

---

[248] DPS Staff's BoE, pp. 56-59. The reconciliation attached to DPS Staff's BOE shows a reversal of the recommended $ 2 million rate case disallowance. The downward revenue requirement impact of granting its exception is estimated to be $ 9.9 million for the Linking Period and $ 3.4 million for the Rate Year. As discussed below, however, the Company estimates larger revenue requirement impacts of $ 15.8 million for the Linking Period and $ 4.9 million for the Rate Year. The Company's figures apparently include associated depreciation expense.

[249] The Company's BOE, pp. 62-67.

That exhibit shows the 2005-2007 average investment was $ 75.2 million per year, in line with the Company's forecast for 2009 through 2011.

g. DPS Staff seeks to disallow a return on more than $ 99 million of plant additions for general equipment in the Linking Period even though that investment was included in the Company's last rate case filing, was unopposed in its last case, and was reflected in part (January-March, 2008) in the 2005 Rate Plan. It makes no sense to disallow these costs, even prospectively, based on the Company's failure to re-justify them in testimony in these cases.

h. DPS Staff is inconsistent to [*271] argue that the Company failed to meet current requirements and to propose on a prospective basis that the Company be required to prove the reasonableness of new costs in the Rate Year or deviations from the forecasts of more than 10%. [250]

i. The effect of granting DPS Staff's exception would be to deny the Company $ 4.9 million of revenue for planned Rate Year investment and $ 15.8 million for its investment in the Linking Period. The Company says it is not clear if DPS Staff is pressing the latter point because it is silent on it. The Company provides the revenue requirement figure as a matter of caution.

The Company also excepts and appeals the November 4, 2008 ruling, arguing: [251]

a. The recommended $ 2 million rate case expense disallowance is unreasonable to the extent it is based on a deficiency in one narrow aspect of the Company's rate case filing rather than on a comprehensive assessment [*272] of the Company's entire filing.

b. A $ 2 million disallowance is not needed to encourage the Company to meet the applicable rate case filing standards.

c. Contrary to the recommended decision, the Company submitted sworn testimony to the effect that its approach in this case followed historical practice and that testimony is unchallenged (Tr. 404). It would be difficult or impossible to prove that other parties did not object to that approach in past cases.

d. Even if parties cannot waive a standard by practice, it would be unreasonable to disallow $ 2 million without prior notice, especially in light of the judges' tacit recognition that current filing requirements are general.

e. While the judges recommend that DPS Staff and other parties be relieved prospectively of the obligation to identify and invite the Company to flesh out deficient aspects of its filing, past precedent holds otherwise and the Company relied in good faith on that precedent.

f. DPS Staff and other parties should have some continuing obligation to avail themselves of all tools and remedies available for obtaining the information they need to evaluate a utility rate filing.

g. Nothing in this case [*273] provides a basis for the judges' suggestion that consideration be given to starting the 11-month suspension clock only after it is determined that all filing requirements have been met.

DPS Staff disagrees with the Company as follows: [252]

a. Parties are not collaterally estopped from questioning the level of support the Company provides for planned general equipment investment, merely because there was no objection in prior cases.

b. DPS-318 asked the Company to identify where in testimony and exhibits it supported its general equipment request <u>and</u> to provide the justification for each project not included in the Company's filing. The Company's response (in Ex. 190) answered neither of these questions. The failure of proof here is entirely the Company's.

---

[250] The latter proposals are discussed below, in Section IX(B)(5) and (6).

[251] The Company's BoE, pp. 50-52.

[252] DPS Staff's BOE, pp. 30-31.

We conclude [*274] that DPS Staff's exception pertains to general equipment investment for the Linking Period and the Rate Year. This has been its position all along and nothing it says on exceptions suggests anything to the contrary.

Under 16 NYCRR 61.3(b)(1), the Company is required to establish by competent testimony the detailed cost of rendering service to which its proposed new rates, rules, and regulations are applicable. The Company did not comply with this requirement for general equipment. Likewise, the Statement of Policy on Test Periods in Major Rate Proceedings states the long-standing expectation that rate case filings will be accompanied by testimony and exhibits justifying quantities, assumptions, expectations, activity changes, etc. [253] The Company did not comply with this policy to the extent it failed to file testimony timely.

The Company seeks relief from any adjustment on various grounds. It suggests, for example, that it was reasonable [*275] for it to conclude that its response to DPS-318 was acceptable in the absence of any objection or follow up discovery. This essentially amounts to an argument that responsibility for meeting rate case filing requirements should be shifted to other parties. Such an outcome is contrary to the express terms of the rule and policy discussed above and we reject it. Moreover, it is highly unlikely any person reviewing the Company's answer to DPS-318 would reasonably conclude that it is a complete and direct response to the specific questions asked. This confirms our conclusion.

At the same time, the purpose of a rate case filing is to help us to set rates for a future period. The bulk of DPS Staff's adjustment, however, would result in the disallowance of a return on investment in the Linking Period rather than in the Rate Year. The Company is also correct that its investment plans for the current rate year were reviewed in its last rate case with no disallowance. Following such an evaluation, a disallowance in these cases would only be warranted on some showing that the Company's actual investment was unreasonable. Moreover, an attachment to DPS Staff's brief on exceptions shows the Company's [*276] budget and actuals for general equipment of $ 99.064 million and $ 98.935 million through December 2008. This information also suggests a disallowance of all general equipment investment for the Linking Period would not be reasonable.

Taking all of the above into account, DPS Staff's exception is granted as to the Rate Year and denied as to the Linking Period. The recommended $ 2 million rate case expense disallowance is not adopted.

The Company's appeal of the November 4, 2008 ruling is denied. The Company's arguments against a revenue requirement adjustment have no bearing on whether the Company's ″rebuttal″ was actually untimely direct testimony and properly stricken on that basis.

3. Electric Production

The Company forecast capital expenditures of approximately $ 39 million per year and DPS Staff proposed a downward adjustment of approximately $ 5.5 million based on the Company's investment levels over the prior five years. [254]

[*277]

The judges recommended that the revenue requirement impacts of the Company's forecast be reflected in rates, subject to a downward only reconciliation provision. Under the latter term, which had been proposed by DPS Staff, the revenue requirement impacts of any planned investments not made by the Company would be deferred with interest for the future benefit of customers. Given this recommendation, ratepayers will not be harmed and the Company will not benefit financially if the latter actually invests less than it forecasts.

Aside from this term, other reasons why the judges did not recommend DPS Staff's proposed $ 5.5 million disallowance include: [255]

---

253 17 NYPSC 25-R, 26-R (1977).

254 DPS Staff called it $ 5.428 million and the Company called it $ 5.6 million.

255 R.D., pp. 282-283.

1. DPS Staff said the Company had recently invested more than $ 40 million per year and that it had no reason to believe the Company would not continue to invest at current levels.

2. DPS Staff agreed the work proposed by the Company needs to be done but said it has doubts about the timing and costs for such work.

3. DPS Staff seemed to be requiring a level of proof in support of the Company's forecast that goes beyond that set forth in the 1977 Statement of Policy on Test Periods in Major Rate Proceedings. Meanwhile, the [*278] Company described how its estimates were prepared and said they were made in good faith.

4. DPS Staff had not provided a direct response to the Company's contention that investment levels in two of the five years in DPS Staff's historic average were aberrational. [256]

5. The Company's actual investment in the last three years averaged $ 43.3 million. [257]

DPS Staff excepts for the following reasons: [258]

a. The judges mischaracterized [*279] DPS Staff's argument concerning the proposed use of a five-year instead of a seven-year historic average. DPS Staff rejected the seven-year average because the East River Repowering Project work was ongoing during those years.

b. The judges gave inadequate weight to DPS Staff's contention that the Company provided little proof supporting its projections as the planned projects are still in the conceptual design and work-scope development phase.

c. The judges give too much weight to the Company's unsupported and undocumented cost and timing estimates (as contrasted with need).

d. Customers should not be expected to fund projects that may or may not be completed.

The Company opposes DPS Staff's exception, contending: [259]

a. DPS Staff champions the exclusion of aberrational data as a reason for not using a seven-year forecast but has still not responded to the Company's contention that two of the five years in DPS Staff's five-year historic average are aberrational because [*280] they immediately followed the East River Repowering Project and the retirement of Waterside.

b. DPS Staff does not contest the judges' conclusion that the Company's presentation meets the standards of the 1977 Statement of Policy on Test Periods in Major Rate Proceedings.

c. DPS Staff does not contest that the Company justified the need for the proposed work and that it has no reason to believe that the Company should not continue to invest at the level Consolidated Edison proposes.

The Company's planned generation investment in ten subcategories is set forth in reasonable detail in its direct testimony (Tr. 919-933) and in Exhibits 81 and 150, pp. 22-23. The best record evidence is that the Company's actual investment in 2003 and 2004 is aberrational and DPS Staff provides no explanation as to why such information should nevertheless be relied upon. DPS Staff's exception is also undermined to the extent it says it is not aware of any reason why the Company should not continue [*281] to invest at recent historic levels of more than $ 40 million per year. We also disagree that the judges misunderstood or misrepresented DPS Staff's arguments about use of a five-year versus a seven-year average. As the judges' surmised, rejection of a seven-year average with four years of aberrational data does not render reasonable a

---

[256] Id. In connection with the latter point, the judges characterized as "beneath DPS Staff" an argument that use of a five-year historic average is reasonable because DPS Staff could have but decided not to rely on a seven-year average that would have reflected electric production capital investment levels that were substantially lower than its five-year average. See DPS Staff's Initial Brief, p. 248.

[257] Actual investment levels, 2003 through 2007, are $ 16.4 million, $ 20.6 million, $ 48.9 million, $ 36.8 million, and $ 44.3 million.

[258] DPS Staff's BoE, pp. 59-60.

[259] The Company's BOE, pp. 67-68.

five-year average based in part on two years of abberational data. Finally, it seems clear that DPS Staff is envisioning the filing of detailed construction plans to support forecast rate base increases and neither our rules nor policy statements require this. DPS Staff's exception is denied.

4. Facilities -- West 125th Street Property

The judges declined to offer any recommendation under this heading, noting that the issues changed during the case and that the parties' trial arguments basically amounted to new proposals with no clear explanation by either side about why its latest proposal is reasonable. [260] The arguments offered at this point, accordingly, are more in the nature of clarified trial arguments rather than exceptions.

[*282]

The basic facts are that the Company proposed to transfer a property at West 125th Street for $ 15.3 million so that the building there can be torn down and a new charter school can be erected.

There was broad public support for the property transfer and, as discussed below, the transfer was previously authorized subject to conditions. In the present case, the Company proposes that it be authorized to true-up (be made whole for) any additional costs it incurs for leases, renovation, and moving into a replacement facility.

According to DPS Staff, the Company's proposed true-up is inconsistent with a prior decision in another case concerning the accounting for a net gain expected to result from the sale of the 125th Street Property, [261] would eliminate any incentive by the Company to control capital spending associated with a replacement facility, and is not warranted as the total annual revenue requirement impact of the replacement facility (compared to what is in rates today) would be about $ 225,000 less some avoided costs. DPS Staff describes this as de minimis for a utility the size of Consolidated Edison. [262]

[*283]

The Company argues that its true-up proposal would ensure that ratepayers pay no more and no less than the Company's actual incremental costs, if any, resulting from the sale of the West 125th Street property, regardless of the timing of the closing on that sale. [263] Anticipating DPS Staff's arguments, the Company also argues there is no way to know whether the incremental costs to the Company will be de minimis as the exact date of closing is not known. If the impacts are de minimis, it continues, this undermines DPS Staff's contention that a reconciliation would eliminate any incentive to mitigate or control costs. DPS Staff's proposal to deny any incremental costs regardless of the Company's mitigation efforts, the Company continues, would provide the Company a disincentive to accelerate a closing on the sale should circumstances ever make such an acceleration possible. The Company also points out that all parties would have an opportunity to review the reasonableness of its incremental costs in the Company's next electric rate case, before the costs **[*284]** would be reflected in rates.

In response to DPS Staff's latest arguments, the Company adds that its true-up proposal was set forth in its affidavit in Case 08-M-0930 and that this proposal was not addressed much less rejected in the October 28, 2008 Order. Accordingly, it sees no inconsistency between its proposal and that order. [264]

---

[260] R.D., p. 287.

[261] Case 08-M-0930, Consolidated Edison and Village Academies Network, Inc. -- Transfer of 125th Street Property, Order Approving Property Transfer (issued October 28, 2008) (the October 28, 2008 Order).

[262] DPS Staff's BoE, pp. 60-62.

[263] The Company's BoE, pp. 53-55.

[264] The Company's BOE, pp. 68-69.

In response to the Company's further initial arguments, DPS Staff argues that adoption of the Company's true-up proposal would mean that the benefits of the transaction might be fewer than those calculated in the net present value analysis performed to determine whether the proposed transfer is in the public interest. [265] It reiterates that the impact of any incremental costs are likely to be de minimis as the in-service date for the replacement [*285] facility is likely to be close to the end of the Rate Year. DPS Staff describes as counter-intuitive the Company's contention that denial of a true-up would give it a disincentive to accelerate a closing, saying that information presented in the case in which the transfer was authorized suggests the transfer date is dependent on the buyer.

In light of the positive net present value of the benefits of this sale of land estimated when the sale was authorized, and in light of the positive benefits of this transfer to the local community, the Company's proposal is adopted. There is nothing in the October 28, 2008 Order to the contrary.

B. Capital Expenditure Cap/Reconciliation and Capital Expenditure [*286] Reporting/Rate Case Demonstration

1. Introduction

DPS Staff proposed a continuation of the one-way downward-only reconciliation of T&D plant that was adopted in the 2008 Rate Order. [266] The judges recommended adoption of DPS Staff's proposal. [267] As a matter of principle, the Company continues to oppose such a term for T&D plant. However, it does not except to minimize the number of issues in controversy and as the judges recommended that the net plant target be set based on the Company's forecast (and not based on any historic level of investment or any global adjustment). [268]

DPS Staff also proposed that the downward-only reconciliation adopted in the 2008 Rate Order [*287] for T&D plant be extended in these cases to several other categories of capital investment. The judges recommended adoption of DPS Staff's proposal and the Company excepts.

DPS Staff proposed a change in the existing downward-only reconciliation mechanism to exclude the effects of the cost of removal. The judges recommended against DPS Staff's proposal and DPS Staff excepts.

Finally, DPS Staff proposed new reporting and rate case filing requirements. The judges recommended against DPS Staff's proposals or that they be pared back and DPS Staff excepts on both counts.

The exceptions are discussed in turn.

2. Expansion of the One-Way Reconciliation

The judges recommended DPS Staff's proposal that the existing one-way, downward-only T&D reconciliation proposal apply as well to Electric Production, Shared Services, and Municipal Infrastructure capital expenditures. They reasoned as follows: [269]

> 1. The Company sought and obtained funding in its last electric rate case for numerous positions of which many were not filled in the current rate year. With the exception of one Company witness, the Company claimed there was nothing wrong with this approach. Setting rates with no reconciliation [*288] of actual and forecast capital

---

[265] That analysis, says DPS Staff, suggested the sale would produce marginal quantifiable benefits to ratepayers. The October 28, 2008 Order, p. 18, anticipated a net present value benefit to customers of $ 1.3 to $ 3.2 million over 25 years. These are exclusive of other, unquantified benefits to the Harlem community.

[266] The 2008 Rate Order, pp. 98-99. Any credit due ratepayers would be measured by the revenue requirement effect of any reduction in T&D plant in service from the level authorized in the 2008 Rate Order.

[267] R.D., p. 299.

[268] The Company's BoE, p. 56. However, the judges recommended some adjustments to the Company's forecast.

[269] R.D., pp. 299-301.

expenditures, as the Company had proposed, would permit the Company to under-invest as a means to help drive up its earnings at the expense of reliability.

2. Bilateral reconciliation of projected and actual costs would reduce the Company's incentive to minimize its capital expenditures.

3. The combination of a one-way, downward-only reconciliation term and a low estimate of Company investment, as DPS Staff proposed, would unreasonably increase the risk that the Company would not have sufficient revenues to cover its actual costs.

4. Accordingly, the best approach would be to adopt a reasonable estimate of the Company's capital investment, to leave in place the same incentives the Company has to control its capital costs, and to provide for a one-way, downward-only reconciliation.

The Company excepts, offering the following arguments: [270]

a. The only reason the judges offer for their recommendation is to hold ratepayers harmless when the Company **[*289]** invests less than forecast.

b. The effect of the recommendation is that the Company loses flexibility, once rates are set, to use funds to meet the needs that turn out to be the most important during the Rate Year.

c. The Company also needs flexibility in order for it to earn its allowed rate of return and to achieve and retain the productivity that the recommended decision encourages it to pursue.

d. The Company also excepts if the judges are recommending reconciliation of forecast and actual total capital expenditures. Such an approach would give the Company more flexibility to shift funds around, compared to a number of separate reconciliation mechanisms, but there is no basis in the record for it either as there is no demonstration that ratepayers would be harmed without such a term.

As an aside, the Company states that it currently includes capital expenditures for electric municipal infrastructure in the T&D reconciliation mechanism and that it proposes that this continue. **[*290]**

DPS Staff opposes the Company's exception for the following reasons: [271]

a. Reasons for the judges' recommendation not discussed in the Company's exception include (1) concern about the Company under-investing to drive up its rate of return, and (2) the judges' contemporaneous support of a capital investment forecast much closer to the Company's than to DPS Staff's, in order to minimize the chances of a Company shortfall.

b. The costs of copper, rolled steel, and synthetic rubber have gone down because of the economic downturn and the savings should be captured for ratepayers.

c. A downward-only reconciliation for all plant categories is more important than ever in light of the recent arrest of ten Company employees.

The County agrees in part with DPS Staff and contends: [272]

a. The judges properly recommended a downward-only reconciliation term for additional plant categories, so the Company will not shift such funds for T&D use or retain the associated revenues for **[*291]** shareholders.

b. However, to allow the Company greater flexibility to shift funds from one category to another, the County supports adoption of one overall capitalized plant target that would be subject to a downward-only reconciliation.

---

[270] The Company's BoE, pp. 55-58.

[271] DPS Staff's BOE, pp. 34-35.

[272] Westchester's BOE, pp. 8-9.

There is some confusion on the record about whether DPS Staff is proposing one large reconciliation mechanism (with two minor exceptions discussed separately in the next subsection) or one reconciliation mechanism each for T&D, Electric Production, Shared Services, and Municipal Infrastructure capital expenditures. [273] The Company understood DPS Staff to be proposing separate mechanisms and we are evaluating the proposal on that basis.

With two minor exceptions noted above and discussed [*292] below, we are adopting four separate downward-only reconciliation mechanisms for the capital investment categories listed above. Such mechanisms will provide the Company a strong incentive to budget carefully, manage its capital operations efficiently, and keep total investment below the targets we adopt, with the possible exception of any incremental investment that is absolutely essential to the maintenance of safe and adequate electric delivery service.

We acknowledge that adoption of targets without any reconciliation would provide the Company even more incentive to operate efficiently. However, the record in this case with respect to the Company's historic hiring practices--i.e., numerous funded positions were not filled, with no solid evidence from the Company of how the funds were used instead--is a good reason to question whether the Company would increase earnings by becoming more efficient or seek to do so by pocketing carrying costs on investments not made. The Company's exception is denied.

3. Advanced Technology and Storm Hardening and Response True-Up Proposals

As summarized in Appendix 2, p. 2 of the recommended decision, the Company originally projected investment [*293] of approximately $ 13 million and $ 12 million in 2009 and 2010, respectively, in storm hardening and response. This investment would be for sectionalizing overhead distribution feeders to minimize outage impacts, installing automated switches and remote monitoring and control equipment, and replacing obsolete cable.

It likewise originally projected approximately $ 49 million and $ 39 million in 2009 and 2010, respectively, in advanced technology. This would be for updates to its energy management system, and to enhance its work management system, as well as for cyber security and 20 separate investments in advanced technologies to create a "smart grid."

In its trial briefs, DPS Staff proposed that the Company be required to defer for the future benefit of customers the carrying charges on planned investment in these two categories that for any reason is not made during the Rate Year.

The judges did not recommend DPS Staff's proposal, citing the absence of any explanation of why these categories should be subject to separate downward reconciliations, outside that proposed and supported by DPS Staff for T&D, electric generation, shared services, and municipal infrastructure support [*294] capital programs and projects. [274]

DPS Staff excepts, arguing that it had provided an explanation, i.e., to encourage the Company to invest properly in these categories which can help reduce the likelihood of events like the Long Island City network and Westchester storm outages of 2006. [275] It asks that separate, one-way downward-only reconciliation terms be adopted for these two categories of capital investment.

The Company does not respond to this exception specifically. As discussed immediately above, however, the Company expresses concern about losing flexibility to move funds from one capital investment category to another when warranted by operating circumstances, particularly [*295] as the number of separate capital investment categories subject to one-way, downward-only reconciliation goes up. [276]

We do not accept the underlying premise that the Company's investments in Storm Hardening and Advanced Technology affecting the Rate Year are so much more important than other T&D investment categories to warrant separate reconciliation terms. DPS Staff's exception is denied.

---

[273] See Tr. 2463, 2523, 2554-55, 2824 and 3047 and DPS Staff's Initial Trial Brief, p. 255.

[274] R.D., p. 318. An issue about reconciling municipal infrastructure support O&M expenses is discussed above, in Section V(B).

[275] DPS Staff's BoE, pp. 54-55.

[276] The Company's BoE, p. 57.

4. The Cost of Removal

As noted above, DPS Staff proposed a change in the current one-way, downward-only reconciliation approach so that it would isolate the net changes in the book cost of plant and exclude the effects of the associated cost of removing existing plant from service. The Company opposed DPS Staff's proposal.

The judges recommended against DPS Staff's proposal, noting that the actual cost of removal could differ from a forecast just as much as the cost of materials and equipment and that DPS had given no reason as to why the differences of one should be reconciled while the other [*296] would not. [277]

DPS Staff excepts for the following reasons: [278]

> a. A failure to isolate the costs of removal provides the Company with an upward reconciliation of the cost of removal i.e., it permits the Company to spend more than forecast for removal with no loss of income in instances where the associated net plant costs are lower than forecast.
>
> b. DPS Staff's proposal ensures that the benefits of under-spending on capital projects and programs are captured for the benefit of ratepayers.

The Company replies in opposition as follows: [279]

> a. The effect of DPS Staff's proposal is that the Company is penalized if its mix of capitalized plant and removal costs changes, in instances when the net plant component is lower then forecast, even if the total is exactly the same as the Company [*297] forecasts.
>
> b. DPS Staff is inconsistent to press this exception even though it previously agreed [280] that adoption of its proposal would result in an under-run of net plant worth $ 201.862 million, in circumstances when the Company did not have any variance in the level of capitalized plant and removal costs.

Approximately 15% of total projected capital investment comprises removal costs. The latter costs are spiraling and the Company should have an incentive to keep them to the minimum necessary. Rejection of DPS Staff's proposal would have the opposite effect, however, providing the Company a disincentive to control removal costs should the actual for the other 85% of total projected capital costs be less than the projection we adopt. DPS Staff's exception is granted.

5. Proposed Reporting Requirements

DPS Staff proposed that the Company be required to prepare and file quarterly reports on its capital expenditures. The reports [*298] would include detailed explanations of actual investments by program or project that differ by 10% or more from the projected amounts reflected in rates, that involve programs or projects beyond those reflected in rates, or that involve projects or programs that have been abandoned or materially altered. The Company opposed DPS Staff's proposal.

The judges recommended that DPS Staff's proposal be rejected or pared back, observing that the Company does not prepare a quarterly capital investment forecast that could be used for comparison purposes and that it does not seem reasonable to require the Company to report quarterly deviations between forecasts and actuals that should be expected to be different. The proposal would also result in reports on very small dollar amounts. Finally, the judges noted that the proposed quarterly filing requirements would be redundant if DPS Staff's proposed new rate case filing requirements were adopted. The

---

[277] R.D., p. 303.

[278] DPS Staff's BoE, pp. 63-64.

[279] The Company's BOE, pp. 71-72.

[280] DPS Staff's Initial Brief, p. 259.

Company already prepares Monthly Capital Budget Status Reports and the judges recommended that these be provided to DPS Staff. [281]

[*299]

DPS Staff excepts to the judges' recommendations, implying that the reports are critical to the proposed new rate case filing requirements on which it focuses. [282]

The Company responds, stating that DPS Staff has not addressed the judges' reasoning and that DPS Staff's exception should be given no weight. [283]

DPS Staff is clearly entitled under law to whatever information it needs to monitor utility operations and it needs no order from us to exercise its authority. That said, the judges correctly identified a number of practical shortcomings in DPS Staff's proposal and DPS Staff does not contest those reasons expressly. DPS Staff's exception is denied.

6. Proposed Rate Case Filing Requirements

DPS Staff proposes that the Company be required to file in its next electric rate case [*300] information similar to that to be provided in the quarterly reports just discussed, along with testimony that includes a complete justification of the then-current book cost of plant.

The judges expressed mixed feelings about DPS Staff's proposal. They agreed with DPS Staff, for example, that it is important to be sure that the Company's construction program is limited to what cannot be avoided, that work is completed efficiently, and that actual costs incurred are reasonable for the work done. They simultaneously expressed wariness of adopting new rate case filing requests for the Company alone that might be perceived by investors as an increase in regulatory risk. [284] In the end, however, the judges recommended against DPS Staff's proposal because they were concerned about the process and resource implications of overlaying on an already complex, 11-month Consolidated Edison electric rate case what amounts to a prudence proceeding concerning past Company investments. In this light, they suggested alternative approaches to address DPS Staff's valid concern, one of which would be to institute a separate prudence investigation. Finally, the judges noted that should we adopt DPS Staff's [*301] proposal, it should be recognized that very little actual information about the Company's capital investments in the Rate Year will be available by the time the Company files its next electric rate case (expected in May 2009).

As noted above, DPS Staff excepts offering the following arguments: [285]

a. The judges' recommendation is disturbing because the proposed information is necessary for it and this Commission to determine if the Company's net book plant is reasonable.

b. Investors' expected risk should not change because rate base expansion is always subject to review.

c. The judges fail to recognize that the Company cannot reasonably request rate relief without explaining the reasons for new plant added [*302] beyond that previously proposed.

---

[281] R.D., pp. 301-302. As to the proposed reports covering relatively small dollar amounts, see exhibits 47, 49, 51 and 54 (as filed in May 2008) and 310, 312, and 313 (as filed in late September 2008).

[282] DPS Staff's BoE, pp. 62-63.

[283] The Company's BOE, p. 69.

[284] R.D., pp. 302-303. It is undisputed that witnesses for both the Company and DPS Staff testified that we should act in a manner intended to help ensure an S&P credit rating of ″A-″ could be maintained by the Company. One reason for doing so is minimize future capital costs and revenue requirements.

[285] DPS Staff's BoE, pp. 62-63.

d. It is inconceivable how the judges could conclude that DPS Staff's proposal would be too expensive, stating there is no evidentiary basis for such a conclusion and that the costs of not adopting its proposal could be even greater.

The Company replies as follows: [286]

a. DPS Staff ignores the investment community's acknowledged focus on consistency of regulation as a primary factor in rating utilities. To suggest that investors' risk would not be materially changed by DPS Staff's proposal ignores reality. Indeed S&P states that regulation of a delivery company could account for 30-40% of a business profile score.

b. As suggested in the recommended decision, DPS Staff's proposal goes beyond what is required by the Statement of Policy on Test Periods in Major Rate Proceedings and 16 NYCRR Part 61, concerning rate case filings.

c. DPS Staff's concerns can reasonably be addressed on a cost-effective **[*303]** basis without adopting DPS Staff's proposal.

The basic issue presented is how, if at all, should the rate case process be changed to focus not only on a utility's revenues, costs, and other variables in a future rate year but on the reasonableness of a utility's investments in plant for an historic period. Given that our rate decisions are not prudence determinations with respect to planned future investment and the relatively larger dollar amount of plant investment made by New York utilities each year, there should be no question about whether utilities' past investments are properly subject to review by the Department.

Going beyond the broader issue, DPS Staff is proposing a specific manner by which we would review the reasonableness of the Company's past investment in plant, in the context of future rate cases.

As the judges observe, however, there are some practical problems with DPS Staff's specific proposal, including the time constraints of the statutory 11-month rate **[*304]** case schedule, marshalling resources to complete the necessary work, identification of the past period of investments to be reviewed, and development of a process by which all the information necessary would be provided and reviewed. For these reasons, we decline to adopt DPS Staff's proposal.

C. EB Cap Adjustment

An earnings base/capitalization (EB Cap) adjustment was first adopted in 1975 because the Commission thought it improper for a utility to earn a return on a rate base that exceeded the utility's capitalization. The adjustment has been commonplace since that time, including in cases, such as the present one, in which a utility's capitalization exceeds its rate base.

The New York Power Authority opposed application of such an adjustment in this case, noting the effect is to increase the Company's rate base by $ 388 million. [287] The judges agreed with NYPA that the Company's explanation of need for the adjustment--use of the Federal Energy Regulatory Commission (FERC) formula for cash working capital and some point about pension credits--was fairly vague. However, the Judges declined to recommend NYPA's position in the absence of any support by DPS Staff. [288]

[*305]

NYPA excepts, arguing the Company has the burden of proof, that the Company's explanation is so sparse that the judges could not even determine if it is reasonable, and, thus, that the judges have improperly presumed that the EB Cap

---

[286] The Company's BOE, pp. 70-71.

[287] As discussed below, the correct figure is approximately $ 193 million.

[288] R.D., p. 305. As of the conclusion of the hearings, the annual revenue requirement effect of adopting NYPA's proposal was estimated to be a $ 22.3 million decrease.

adjustment is reasonable. NYPA goes on to fault the judges for giving undue preference to the view of one party (DPS Staff) and for unreasonably shifting the burden of proof to DPS Staff. The end result, says NYPA, is that the Company is rewarded at the expense of ratepayers. In sum, according to NYPA, the EB Cap adjustment should be rejected based on the Company's failure to justify it. [289]

The Company replies that adoption of an EB Cap adjustment in the 2008 Rate Order is a legal basis for doing so here. **[*306]** Unlike other components of rate base that are forecast, the Company continues, the EB Cap figure is derived using actual data from the Test Year ending December 31, 2007 and a calculation method that is consistent with well-established precedent. The Company emphasizes that DPS Staff reviewed the Company's calculations and has no objections. According to the Company, therefore, it fully met its burden of proof and provided an adequate explanation of the EB Cap adjustment. Thus, it concludes, there is no improper shift in the burden of proof.

No other party comments on this issue.

The record shows that the Company's historic Test Year EB Cap adjustment was approximately $ 388 million, but that the Company adjusted this amount downward by $ 141.980 million. [290] The latter figure was reduced to $ 200.846 million in the Company's informal update in July 2008. It is that latter figure that DPS Staff supported, subject to a correction, bringing the figure to $ 192.957 million. [291] In this context arguments about $ 388 million are misplaced.

[*307]

In this case, the EB Cap adjustment primarily corrects for differences between the Company's cash working capital requirements and those we forecast using the FERC formula (discussed next). The adjustment also reflects that non-cash pension credits have been employed in past cases to reduce delivery service revenue requirement. This requires the Company to finance the amount of the credits and this is reflected in rate base through a positive EB Cap adjustment.

We have also evaluated the Company's latest figure in comparison with the EB Cap adjustment adopted in the Company's last case and note that the results are very similar. [292] This confirms the reasonableness of the result here.

Given the specific record evidence in support of the EB Cap adjustment and the other reasons just mentioned, the EB Cap adjustment is reasonable and NYPA's exception is denied.

D. Working Capital - Lead-Lag Study

A portion of the capital **[*308]** invested in the Company is necessary because there are time differences between (1) the provision of service by the Company and its receipt of payment and (2) the Company's receipt of materials and services and its payment for them. Capital used in this way is referred to as cash working capital and is included in rate base so that the Company earns a return on or recovers the costs of such capital. This Commission has long-employed the FERC formula which equates cash working capital requirements with 1/8 of certain O&M expense. In this case, that formula yields $ 185.6 million in rate base.

NYPA argued that the Company should be required to prepare a lead-lag study to determine more accurately the Company's cash working capital requirements. Pending completion of that study, NYPA proposed a $ 19.4 million downward adjustment to the Company's cash working capital figure, based on the results of a simplified lead-lag study NYPA had prepared. NYPA also proposed that the Company be required to perform a retrospective lead-lag study to show whether use of the FERC formula resulted in an excessive Company rate base in past periods. Consolidated Edison opposed all of NYPA's proposals.

---

[289] NYPA's BoE, pp. 2-4.

[290] Tr. 2171-72 and Ex. 9, Schedule 5.

[291] Tr. 2757-2758.

[292] The figure was $ 184.509 million. The 2008 Rate Order, Appendix 2, Schedule A, p. 6 of 8.

The [*309] judges agreed with the Company that prior decisions make clear this Commission's preference for use of the FERC formula because it is easy to use. They agreed with NYPA that use of the FERC formula may systematically overestimate the Company's cash working capital needs. However, the judges said they saw no purpose in requiring a lead-lag study in the absence of any willingness on our part to abandon the EB Cap adjustment. As noted above, the latter adjustment offsets any error in estimating cash working capital. As such an outcome seemed unlikely, the judges did not recommend any of NYPA's cash working capital proposals. [293]

For several reasons, NYPA strongly disagrees with the judges' pre-supposition of how we might resolve the EB Cap issue as a basis for rejecting NYPA's cash working capital proposals. [294] To begin, this recommendation ignores the judges' finding that the FERC formula could very well systematically over-estimate the Company's cash working capital requirements. Second, one [*310] purpose of a recommended decision is to provide guidance to an agency in reviewing and implementing policy, deciding whether policy changes are needed, and, if so, in what areas and to what extent. [295] Further exacerbating the judges' flawed reasoning, NYPA continues, is that whether an EB Cap adjustment is proper is also at issue and the judges found inadequate on even a gross basis the Company's explanation of why that adjustment is reasonable.

Another problem with the judges' cash working capital recommendations, according to NYPA, is that they intertwine and overstate the relationship between cash working capital and the EB Cap adjustment. NYPA concludes, arguing that the Company's cash working capital requirements should be determined on a stand-alone basis and not based on conjecture about how the EB Cap issue might be resolved. [*311]

Consolidated Edison opposes NYPA's exception. [296] It argues that this Commission has consistently expressed a strong preference for use of the FERC formula since the 1970s because the alternative of preparing lead-lag studies is so cumbersome and time-consuming and that NYPA's proposals in this case were rejected for failing to overcome this long-standing preference with evidence or arguments. According to the Company, this Commission has also required utilities to include EB Cap adjustments in their filings to correct for any over- or understatement of working capital requirements that might result from using the FERC formula.

The Company goes on to criticize NYPA's failure to prove that any technological improvements since the 1970s (including computers) will translate into an increase in accuracy that justifies the time and expense of performing a lead-lag study.

Contrary to NYPA's argument, the Company maintains that the judges' recommendations rest less on how the EB Cap issue [*312] might be resolved and more on the fact that the mere possibility that the FERC formula may result in a systematic overestimation of cash working capital requirements does not overcome the long-standing preference.

There is no risk to ratepayers of overpaying for cash working capital requirements if the FERC cash working capital formula and the EB Cap adjustment are both employed. For this reason, there is no need for the studies NYPA proposes. While it is true that it may be easier to prepare such studies now, compared to thirty or more years ago, there is no reason to believe there would be fewer disputes about the proper inputs to such studies. Given the continued use of an EB cap adjustment, this could not provide any benefit to ratepayers. NYPA's exception is denied.

E. <u>Rate Base Treatment for Deferred Overhaul and Local Law 11 Expenditures</u>

DPS Staff had proposed that two O&M costs be recovered over more than one year with carrying charges accruing at the other customer capital rate. The Company had no objection to the longer recovery period, provided carrying charges would accrue at its overall rate of return.

---

293 R.D., p. 309.

294 NYPA's BoE, pp. 4-7.

295 <u>Id</u>., p. 5. NYPA cites to the 2002 Manual for Administrative Judges and Hearing Officers, p. 135, posted on the Department of Civil Service web page.

296 The Company's BOE, pp. 74-76.

The judges concluded that use of the other customer capital [*313] rate would confiscate utility property unless it were established that the Company could finance the costs at that rate. [297] Specifically, the judges said that adoption of DPS Staff's proposal would be contrary to the fundamental tenet that the Company should be able to recover its reasonable costs of doing business, including a reasonable opportunity to earn a fair rate of return.

DPS Staff excepts, arguing that the issue is not about recoverability, but carrying charges. [298] As to the latter, it says the historic practice of employing the other customer capital rate reflects the common utility practice of financing such costs with short-term instruments. [299] Likewise, it contends the standard treatment of costs that are unknown and subject to reconciliation is to accrue carrying charges at the other customer capital rate. According to DPS Staff, rate base treatment is usually afforded only to known and verified costs.

[*314]

The Company replies that DPS Staff's exception rests primarily on what DPS Staff calls past practice by the Department and in part on one reference to a prior order adopting the terms of a joint proposal. The latter order concerns a steam rate plan in which there was no dispute about carrying charges.

The Company also denies that rate base treatment is afforded only to known and verified costs, noting that the FERC cash working capital formula employed for many years is based on a forecast of certain O&M expenses and that the result is nevertheless included in rate base.

We are authorizing carrying charges for these expenses based on the other customer capital rate in the Rate Year and the Company's overall rate of return thereafter.

The interest rate on other customer capital, such as gas supplier refunds, is based on the composite yields of intermediate term, A-rated corporate bonds and an index of municipal bonds. The rate for 2009 is 6.6%. Unlike customer deposit rates, there is no reduction to the 6.6% on account of administrative [*315] costs.

The Company can reasonably be expected to finance these projects in the Rate Year with short term debt and without incurring administrative costs associated with customer deposits. The Company's current commercial paper rates, meanwhile, are extremely low, at just under .5%. In these circumstances, we are satisfied that use of the other customer capital rate in the Rate Year will not be confiscatory. Going beyond the Rate Year, however, the unamortized costs will more likely be supported by long-term capital, including a mix of debt and equity. Accordingly, the Company's proposal is adopted for that period.

X. REVENUE ALLOCATION/RATE DESIGN

A number of parties submitted exceptions or arguments concerning the interim revenue allocation and rate design recommendations in the January 7, 2009 recommended decision. The issues raised include whether a report should be submitted to us or a separate recommended decision should be issued for exceptions on Phase II issues, the pros and cons of an across-the-board revenue allocation, the appropriate allocation of a $ 30 million revenue requirement element attributable to a forecast $ 30 million reduction in TCC revenues, and the reasonableness [*316] of the Company's 2005 embedded cost of service study.

As discussed below, we are addressing all of the Phase II issues finally at this time. The arguments about interim recommendations, accordingly, are moot.

As to whether a report should have been submitted to us or a separate recommended decision should have been issued on all Phase II issues, we reiterate that issuance of a recommended decision, even if preferable, was not an option as a practical

---

[297] R.D., pp. 309-312.

[298] DPS Staff's BoE, pp. 64-65.

[299] This argument was not offered in DPS Staff's trial briefs.

matter even with the 25-day suspension date extension through April 30, 2009. Severing the Phase I and Phase II issues might have resulted in unwarranted customer confusion from multiple rate changes in a short period of time. We also prefer to consider simultaneously the issues about rate of return, low-income discounts, the residential/religious customer charge, and the level of Company revenues at risk under various performance mechanisms.

A. 2005 ECOS, Revenue Allocation, and Tolerance Bands

Arguments concerning the Company's Embedded Cost of Service Study for calendar 2005 (the 2005 ECOS), the proper allocation of revenue requirement, and appropriate tolerance bands to apply when using the 2005 ECOS are summarized next, followed **[*317]** by one discussion. The basic issue presented is whether approximately $ 15.0 million in annual revenue requirement should be shifted to NYPA customers before any revenue increase (the Company's position), whether only $ 6.7 million should be shifted to NYPA customers before any revenue increase (DPS Staff's position), or whether no shift is warranted (NYPA's, the NYC Government Customers', and Westchester's position). [300]

1. 2005 Embedded Cost of Service Study

For the reasons that follow, the Company argues that its 2005 ECOS should be relied upon for purposes of realigning class revenues before any revenue increase, allocating any incremental revenue increase, and designing specific rates to recover each class's revenue requirement: [301]

a. The validity of the Company's 2005 ECOS was established in the Company's last electric rate case. At that time, criticisms of the Company's study by other parties were rejected (2008 Rate **[*318]** Order, p. 134) and an additional $ 15 million of revenue requirement was allocated to NYPA based on the study's results. The fact that the entire $ 30 million NYPA deficiency indicated by the study was not allocated to NYPA reflected our desire to ameliorate harsh impacts and does not undermine the substantive validity of the study or its results.

b. This Commission has frequently relied upon the results of an ECOS for more than one rate year. Accordingly, reliance on the Company's 2005 ECOS in the last case is no barrier to relying on it again.

c. The criticisms of the Company's study in this case are the same as those rejected in the Company's last electric rate case.

d. Going beyond the 2008 Rate Order, the evidentiary record here establishes that the criticisms of other parties do not provide any basis for ignoring the results of its 2005 ECOS. For example:

i. DPS Staff's and the NYC Government Customers' concerns notwithstanding, the Company's relative weighting of Non-Coincident Peak (NCP) 60% and Individual Customer Maximum (ICM) demand (40%) for the residential classes remains valid unless and until a proposed Company load study is conducted and establishes otherwise.

[*319]

ii. Various studies introduced by a witness for the NYC Government Customers are fraught with errors. For example, data from different years are mixed together, some data are excluded and other data are erroneous. The Company also disagrees with the contention that some of its transformer costs are customer-related, arguing its large transformers are properly treated as demand-related. It states that a concern about the allocation of high-tension costs to residential heating load ignores that NYPA residential heating load is treated in the same manner.

iii. Various studies introduced by NYPA witnesses are likewise fraught with errors and do not undermine the Company's 2005 ECOS. Among other things, NYPA's load is underestimated, [302] an update of rate base is not complete, NYPA and Company load data from different years are used, and no load research

---

[300] The NYC Government Customers and Westchester are NYPA commodity customers.

[301] The Company's Initial Brief, pp. 431-440.

[302] Specifically, 54 MW of Kennedy Airport load was excluded and NYC public building load was significantly underestimated.

results are provided. If the identified errors are corrected, this suggests the NYPA class is deficient by $ 18.7 million, or more than the $ 15.0 million the Company is proposing to reallocate to the NYPA class before any revenue increase.

[*320]

NYPA argues that the Company's 2005 ECOS study is fundamentally flawed as of the date it was completed, and significantly out of date for purposes of the Rate Year.

As to the fundamental flaws, NYPA argues: [303]

a. NARUC's 1992 Cost Allocation Manual states that total revenue requirement of a utility is allocated to the various classes in a fashion that reflects the cost of providing service to each class. Company assertions to the effect that the NARUC manual does not apply to the allocation of revenue increases are inconsistent with the text of the NARUC Manual and should be rejected.

b. The Company proposes to allocate the revenue requirement based on the Company's forecast revenues before any rate increase. This approach implicitly and improperly assumes that costs the Company incurs to provide service in the Rate Year will be in the same proportion to each other as the costs that underlie the rates used to forecast revenues. This assumption can only be true if **[*321]** customer classes are growing at the same rate and all investments in rate base are made in the same proportion to each other as they were in the past.

c. A second fundamental flaw is that in situations where the Company's ECOS suggests a class deficiency or surplus of a specified dollar amount, the Company proposes to adjust rates in a multiplicative way that goes further than is necessary to eliminate the class dollar deficiency or surplus.

d. While the Company asserts that its approach was previously adopted, this argument is undermined because many of those decisions involved adoption of terms that were the product of the give and take among parties in negotiations. Moreover, the NYPA panel witnesses have combined experience of more than 80 years and none of them has ever seen any other utility in the country allocate revenue requirements in the manner the Company employs (i.e., based on forecast revenues rather than costs). Neither has the Company, the party with the burden of proof, provided any other authority to support its approach.

[*322]

NYPA's contentions about the 2005 ECOS being out of date are as follows: [304]

a. Between 2005 and 2010, the Company expects its plant in service will increase by $ 6 billion, with $ 4.7 billion of that occurring between 2008 and 2010.

b. In the same period, the Company expects its annual O&M expenses will increase from $ 0.88 billion to $ 1.743 billion.

c. It is not reasonable to assume NYPA's usage would impose the same burden on the Company's T&D system as it did in the past in light of these changes. Indeed, the Company expects transmission plant, over which NYPA customers receive service, will decline from 16.77% of total T&D in 2005 to 15.72% of total T&D plant in 2010. The Company says the percentages are about the same but the change shows that NYPA's share of costs is going down and the 2005 ECOS study does not reflect this.

d. Exhibit 200 (a Company press release dated May 12, 2008) shows that the Company identified the increased expense of serving the electronic equipment of residential customers as a major driver of its requested revenue increase. The cost of providing service to NYPA was not so identified.

---

303 NYPA's Initial Brief, pp. 11-15.

304 NYPA's Initial Brief, pp. 18-20.

e. The Company has not performed a study of NYPA's [*323] demand as a percentage of the system total since 2005; the Company forecast panel did not reflect NYPA DSM initiatives; data show that 13% of the Company's billing demand data for NYPA customers are estimates; and all of these factors erode confidence in the 2005 ECOS.

f. The 2005 ECOS fails to reflect the $ 15.1 million incremental revenue shift to NYPA in the Company's last electric rate case nor does it reflect the contemporaneous decision to bar NYPA from enjoying any portion of the Company's net Transmission Congestion Contract (TCC) revenues.

Other arguments offered by NYPA in opposition to use of the 2005 ECOS are as follows: [305]

a. Another way of saying that the 2005 ECOS is out of date is that the Company has failed to meet its burden of proving that a NYPA revenue deficiency will exist in the Rate Year that is any greater than any other customers'.

b. The contention that it is reasonable to rely on ECOS studies for many years is suspect and, in any event, [*324] is undermined because terms of prior decisions adopting such a course of action were frequently the product of the give and take in negotiations among interested parties.

c. The decision in the Company's last electric rate case, to address $ 15.1 million of an indicated $ 30 million NYPA revenue deficiency, is not a valid basis for requiring a further $ 15 million or greater revenue shift here. As stated by the NYC Government Customers, the 2008 Rate Order, p. 135, expressly stated that it was without prejudice to subsequent rate periods.

d. The primary reason that the Company did not provide an up-to-date ECOS in this case is that it did not have time to prepare one following the 2008 Rate Order.

e. The Company's failure to provide an up-to-date ECOS in this case is a violation of 16 NYCRR 61.3. That rule requires utilities to provide the number of units of service rendered for each class, revenue per unit, and the detailed cost of service rendered in each of the last three years. The Company's counter argument, that it provided five years of financial data, is erroneous because such data is Company-wide, and neither differentiated by [*325] native load class nor by (1) NYPA, (2) Economic Development Delivery Services, and (3) the Company's retail customer classes combined.

Further NYPA arguments critical of the 2005 ECOS, are: [306]

a. NYPA's arguments against the use of the 2005 ECOS in this case are not the same as those it made in the Company's last electric rate case, but now focus primarily on the study's age.

b. NYPA undertook its own cost study, which the Company criticizes for data, estimates, and assumptions used, only because the Company refused to perform one and refused to supply data NYPA requested (Tr. 4752-53; Ex. 202). [307] That does not in any event relieve the Company of its burden of proof.

c. The Company's Initial Brief has not in fact challenged NYPA's interpretation of 16 NYCRR § 61.3.

d. The Company's claim that NYPA would ″omit the step of adjusting a class's revenue by its deficiency or surplus in allocating the revenue increase . . .″ [*326] is not correct. NYPA would not oppose an adjustment if a sound ECOS legitimately showed a deficiency or surplus existed.

The Company counters NYPA's arguments with these contentions: [308]

---

[305] NYPA's Initial Brief, pp. 15-18.

[306] NYPA's Reply Brief, pp. 9-14.

[307] The Company declined to provide individual customer metered and billing data for 2006 and 2007 on the grounds that the information is proprietary and that it would need to conduct a study to respond.

[308] The Company's Reply Brief, pp. 146-47.

a. NYPA is incorrect when it suggests that its customers receive only transmission service and are not served by the Company's distribution system. NYPA is served by the Company's distribution system and growth in Company distribution plant can affect NYPA. In any event, the transmission plant share of total plant remains about the same, with a decrease of approximately one percentage point (Tr. 1055-56).

b. NYPA fails to acknowledge its own blatant 155 MW underestimation of its transmission allocator, correction of which would increase NYPA's transmission demand allocator by 10% **[*327]** (Tr. 1072-73; Ex. 452).

Using the Company's original $ 654.1 million electric revenue request as a base, the NYC Government Customers strongly oppose the Company's proposal to allocate $ 18.5 million annually to the NYPA customer class beyond what would be allocated based on a flat percentage increase for all classes. The basic arguments offered by these customers are as follows: [309]

a. The Company's proposal is based on the results of a 2005 ECOS but that study is outdated because new rates were approved subsequently, billions of dollars of additional costs have been incurred by the Company, and usage patterns have changed. For example, the Company did not update the 2005 ECOS to reflect new rates that went into effect earlier in 2008, even though the purpose of a cost study is to measure the adequacy of current rates compared to the costs customers impose on the system. Nor did the Company update the study to reflect the allocation of $ 8 million of additional **[*328]** revenue requirement to NYPA related to TCCs in the Company's last electric rate case.

As to cost changes, rate base and O&M costs at the time of the 2005 ECOS were $ 9.5 billion and $ 0.88 billion, respectively, while comparable figures for the Rate Year are projected to be $ 14.6 billion and $ 1.742 billion, respectively. Turning to changed usage patterns, energy and demand figures have not been updated by the Company. Nor has it reflected its projection of much higher energy sales growth for the NYPA customer class (7.6%) compared to that for native load customers (2.4%).

b. Whether or not the 2005 ECOS is out of date, it is materially flawed to the extent it:

i. Is arbitrarily based on a 50%/50% weighting of individual customer maximum demand and class non-coincident peak demand for all classes with the exception of the SC 1 residential/religious and SC 7 residential/religious heating classes for which a 25%/75% weighting is employed. The 25%/75% weighting for SC 1 and SC 7 assumes diversity benefits (usage by different customers in a class at different times) much greater than assumed by other utilities and greater than what the Company assumed in a separate case concerning **[*329]** standby rate design. This flaw was flagged by DPS Staff in the Company's last electric rate case and is part of the basis for DPS Staff's support for a 15% tolerance band in this case compared to the 10% adopted in the Company's last electric rate case.

ii. Erroneously failed to assign any transformer costs to the customer cost category.

iii. Unreasonably relies on class summer demand to allocate High Tension Plant Costs to the SC 7, SC 12 multiple dwelling space heating, and SC 12 time-of-day classes, even though the winter demands for these classes far exceeded their summer demands, and even though the greater of summer or winter demands were used to allocate such costs for all of the Company's other customer classes. It would be more reasonable for the Company to allocate these costs to all classes using either coincident peak (or summer demands) or non-coincident peak (the higher of summer or winter demands). The use of different allocation methods for different classes is not reasonable.

[*330]

The NYC Government Customers also respond to contrary arguments they expect the Company will make, as follows: [310]

[309] NYC Government Customers' Initial Brief, pp. 37-41 and 46-49.

[310] NYC Government Customers' Initial Brief, pp. 41-46.

a. The absence of a sufficient time to prepare a new cost study for this case is not a good reason to rely on the old study and to allocate extra revenue requirement to the NYPA customer class. In any event, the Company was able to quickly update the old study in part when asked to do so by DPS Staff in a discovery request.

b. While a revenue deficiency of approximately $ 30 million was acknowledged in the Company's last case and approximately half of that was addressed at the time, the Company has not established that revenues, costs, and usage patterns have and will remain static. This is another reason why DPS Staff supports use of a broader tolerance band in this case (15% compared to 10% adopted in the Company's last electric rate case). Moreover, the decision in the Company's last case expressly stated that it was without prejudice to allocations in periods beyond the April 1, 2008 through March 31, 2009 rate year.

c. It is true that past multi-year rate plan allocations have been based on one ECOS cost study, but that is usually in the context of a decision [*331] adopting rate plan terms that resulted from the give and take in negotiations among interested parties.

d. The Company failed in its effort to establish that plant growth has had no effect on the reliability of the 2005 ECOS (Ex. 372) because a one percentage point increase in distribution plant identified in that effort as a percentage of total plant is significant in the context of a $ 5.9 billion increase in total plant, especially given that NYPA receives a relatively smaller allocation of distribution plant. The Company's effort also ignores that shifts in the types of distribution plant investment could also have significant effects on the results of the ECOS.

The Company answers the NYC Government Customers' points, declaring: [311]

a. The $ 15 million assessment of the NYPA deficiency from the 2008 Rate Order and the disallowance of any NYPA TCC benefits have no significant effect on the results of the 2005 ECOS. A rerun of the 2005 ECOS with [*332] current rates, reflecting those changes, produced a NYPA deficiency of about one-half the originally filed $ 30.2 million deficiency (Tr. 1124-35).

b. The Company's detailed ECOS uses costs, revenues, usage, and load research data from the same time period, while NYPA and the NYC Government Customers selected a combination of data from different periods that favor them at the expense of other customers (Tr. 1159). The NYC Government Customers' witness's study was misaligned, less than credible, and led to self-serving results (Tr. 1060-61).

c. The functional relationship between transmission and distribution plant mix in the 2005 ECOS accurately reflects the current composition of the Company's plant assets.

Westchester opposes any reallocation of revenues among service classes that would shift additional costs to NYPA and its customers, because: [312]

a. The 2008 Rate Order did not direct that any remaining NYPA deficiency be eliminated in this case. [313]

b. [*333] From 2005 to 2009, Consolidated Edison will have increased non-production plant by $ 6 billion, or 40%. The majority of plant additions are for underground distribution, of which NYPA's customers were responsible for only 8.9%, according to the 2005 ECOS. Since NYPA's customers represent 10% of total T&D revenues, an across the board increase would result in NYPA customers paying more than their fair share.

c. Consolidated Edison has been estimating bills for about 30% of meters serving County facilities and probably those of other municipalities in Westchester and New York City, since before the 2005 ECOS was prepared. The impact or bias caused by the use of estimated billing on the 2005 ECOS is unclear, but sufficient to raise serious questions about the study's validity. Recently, the estimated readings on County facilities have dropped

[311] The Company's Reply Brief, pp. 145-46.

[312] Westchester's Initial Brief, pp. 18-21.

[313] Citing the 2008 Rate Order, p. 134.

dramatically, so that the anticipated 2007 ECOS may provide more accurate cost allocation factors. Until it is available, any revenue increase should be applied proportionally among Con Edison's and NYPA's customers.

[*334]

The Company responds to Westchester: [314]

a. Plant investment through 2009 includes significant amounts in primary distribution and substation assets, allocated based on a high tension NYPA demand allocator of 14.2% (Ex. 143, Table 7, p.1), a cost responsibility percentage that far exceeds NYPA's 10% revenue percentage.

b. The use of estimated bills in calculating the NYPA revenue responsibility is immaterial. Estimated bills are issued to customers in every service class and estimated billing determinants are reflected in the development of class demand allocation factors for all service classifications (Tr. 1126).

2. Revenue Allocation

The Company summarizes the steps it took to allocate the originally requested $ 654.1 million, taking into account the results of its 2005 ECOS. [315] It states that the resulting electric revenue increases, **[*335]** including gross receipts taxes, are $ 561 million for the Company's retail customers, $ 88.7 million for NYPA customers (including the further $ 15 million revenue shift it supports), and $ 4.4 million for Economic Development Delivery Service customers.

The Company anticipates criticisms of its allocation methodology by NYPA and the NYC Government Customers on two fronts. The first criticism is that the Company improperly addresses class deficiencies and surpluses at current rates, before allocating any incremental revenue requirement, and that this has an unfair multiplicative effect on NYPA customers. The second is that the Company allocates revenue requirement based on forecast revenues rather than based on forecast costs. As to these contentions, the Company states the following: [316]

a. There is no proof that the Company's allocation method is not generally accepted in the industry.

b. The Company's approach has been consistently proposed by it and adopted **[*336]** by in past cases.

c. The NARUC manual does not specifically address the allocation of rate increases and, thus, does not undermine its allocation methodology.

d. The purpose of realigning class revenues before allocating incremental revenue requirement is to bring existing revenues closer to costs before allocating any incremental revenue increase based on costs. Omitting this step means cost indications are totally ignored, contrary to sound ratemaking principles (Tr. 1074). [317]

e. The witness proffered by the NYC Government Customers testified within the past couple of years in support of the Company's approach, in gas and steam rate cases.

DPS Staff states that it reviewed and agrees with the Company's allocation methodology. [318]

[*337]

Building on their arguments that the Company's 2005 ECOS is outdated and materially flawed, the NYC Government Customers argue that any revenue increase should be allocated across-the-board, on an equal percentage basis. Moreover,

---

[314] The Company's Reply Brief, p. 147.

[315] The Company's Initial Brief, pp. 432-433.

[316] The Company's Initial Brief, pp. 439-440.

[317] The Company's Reply Brief, p. 148.

[318] DPS Staff's Initial Brief, p. 264.

they argue this allocation should be subject to further adjustment based on our decision in this case with respect to the allocation of net TCC revenues. Specific arguments in this regard, which focus primarily on why the 2005 ECOS results are not reliable, are as follows: [319]

a. An update of the Company's 2005 ECOS using current rates and usage factors (Ex. 215, Schedule 1) shows that the NYPA customers' class is not deficient with a tolerance band of +/-10% or +/-15%. The Company's update of the ECOS for revenue changes only (in response to a DPS Staff discovery request) shows a deficiency for NYPA customers of only $ 5.5 million with a +/-15% tolerance band. Even if Ex. 215, Schedule 1 needs to be corrected, as the Company argues, this shows there is no NYPA customer class deficiency using a +/-15% tolerance band and a deficiency of only $ 4.45 million using +/-10% tolerance band (Tr. 1165, Ex. 283).

b. Exhibit 215, Schedules 2 and 5, build on **[*338]** the first update, using proxies to reflect on a gross basis the projected increase in capital and O&M spending, and employing reasonable low tension demand allocators. These both suggest there is no NYPA class revenue deficiency. While these updates are not advocated as a basis for allocating revenue requirement, they show that the Company's 2005 ECOS is not reliable.

Anticipating that the Company will criticize their update efforts, the NYC Government Customers acknowledge such efforts are not perfect and reiterate that they do not rely on them in support of a less than overall percentage increase for NYPA class customers. They suggest their update efforts should nevertheless be given some weight given the Company's failure to include an updated ECOS in its direct case, as well as the Company's subsequent update in a discovery response that reflects only changes in revenues since 2005.

The Company offers **[*339]** these responses to the arguments of NYPA, the NYC Government Customers, and Westchester: [320]

a. The NYC Government Customers have in the past presented testimony in support of the Company's methodology of using forecast revenues in conjunction with the results of a historical ECOS to preserve movement toward cost-of-service ratemaking (Tr. 1075).

b. NYPA's opposition to the Company's methodology in this instance is purely result driven, because the Company's methodology allocates a higher share of the rate increase to NYPA. When NYPA proposes to realign rates to recognize TCC revenues as NYPA believes proper, NYPA uses the same methodology the Company has used here, because that methodology produces a lower allocation to NYPA.

3. Tolerance Bands

If we decide to rely on the Company's 2005 ECOS for purposes of allocating any revenue increase in this case, NYPA argues that a +/-20% tolerance band should be employed instead of the +/-10% tolerance band favored by the **[*340]** Company or the +/-15% tolerance band supported by DPS Staff. [321] NYPA's reasons are as follows: [322]

a. DPS Staff supported use of a +/-15% tolerance band in the Company's last electric rate case because of one identified problem (pertaining to two demand allocators) beyond the usual concern about the accuracy of such studies.

b. DPS Staff still has the same concerns and raised three new ones (study a year older, study not updated for significant incremental capital expenditures since the 2005 ECOS study, and study relies on a dated class demand study).

---

[319] NYC Government Customers' Initial Brief, pp. 50-54 and NYC Government Customers' Reply Brief, pp. 14-16.

[320] The Company's Reply Brief, p. 144.

[321] As noted above, any class rate of return within +/-20% of the Company's overall rate of return in the study year would be treated as if its class rate of return is equal to the Company's overall rate of return in that year. Classes with rates of return below or above the tolerance band would be treated as having insufficient or excess revenues, respectively.

[322] NYPA's Initial Brief, pp. 20-23.

c. Given the additional problems that even DPS Staff acknowledges, and taking into account all the other significant problems with the 2005 ECOS identified by other parties, a tolerance band of at least +/- 20% would be reasonable.

d. No weight should be given to the Company's proposed +/-10% tolerance band because the Company does not address that the study is one year older, and the Company lacks any reasonable support for the underlying contention that class relationships in the Rate Year will be the same as they were in 2005.

[*341]

The NYC Government Customers argue that a 20% tolerance band should be applied for purposes of determining if any classes warrant a revenue change greater or lesser than an equal percentage increase. Its reasons are as follows: [323]

a. The Commission adopted a 20% tolerance band in a 2003 decision affecting electric and gas rates for Rochester Gas and Electric Corporation.

b. DPS Staff's support for a 15% tolerance band is superior to the Company's 10% proposal. However, DPS Staff witnesses did not consider the Company's projected uneven sales growth rates among customer classes, a decrease in transmission plant as a percentage of total plant, and the effects of a $ 23 million revenue shift to NYPA in the last case ($ 15 million plus $ 8 million related to TCCs). Accordingly, it is not reasonable for DPS Staff to continue to support a +/-15% tolerance band.

[*342]

The Company does not discuss affirmatively on brief why a tolerance band of +/-10% should be employed. However, it argues that DPS Staff's support for use of a 15% tolerance band is unfounded for the following reasons: [324]

a. The proposed tolerance band expansion is arbitrary and rests on DPS Staff's dissatisfaction with the respective weights the Company accords to Non-Coincident Peak and Individual Customer Maximum demands, a concern, as discussed above, it believes is premature.

b. A change in the tolerance band undermines the goal of aligning class revenues and cost of service.

In anticipation of this contention, DPS Staff argues as follows: [325]

a. In the last Consolidated Edison electric rate case, DPS Staff proposed use of a 15% tolerance band because of concerns over the D08/D09 allocation factors for the SC 1 and SC 7 customer classes and lack of a specific load diversity study. DPS Staff found that a 15% tolerance band better captured the range **[*343]** of possible D08/D09 allocation factors than a 10% tolerance band and was a conservative approach (Tr. 4553).

b. In this case, DPS Staff has the same concerns about the D08/D09 allocation factors for SC 1 and SC 7 customer classes. Moreover, the 2005 ECOS is a year older and relies on a dated class demand study. It also does not reflect the significant capital expenditures the Company has made in the years since the study occurred and the declining ratio of transmission plant to total transmission and distribution plant (Ex. 372, Tr. 1122). Thus, DPS Staff's 15% tolerance band is even more preferable to the Company's 10% tolerance band than it was in the last Consolidated Edison electric rate case.

c. The 15% tolerance band was a sufficiently conservative approach in the last case that it remains adequate to address the uncertainties of the dated class demand study, the D08/D09 allocation factors, and the pattern of Company capital investments over the last three years.

---

[323] NYC Government Customers' Initial Brief, pp. 55-57 and NYC Government Customers' Reply Brief, pp. 17-18.

[324] The Company's Initial Brief, pp. 434-435.

[325] DPS Staff's Initial Brief, pp. 265-267.

[*344]

The Company responds to DPS Staff, contending: [326]

a. DPS Staff's argument, that a 15% tolerance band adequately captures the range of possible results of a load diversity study, is invalid. It would not capture an outcome where residential customers are assigned less costs and NYPA customers more costs through a reduction in Individual Customer Maximum demands for residential customers, for example, or *vice versa*.

b. Raising the tolerance band has the same directional impact on both residential and NYPA classes, lowering the deficiencies of both residential and NYPA classes, unlike the potential results of a load diversity study.

NYPA dismisses as a "post hoc rationalization" DPS Staff's characterization of its prior use of a +/-15% tolerance band as a conservative approach, because DPS Staff did not characterize it that way in its briefs in that case or in its prefiled testimony in this proceeding. It did so only on cross-examination in this case (Tr. 4553). [*345] [327] In addition, NYPA says the shift of about 6% (or one percentage point) away from transmission investment identified by DPS Staff [328] would significantly reduce the revenue allocation to NYPA, because the distribution allocator for NYPA is only about 60% of the transmission allocator (8.8% v. 13.7%). NYPA maintains this shift supports use of its proposed +/-20% tolerance band.

4. <u>Discussion</u>

The Company's 2005 ECOS is the same study we relied on in the Company's last electric rate case, along with a +/-10% tolerance band, for purposes of allocating revenue requirement. NYPA and other parties emphasize significant increases in plant investment and expenses, and changes in load and sales since 2005, in support of their fundamental contention that the Company's 2005 ECOS is stale. We agree with DPS Staff, however, that the most reasonable way to reflect this information pending [*346] a new study is to increase the tolerance band from +/-10% to +/- 15%.

We also examined in the Company's last electric rate case some of the same criticisms raised here, including whether the Company gives appropriate weightings to non-coincident peak and individual customer maximum demands and whether those weightings are consistent with those employed by the Company in the standby rate proceedings. We decline to consider these issues pending receipt of the new ECOS we understand the Company is preparing for its next electric rate filing.

We reject outright NYPA's contention that 16 NYCRR 61.3 requires the filing of an updated ECOS in each case, presenting cost data for the three years immediately preceding a rate case. The Company properly understands that rule to pertain to information affecting the Company's revenue requirement, rather than to all information necessary to determine a fair and reasonable allocation of required revenues among various service classifications. Reading 16 NYCRR 61.3 in the context of 16 NYCRR 61.1 through 61.10 [*347] confirms that the Company's understanding is correct.

One methodological dispute discussed on the merits concerns whether it is reasonable for the Company, assuming a reliable ECOS, to reallocate existing revenues before allocating any incremental revenue requirement among the Consolidated Edison native load, NYPA, and Economic Development Delivery Service groupings, on the one hand, and among Consolidated Edison's full service and retail access customer classes, on the other. We reject the criticisms of the Company's approach.

If a specific native load customer class is generating an inadequate rate of return before any rate increase, and putting aside whether we might want to move gradually in the direction of cost to minimize harsh customer impacts, two reasonable alternatives are to: (1) shift revenue requirement first to bring up the class rate of return to where it should be, and allocate

[326] The Company's Reply Brief, p. 144.

[327] NYPA's Reply Brief, pp. 14-16.

[328] From 16.77% to 15.72%, identified in Ex. 372 and cited in DPS Staff's Initial Brief, p. 266.

any incremental revenue requirement on an across-the-board basis; or (2) allocate an above-average increase to each class as necessary to eliminate the existing class revenue deficiency and to cover any incremental revenue requirement prospectively. The Company's approach is the first of these [*348] two alternatives and we find it is reasonable on this basis.

An issue not addressed directly by the interested parties is whether the Company's 2005 ECOS should be used for purposes of shifting existing revenues among the Company's native load electric delivery service customer classes before allocating any incremental revenue increase. Given our decision above to rely on the 2005 ECOS, the Company is authorized to reallocate existing revenues among its full service and retail access classes in accordance with the study's results, subject to use of a +/-15% tolerance band.

B. TCC Treatment vis-a-vis NYPA

1. Background

In the years prior to the NYISO, the Company's native load customers generally paid for their use of the Company's transmission system through rates paid directly to the Company. The New York Power Authority paid the Company directly for transmission and distribution services for its customers through rates in a separate Company tariff. The latter arrangement was pursuant to the terms of contracts between the Company and NYPA. The last such contract was executed in 1989, about ten years before formation of the NYISO.

Things changed upon the advent of the NYISO, [*349] the New York wholesale commodity market, and the use of congestion pricing as a means to assign a value to transmission resources. Transmission owners like the Company were assigned Transmission Congestion Contracts (TCCs), each of which represent a financial right to transmit one megawatt from a point of injection to a point of withdrawal on its system. The rights associated with a utility's TCCs are auctioned off from time to time and utilities, among others, bid for the use of such rights to serve their retail customers. Payments by winning bidders are made to the NYISO and receipts, called TCC auction revenues, are distributed by the NYISO to TCC owners.

NYPA, which had interests in use of the Company's transmission system under the 1989 contract referred to above, had two basic options with respect to those rights when the ISO was formed. Under the first, it could claim grandfathered contract rights, continue to pay rates under a Company tariff pursuant to the 1989 contract, pay the NYISO for congestion costs and offset those congestion costs using the rents or auction revenues received from the grandfathered contract rights. Under the second option, NYPA could assign its grandfathered [*350] rights to the Company, continue to pay the Company's applicable tariff rates under the 1989 contract, pay the NYISO for congestion costs, and be reimbursed by the Company for all of such congestion costs.

The Company and NYPA agree that when the NYISO was first established, NYPA selected the first of these two options. After it became apparent that the TCC revenues NYPA was receiving exceeded its congestion costs, NYPA and the Company entered into a new contract on May 11, 2000, under which NYPA selected a mix of the first and second options. [329] Specifically, under the first option, NYPA elected to be excused from having to pay NYISO congestion costs with respect to its in-City Poletti and KIAC units and to receive congestion revenues associated with these rights from the NYISO. It elected to do likewise with its rights to transmission paths from various NYPA upstate generation resources, including from the Niagara and St. Lawrence power projects to East Fishkill. NYPA simultaneously elected to transfer to the Company 1,680 MW of TCCs south of East Fishkill, to pay congestion costs to the NYISO, and to be reimbursed by the Company for NYPA's actual congestion payments to the NYISO [*351] (the second option).

In the period following execution of the May 11, 2000 contract, revenues associated with the transferred TCCs generally continued to exceed NYPA's associated congestion costs and the net of TCC revenues minus NYPA's congestion costs (net TCC revenues) have been used as an offset to the Company's delivery service revenue requirement. This is accomplished by imputing a level of net TCC revenues along with auction revenues from the Company's own grandfathered TCC rights

[329] Ex. 419.

(total net TCC revenues) in the rate case revenue requirement calculation and either passing back or recovering from customers differences between forecast and actual total net TCC revenues.

A three-year rate plan adopted in 2005 provided that NYPA and its retail customers would receive 14.22% of only the first $ 60 million of net TCC revenues received by the Company in each of the three-rate years. The 14.22% reflected NYPA's share of the Company's total load. This rate plan term was accepted as an element of a joint [*352] proposal negotiated and executed by a number of parties. It reflected in part that there was a dispute in that case among interested parties about whether NYPA should share in any total net TCC revenues.

In the Company's last electric rate case, it was determined that NYPA and its customers should not enjoy any portion of the Company's total net TCC revenues going forward. [330] The primary reasons for this determination were that NYPA's interest is limited to revenues from TCCs it transferred to the Company and that such interest is further limited to NYPA being reimbursed for its congestion costs related to the same TCCs. It is uncontested that, all other things be equal, this decision increased by approximately $ 8 million NYPA's share of the Company's total annual electric delivery service revenue requirement.

[*353]

NYPA and its customers complain here that the last decision is incorrect and was based solely on briefs because there was no testimony or cross-examination on the issue. NYPA and its customers ask that the issue be examined anew based on a more comprehensive record here.

2. The Arguments

NYPA argues that it and its retail customers should enjoy a share of the Company's annual net TCC revenues, for the following reasons: [331]

a. As a matter of principal, the allocation of net TCC revenues should be consistent with that of any other component of cost of service.

b. The Company has three major sources of net TCC revenues of which two are as follows:

i. net revenues from auctions of the Company's native load TCCs totaled $ 89.5 million and $ 98 million in 2005 and 2006; and,

ii. net revenues or ″rents″ from NYPA's grandfathered rights, transferred to the Company pursuant to the May 11, 2000 contract, totaled $ 62 million and $ 26.5 million in 2005 and 2006. [332]

c. The fact that there are net TCC revenues from these two sources shows that the Company's native load and its NYPA customers are both equally hedged against congestion costs.

d. The costs of the Company's [*354] transmission system are allocated in its cost-of-service studies using the ″DO3″ allocator. As a result, 13.7% of the Company's embedded transmission system costs are allocated to NYPA. [333]

---

[330] The 2008 Rate Order, pp. 27-28, and Case 07-E-0523, Consolidated Edison Company of New York, Inc. - Electric Rates, Order Denying Rehearing (issued July 18, 2008). The latter order suggested that there was no need to ameliorate bill impacts on NYPA customers on account of the TCC determination, stating that the simultaneous revenue allocation decision (discussed above) provided adequate amelioration.

[331] NYPA's Initial Brief, pp. 26-29.

[332] A third revenue source is so-called residual TCC auction revenues. Tr. 2538-39.

[333] NYPA does not discuss why it is appropriate to employ an allocator set forth in the 2005 ECOS that NYPA claims is defective and stale.

e. A decision to allocate none of the Company's net TCC revenues to NYPA and its retail customers is inconsistent with the above described allocation of the Company's transmission costs and is flatly contrary to cost of service principles.

f. Moreover, a decision to allocate none of the Company's net TCC revenues to NYPA and its customers ignores that upon the formation of the NYISO, NYPA had an option under which net TCC revenues from NYPA's grandfathered rights transferred to the Company would have been paid to NYPA, rather than becoming a ″windfall″ for the Company and its retail customers.

g. As previously discussed, the prior determination should be reversed as there was no testimony or cross-examination on this issue at the time.

h. In the event we agree that NYPA and its retail customers should enjoy some of the Company's net TCC revenues going forward, a rate element should be adopted that would permit NYPA to participate in any reconciliation of forecast and actual net TCC revenue. **[*355]** Such a reconciliation is currently accomplished solely through the Monthly Adjustment Clause (MAC) and NYPA and NYPA customers are not subject to that rate element.

i. In the event there are any unresolved issues with respect to implementation, NYPA offers to meet with the Company and interested parties to resolve them prior to the Company's filing of new tariffs in compliance with the terms of the final order in these cases.

For the reasons that follow, the Company argues that none of its net TCC revenues should be allocated to NYPA and NYPA's customers: [334]

a. NYPA is incorrect when it suggests the Company had ″net″ TCC revenues of $ 151.5 million and $ 124.5 million in 2005 and 2006, respectively. Among other things these figures **[*356]** ignore:

i. The Company's payments to the NYISO for congestion costs embedded in the NYISO's day-ahead energy prices. [335]

ii. The Company's payments to the NYISO for congestion costs embedded in the NYISO day-ahead energy prices paid by ESCOs to serve their commodity customers (or 61% of the Company's native load.)

iii. Excess congestion rents that are credited to NYPA through reduced Transmission Service Charges for wheeling through the Company's service territory (which credits are admittedly not as significant as day-head congestion costs incurred by the Company).

iv. Congestion costs embedded in Transmission Usage Charges paid by the Company and ESCOs under bilateral energy purchases.

v. Additional congestion rents collected by NYPA by selling its in-City generation in the NYISO market or to other energy suppliers.

vi. In sum, the net TCC revenue figures calculated by NYPA are ″hypothetical.″

b. The reason NYPA and the Company entered into the May 11, 2000 contract is that NYPA was collecting congestion revenues under grandfathered TCCs that were greater then NYPA's cost for the transmission rights it had before the NYISO was created.

---

[334] The Company's Initial Brief, pp. 446-451.

[335] Citing information on the NYISO website, the Company reports that the NYISO estimates that congestion costs comprised about 10% of average market energy prices in New York City in 2007. The Company acknowledges that NYPA might have also incurred such costs, but implies that such costs should be ignored because NYPA had alternatives because of its in-City generation while the Company did not because it previously divested most of its in-City generation.

c. The May 11, 2000 contract [*357] guaranteed that NYPA would never incur costs for delivery service in excess of applicable delivery service tariff rates, regardless of the congestion costs, and no other Company customer enjoys such a guarantee.

d. NYPA should not be heard to complain about the allocation of net TCC revenues given that NYPA has not been using its in-City generation to meet the in-City load of its retail customers. [336] Rather, energy from those facilities has either been sold into the NYISO market or pursuant to bilateral contracts, either of which would result in congestion revenues, both for transmission rights and the energy NYPA sells, something clearly not intended by the May 11, 2000 contract. [337]

e. No party to this proceeding has presented any reason to set aside the initial and rehearing decisions on the same issue in the Company's last electric rate case. Among other things, it was determined at that time that NYPA's interest is limited to and addressed entirely by the Company's reimbursement of NYPA's congestion costs.

[*358]

DPS Staff likewise argues that the Company's net TCC revenues should not be allocated to NYPA or NYPA's retail customers, for the following reasons: [338]

a. DPS Staff examined the total amount the Company paid to NYPA from January 2005 through June 2008 to reimburse the latter for its congestion costs under the May 11, 2000 contract.

b. DPS Staff compared those reimbursements to the Company's total TCC revenues for native load and NYPA load in the same period.

c. The result is that NYPA received 27% of the total.

d. 27% exceeds the ″DO3″ allocator of 13.7% and, thus, NYPA is already receiving more than its fair share [*359] of the Company's TCC revenues.

e. Accordingly, the current allocation of net TCC revenues is reasonable.

Anticipating contrary arguments by NYPA and NYPA's customers, DPS Staff goes on to argue that: [339]

a. Under the terms of the May 11, 2000 contract, NYPA and NYPA's retail customers are entitled solely to reimbursement of congestion costs actually incurred.

b. This makes sense as NYPA is guaranteed that its congestion costs will be fully reimbursed.

c. The Company customers have no such guarantee; TCC revenues received might or might not fully cover congestion costs incurred on behalf of such customers. There clearly are times each year when TCC revenues are less than congestion costs.

d. In any event, DPS Staff's analysis establishes that NYPA and its customers are receiving fair treatment on a cost-of-service basis.

e. Moreover, for some of the reasons presented by the Company and summarized above, NYPA's calculation of the Company's net TCC revenues [*360] is flawed and should be rejected.

---

[336] The Company says the amount of NYPA in-City generation used for NYPA load in 2005-2007 was insignificant, decreasing from 5,599 MWh in 2005 to zero in 2007.

[337] NYPA's Initial Brief, p. 30, anticipates this argument and says this is not a proper forum for an investigation of how NYPA bids its generators into the market for the maximum benefit of its customers. NYPA argues, alternatively, that its bidding strategies are consistent with the May 11, 2000 contract.

[338] DPS Staff's Initial Brief, pp. 269-270.

[339] DPS Staff's Initial Brief, pp. 270-275.

DPS Staff sees no need for a working group or collaborative to consider any issues related to implementation of NYPA's proposed TCC treatment because it believes the record shows NYPA's proposal is flawed and should be rejected. [340]

NYPA disagrees with the cost-of-service analysis portion of DPS Staff's recommendation, arguing that a correct analysis would compare the sum of the 13.7% transmission allocator and 100% of congestion costs. If modified in that way, NYPA says, DPS Staff would be in agreement with NYPA and its retail customers. [341]

[*361]

The NYC Government Customers offer general arguments in support of an allocation of some net TCC revenues to the NYPA customer class. Their arguments are as follows: [342]

The allocation of any TCC net revenues to the NYPA customer class in the Company's last rate case was onerous and lacked any record support. This resulted in $ 8 million of the $ 23 million additional revenue shift to NYPA class customers, beyond what would have been required by an across-the-board increase. These changes were made even though the NYPA class customers provide critical services in New York City.

a. The record in this case shows TCC revenues far exceed TCC costs. Given that NYPA pays its share of the Company's transmission costs based on the ″DO3″ allocator, it should enjoy a 14.13% share of net TCC revenues.

b. The current allocation of net TCC revenues unfairly discriminates in favor of the **[*362]** Company's native load customers and against the Company's NYPA class customers.

c. In order to ensure NYPA class customers enjoy their fair share of net TCC revenues, beyond the $ 120 million proposed to be imputed in the calculation of revenue requirements, any such excess should be passed back in a rate element that also applies to NYPA class customers. The Monthly Adjustment Clause (MAC) is currently used to reconcile projected and actual net TCC revenues and NYPA customers are not subject to that rate element.

Westchester objects to Consolidated Edison's crediting all $ 150 million of projected auction revenues consistent with the 2008 Rate Order, which prevented NYPA from benefiting from net TCC auction proceeds. [343] Instead, Westchester supports NYPA's position that NYPA and its customers should share in the net of total TCC revenues in excess of total transmission congestion costs on a pro-rata basis, on the grounds that: [344]

a. In Case 07-E-0523 (the Company's last electric rate case), the issue was not adjudicated; the decision was based solely on arguments raised in briefs, without discovery, testimony, or cross-examination. Prior to that decision, NYPA received **[*363]** a share of the Company's first $ 60 million in TCC net revenues.

b. Under the May 11, 2000 agreement in which NYPA assigned its TCCs to Consolidated Edison, the Company reimburses NYPA for NYPA's congestion costs, but the agreement is silent on the ratemaking treatment for the surplus Consolidated Edison retains.

c. Consolidated Edison's bulk transmission system is integrated and operated as a single unit within the NYISO. The Company has one Open Access Transmission Tariff (OATT) rate on file with the Federal Energy Regulatory Commission that it charges for use of its whole integrated transmission system.

---

340 DPS Staff's Reply Brief, pp. 88-89.

341 The briefs do not explain why NYPA uses 13.7% and its customers use 14.13%. As noted above, a 14.22% allocation was used in the period April 1, 2005 through March 31, 2008.

342 NYC Government Customers' Initial Brief, pp. 57-59. The referenced revenues include congestion rents and TCC auction proceeds.

343 The $ 150 million figure ignores DPS Staff's proposed imputation of $ 120 million in these cases. The Company agrees with DPS Staff's proposal and the judges endorsed it in the recommended decision (p. 314).

344 Westchester's Initial Brief, pp. 21-23.

d. Because Consolidated Edison's delivery system is integrated, NYPA should be permitted to share in any auction proceeds that exceed Consolidated Edison's congestion costs as well as in congestion rents from NYPA-transferred TCCs that exceed NYPA's congestion costs.

e. NYPA customers should be treated like any other Consolidated Edison customers that use the Company's transmission system. Energy Service Companies' (ESCOs') customers benefit from the Company's TCC revenues, which are applied to all delivery charges whether those customers' energy is supplied by Consolidated **[*364]** Edison or an ESCO.

In response to the Company's and DPS Staff's contentions concerning the allocation of TCC related revenues, NYPA advances these additional arguments: [345]

a. DPS Staff's statement--that congestion payments can and will exceed TCC revenues--is unsupported in the record. Every year since inception of the NYISO, ″NYPA Grandfathered TCCs″ [346] have produced higher revenues than the congestion costs they were designed to hedge.

b. The Company implicitly concedes that a surplus of TCC revenues exists, because it argues that if NYPA's proposal were adopted, that would ″guarantee″ NYPA would be hedged for more than 100% of its congestion costs. [347] NYPA explains that under its proposal it would share in TCC revenues only if more than **[*365]** sufficient to hedge fully congestion costs of the Company's native load customers.

c. Despite Company and DPS Staff claims of substantial congestion costs included in energy purchases the Company makes, Consolidated Edison failed to quantify or prove such costs exist, even though NYPA requested on discovery that the Company provide its total native load congestion costs.

d. Any Company suggestion that its customers might have to pay more than their tariff rates and are not hedged for their congestion costs is wrong because:

i. The filed rate doctrine precludes charging more than tariff rates.

ii. The Company's native load customers are reimbursed for their congestion costs from TCC revenues and excess NYPA Grandfathered TCC congestion rents through the MAC.

iii. NYPA's proposal would permit NYPA customers to share in excess TCC revenues only after native load customers' congestion costs are fully hedged.

e. DPS Staff is wrong to suggest that NYPA is the beneficiary of a special deal under the May 11, 2000 contract. Like all other NYISO market participants with grandfathered contracts, NYPA is entitled to hedge its customers' congestion costs associated with transmission **[*366]** rights preserved in the underlying agreement (e.g., the 1989 delivery service agreement between the Company and NYPA).

In their reply brief, [348] the NYC Government Customers criticize DPS Staff's contention that, because NYPA's transmission cost allocator DO3 from the 2005 ECOS is 13.7%, NYPA is receiving more than its reasonable share of the Company's TCC revenues. The NYC Government Customers assert that DPS Staff's analysis is flawed because it is an improper comparison of gross benefits to NYPA divided by only the net benefits of TCCs (Tr. 2539) and ignores ″unquantified″ benefits the Company's other customers receive from TCCs in addition to the $ 120 million to be imputed in the calculation of revenue requirement **[*367]** (Ex. 417, p.1).

---

[345] NYPA's Reply Brief, pp. 17-23.

[346] The ″NYPA Grandfathered TCCs,″ however, include both those TCCs NYPA retained and the 1,680 MW of TCC transferred to the Company under the May 11, 2000 contract. NYPA's Initial Brief, p. 26.

[347] Citing the Company's Initial Brief, p. 450.

[348] NYC Government Customers' Reply Brief, pp. 19-20.

On reply, the Company amplifies its contention that the ″surpluses″ of $ 151.5 million in 2005 and $ 124.5 million in 2006 are fictitious: [349]

> a. The fact that congestion costs embedded in energy commodity prices paid by the Company and ESCOs serving its retail access customers cannot be separated out and quantified precisely does not render those costs ″hypothetical,″ rather than real, anymore than the electricity costs embedded in rents of residents in master-metered buildings are hypothetical simply merely because they are not separately identified and billed.
>
> b. The Company's own spot market purchases of energy amounted to about $ 1.5 billion in 2005 and over $ 800 million in 2006 and 2007, and are projected to be over $ 1.1 billion in 2013 as the Company's firm contract obligations decline (Ex. 107, 110). ESCOs, which serve more than 60% of the Company's retail access customers, incur spot market energy costs almost certainly even higher [*368] than the Company's because they do not have the same mandated firm contract obligations and, thus, are likely to purchase more of their requirements on the spot market (Tr. 4804-05). Congestion costs have been estimated to comprise about 10% of average market energy prices in New York City in 2007.
>
> c. Thus, embedded congestion costs in the spot market energy purchases of the Company and ESCOs providing commodity to the Company's retail access customers more than offset the ″surplus″ NYPA calculates.

3. <u>Discussion</u>

One basic issue presented is whether the May 2000 contract between NYPA and the Company bars NYPA's enjoyment of any or all of the net rents from TCCs transferred from NYPA to the Company.

With respect to the TCCs NYPA transferred to the Company, section (I)(c)(1) of the May 2000 contract states that any rents associated with such TCCs ″shall be retained by Con Edison.″ Section D of the same contract obliges the Company to reimburse NYPA for all associated [*369] congestion costs. A basic position of NYPA's customers is that this contract does not bar us from nevertheless allocating a portion of any such proceeds to NYPA as a matter of ratemaking. Thus, the argument continues, as NYPA is a delivery service customer that contributes to the costs of the Company's transmission system, it should receive a share of any net TCC revenues, just like any of the Company's other delivery service customers.

The effect of this proposal, however, would be to impose obligations on the Company (payment of more than NYPA's congestion costs) and to allocate benefits to NYPA and its customers that differ materially from what NYPA and the Company agreed to expressly.

A related point is that the record as a whole suggests that when NYPA retained some TCCs and transferred others to the Company in 2000 it was hedging its bets about the future relationship of transmission congestion revenues and costs. Now that the passage of time has clearly shown that transmission congestion revenues related to the transferred TCCs always exceed transmission congestion costs on an annual basis, it is apparent that NYPA is trying to avoid the effects of a contract that might have [*370] been, but did not turn out to be, beneficial to it. [350] We decline to interfere with the existing contract in this way.

As to the auction revenues from TCCs that were initially assigned to the Company (<u>i.e</u>., excluding TCCs NYPA transferred to the Company), we conclude that the terms of the May 2000 contract are not relevant for the specific purpose of determining whether NYPA should enjoy any portion of the auction proceeds as an offset to its delivery service revenue requirement. As to these proceeds, NYPA and its customers are persuasive that they are entitled to a fair share of such benefits as much as any of the Company's other delivery service customers. Stated differently, the May 2000 contract includes no terms that govern or pertain to the disposition of the Company's TCC auction revenues.

Another major issue presented, which was not a consideration in the [*371] Company's last electric rate case, concerns

---

[349] The Company's Reply Brief, pp. 149-51.

[350] NYPA's Reply Brief, p. 17, for example, describes the 2001 contract as one that benefits the Company's customers greatly to NYPA's detriment.

whether TCC auction revenues and rents, net of unbundled congestion costs, are properly seen as a ″surplus″ available to offset future revenue requirement for all customers receiving delivery over its system or as a partial credit of congestion costs bundled in commodity costs incurred for the Company's full service and retail access customers.

As a procedural matter, NYPA downplays this issue on the grounds that: (1) when asked by NYPA on discovery to disclose total TCC revenues and costs in past periods, the Company did not even identify congestion costs in bundled day-ahead and bilateral contract energy charges; and (2) the Company thereafter failed to quantify, even in general terms, the amount of annual congestion costs paid by its full service and retail access customers via these means.

We conclude that NYPA's procedural concerns are valid in part and overstated in part. Indeed, we believe this issue might have been eliminated in whole or in large part if the Company early on provided its best estimate of all congestion costs incurred in bundled day-ahead and bilateral contract energy purchases for its full service and retail access [*372] customers.

On the other hand, the Company fully explains why a precise calculation was not possible. It also refers to some factual information on the record (Exs. 107 and 110) necessary to estimate congestion costs in day-ahead commodity charges paid by its full service customers in past and future periods. [351]

The Company also explains that 60% of its energy deliveries are to retail access customers and NYPA's witness agreed with that figure and that such costs are likely passed along to ESCOs' customers. The Company also suggests it is likely [*373] that ESCOs purchase relatively more energy than it in the day-ahead spot market.

As a substantive matter, NYPA's reply brief states that energy purchases from the ISO ″may″ include a congestion component, implying there is some factual reason to doubt it. However, NYPA does not identify any such reasons. Moreover, NYPA's witnesses acknowledged that such costs exist (Tr. 4809) and there was no redirect examination on this point (Tr. 4818-19). A DPS Staff witness also testified that ISO energy prices comprise the marginal energy price, plus line losses, plus a congestion component. [352] The NYPA rebuttal testimony did not address this. The best evidence on the record is that approximately $ 77.1 million of congestion costs will be incurred by ESCOs in connection with the purchase of spot market commodity for the Company's retail access customers in the Rate Year. [353]

[*374]

Taking the $ 49.3 million of projected bundled congestion costs in the Rate Year for day-ahead commodity purchases for the Company's full service customers, the $ 77.1 million of projected bundled congestion costs in the Rate Year for day-ahead commodity purchases for the Company's retail access customers, and the $ 120 million forecast of TCC revenues in excess of NYPA's bundled congestion costs (a large portion of which are governed by the May 2000 contract and in which NYPA should not share for reasons previously discussed), it is likely that there will be no net TCC revenues fairly allocable to NYPA in the Rate Year.

The Company also argues, and DPS Staff's testimony agrees, that the Company's full service customers also pay congestion costs in the form of Transmission Usage Charges (which include a transmission congestion cost component) when the Company purchases commodity under bilateral contracts. The record also shows that the Company has firm contracts for 3,576 MW of capacity as of March 31, 2008 [354] of which 2,136 MW or 60% are from generation facilities located upstate and for which Transmission Usage Charges must be incurred. Using this information and the Company's

---

[351] Ex. 361, however, is the Company's updated forecast of wholesale electricity prices by calendar year, 2009 through 2013. Its projected day-ahead spot energy costs are $ 530 million in 2009 and $ 384 million in 2010. This supports a Rate Year simple estimate of $ 530 million (.75) + $ 384.2 million (.25) or $ 493.3 million of which 10% is $ 49.3 million. Thereafter, its day-ahead purchases, as a percentage of total energy purchases, are expected to increase substantially.

[352] Tr. 2531.

[353] $ 49.3 million of congestion costs in day-ahead purchases for the Company's full service customers divided by [1-.61=.39] equals $ 126.5 million for total congestion costs in day-ahead purchases. $ 126.5 million times the ECOS' share (.61) equals $ 77.1 million.

[354] Ex. 108.

[*375] updated projection of firm contract ″other″ costs for 2009 and 2010 per Ex. 361, [355] it is even more apparent that the net TCC revenues the Company will likely receive in the Rate Year will not in any way be ″surplus″ or fairly allocable in whole or in part to NYPA.

Another issue presented concerns the weight to be accorded to DPS Staff's analysis of the TCC allocation issue on a cost-of-service basis. As noted above, DPS Staff calculates that congestion revenues received by NYPA, in the period 2005 through June 2008, comprised 27% of the total and substantially exceeded that which would be due by simple application of a demand allocator in the 13.17% to 14.13% range.

This is the same basic analysis on which we relied in the Company's last case to conclude that NYPA should not share in the Company's total net TCC auction revenues and rents. It confirms that NYPA and its customers are [*376] being treated fairly. NYPA's criticism of DPS Staff's cost-of-service analysis is flawed. Even assuming NYPA should share in total net TCC revenues, something we reject above, the proper comparison that should be made with NYPA's transmission allocation factor is NYPA's percent share of total TCC benefits available from auction revenues and gross rents from the transferred TCCs. The use to which recipients apply the benefits is immaterial from a cost-of-service perspective. The fact that NYPA may use the benefits to offset congestion payments while Consolidated Edison uses the benefits as a base rate offset is off no consequence. Examined in this light, it is clear that NYPA is already receiving benefits substantially in excess of the level warranted based on cost-of-service principles.

In light of our conclusions, we see no need for further collaborative discussions on this topic.

4. Revenue Allocation Treatment Resulting From A Change in Imputed TCC Revenues

The NYC Government Customers argue that the final revenue allocation decision in this case must be adjusted to reflect whatever decisions are made with respect to the allocation of net TCC revenues.

They give examples of [*377] how this would be done in different circumstances: [356]

Assumption	Adjustment Warranted
1. NYPA class allocated a fair share of TCC net revenue.	1. Reduce NYPA rates by $ 17.1 million before the across-the-board or other revenue allocation is applied.
2. NYPA class allocated some but less than its fair share of TCC net revenue.	2. Reduce NYPA rates by the indicated amount before applying the approved allocation.
3. No TCC net revenue allocated to the NYPA class.	3. NYPA should absorb no share of the $ 30 million revenue increase resulting from the proposal to reduce the revenue imputation from $ 150 million in the Company's last case to $ 120 million in this case.

The Company, DPS Staff and NYPA agree with the NYC Government Customers. [357]

[*378]

355 $ 89.243 million (.75) plus $ 86.649 million (.25) equals $ 66.93 million plus $ 21.66 million or $ 88.59.

356 NYC Government Customers' Initial Brief, pp. 59-61.

357 The Company's Electric Rates Panel (Tr. 1136-1137, DPS Staff witness Padula (Tr. 2589), and NYPA's Initial Brief, pp. 31-32.

In light of our conclusion above, that none of Consolidated Edison's "net" auction proceeds or rents should be allocated to NYPA and its customers in the Rate Year, NYPA will absorb no share of the $ 30 million revenue increase resulting from our adoption of a $ 120 million "net" TCC revenue imputation compared to the $ 150 million imputation adopted in the 2008 Rate order.

C. SC 1 Customer Charge [358]

CPB opposes the Company's proposal to increase the monthly residential customer charge from $ 12.42 to $ 14.90, an annual increase per customer of $ 29.76. According to CPB: [359]

a. The current monthly customer charge of $ 12.42 is greater than the $ 12.20 monthly cost reflected in the Company's 2005 ECOS.

b. Contrary to the Company's **[*379]** proposal, it is not reasonable to assume monthly residential customer costs are now $ 14.90 just because (1) the Company was granted a 12.4% overall revenue increase in the Company's last electric rate case and (2) the Company is seeking a 17.7% overall revenue increase in this proceeding. [360]

c. It is more reasonable to assume that some Company costs have increased since 2005 and that others have not and, thus, the monthly customer charge should not be changed until after a new cost study is prepared.

d. If we decide that the SC 1 and SC 7 monthly customer charge should continue to equal each other, the higher cost of service for the SC 7 class of 16,000 customers should not drive a higher than cost-of-service charge for the Company's 2.6 million SC 1 customers (Ex. 440, pp. 33-35).

[*380]

The Company opposes CPB's customer charge proposal for the following reasons: [361]

a. The resulting customer charge would be below Rate Year customer costs of $ 14.90.

b. The $ 14.90 cost was appropriately determined by subtracting the Billing Payment and Processing charge of $ 0.94 from the SC 1 customer cost per the Company's 2005 ECOS ($ 11.26), as increased to reflect the April 2008 overall revenue increase of 12.4% and the proposed April 2009 increase of 17.7%, yielding $ 14.90. [362]

The Company's own arguments in effect concede that the current monthly customer charge ($ 12.42) for **[*381]** SC 1 and SC 7 customers is set at a level higher than the cost of service under the 2005 ECOS. In the Company's last electric rate case, however, we held that the 2005 ECOS "is not the best source of information for purposes of setting the residential customer charges" and that a current study could safely be assumed to have presented higher cost figures. [363] For that reason, we approved an increase in the residential monthly customer service charge in proportion to the overall electric

---

[358] In its Initial Brief (pp. 441-443), the Company summarizes all of its rate design proposals. These are all uncontested with the exception of the proposed increase in the customer charge for SC 1 and SC 7 residential/religious customers. The latter issue is discussed here.

[359] CPB's Initial Brief, p. 13. The figures discussed are based on the Company's May 2000 revenue request.

[360] Tr. 1077. CPB's brief does not state the dollar revenue increase it believes coincides with 17.7%, but it appears that CPB is referring to an electric delivery service percentage increase rather than an overall electric revenue percentage increase.

[361] The Company's Initial Brief, pp. 451-52.

[362] Using the same calculation method, the Company says the monthly customer charge for SC 7 would be $ 16.43. Nonetheless, it believes the monthly customer charge for the SC 7 class should remain the same as that for SC 1 customers, though it would not object to setting different rates for the two classes in its next electric rate case. The Company's Reply Brief, p. 152.

[363] 2008 Rate Order, p. 138.

delivery service percentage revenue increase approved in that case. [364] There still is no more current cost of service study available. If there were, it would just as surely present higher costs for residential customer service. Applying the approach adopted in the Company's last electric rate case, the Company is authorized to increase the current $ 12.42 SC 1 and SC 7 monthly customer service charges in proportion to the overall electric delivery service percentage increase allowed here.

[*382]

D. BIR Proposal

The Company's Business Incentive (BIR) Rates give eligible customers discounts in order to promote economic development, with other Company customers covering some of the forgone revenues. Up to 432 MW of load is dedicated to this program and its status can be summarized as follows: [365]

	TOTAL	UNSUBSCRIBED
1. Customers Receiving a Comprehensive Package of Economic Incentives from State or Local Government	275 MW	146.1 MW
2. (a) Customers in New and Vacant Premises Receiving Tax Incentives or NYC Energy Rebates, Non-Medical	137 MW	29.1 MW
(b) Medical	20 MW	0 MW

The Company proposes to extend the program, as is, for the entire length of any rate plan adopted in these cases. No party opposes extension of the BIR program.

Consumer Power Advocates (CPA), however, proposes in its testimony that the eligibility criteria for 1 and 2(a) above should be modified and that the 20 MW for 2(b) above be increased to 77 MW. CPA proposes **[*383]** the revisions because: [366]

a. The current 20 MW set aside is fully subscribed.

b. While manufacturing jobs are falling in New York City and Westchester County, academic research and education, areas closely related to biomedical research, are growing.

c. Energy costs contribute significantly to biomedical research institutions' operating costs in New York and may cause research funding to shift elsewhere, particularly when State budget cuts are affecting their programs.

d. Rules for current open BIR set-asides do not explicitly exclude non-profits, but include criteria: that require tax abatements and other benefits that do not apply to non-profits; or that allow agencies, such as New York City's, to frustrate access by withholding any "comprehensive package of benefits," which is a prerequisite for those other set-asides.

e. Increasing the biomedical BIR set-aside to 77 MW would remedy the problem by providing an amount equal to the potential share of biomedical research employment.

[*384]

---

[364] Id.

[365] The Company's Initial Brief, p. 453.

[366] CPA's Initial Brief, pp. 2-3.

The Company opposes CPA's proposed changes for the following reasons: [367]

a. With regard to the ″comprehensive package″ seta-side, there is no need to add the receipt of low-cost financing as an eligibility criterion, because the current tariff language affords eligibility without the need to qualify for property tax incentives. (The same is true under the New and Vacant Buildings program.)

b. Concerning the proposed allocation of 77 MW for Bio-Medical Facilities:

i. The record shows that bio-medical facilities are growing without any economic development benefits and free-ridership should not be allowed at the expense of other ratepayers.

ii. The 2008 Rate Order rejected CPA's contention that BIR benefits should be allocated based on the number of jobs offered by an applicant. Such allocations should be based on electric load.

iii. CPA's suggestion that biomedical facilities in New York need more incentives to compete with other regions of the nation is based on a comparison of operating costs that is incomplete and, moreover, that ignores the need for biomedical research to be conducted near superior research and business infrastructure.

[*385]

In response to the Company's claims that eligibility rules under its BIR tariff are already sufficiently flexible to accommodate the nonprofit sector's needs, CPA argues that the requirement for a ″comprehensive package of benefits″ explicitly demands that a customer qualify for more than one benefit. All of the benefits but one--low-cost financing--are tax benefit programs, which are not applicable to nonprofits. If low-cost financing alone is a sufficient qualifying criterion, CPA says, the tariff should be amended to say that expressly. [368] Furthermore, it maintains even that change would not sufficiently help the biomedical research sector, for which the current 20 MW set-aside is fully subscribed, because not all biomedical projects use financing for development. [369]

Inasmuch as the Company appears to concede that low-cost financing should be sufficient to qualify under the ″comprehensive package of benefits″ category for the BIR discount, we will **[*386]** require the Company, as CPA proposes, to file a revised tariff that explicitly makes that sole criterion suffice for eligibility. That change in itself should serve to expand biomedical facilities' access to the 146 MW of BIR set-aside still available in that category.

CPA argues that such a tariff revision alone is not enough, because some biomedical facilities do not use financing to develop their projects. On this record, we do not see why, if those projects do not require low-cost financing assistance as an incentive to proceed, they will not go forward without discounted electric delivery rates subsidized by other Company ratepayers. In fact, the record shows that CPA members currently have $ 1.3 billion in biomedical projects under development for completion from 2009 through 2013, even without access to additional BIR set-asides (Ex. 234). In these circumstances, particularly with access to additional BIR set-aside made available to biomedical facilities in conjunction with low-cost financing, we do not find adequate justification for making an additional 57 MW of BIR set-aside available to biomedical facilities. We therefore will not adopt CPA's proposal to increase the biomedical **[*387]** BIR set-aside to 77 MW.

E. Shore Power Tariff

New York City and the Port Authority jointly propose that the Company be required to develop a Shore Power Tariff in a collaborative process, so that docked ships will purchase electricity from the Company instead of generating it on-board by burning oil. They support this proposal for the following reasons:

---

[367] The Company's Initial Brief, pp. 452-458. The Company also argues against a new criterion CPA proposed in its testimony, based on level of customer investment in property relative to assessed value. CPA does not pursue this proposal on brief.

[368] CPA's Reply Brief, pp. 1-2.

[369] Ibid., p. 2.

a. Rate tariffs are typically designed for classes of customers with homogeneous service characteristics. Docked ships are not like other customers because the average load of a ship is 14 MW (very large) and shore power load follows a schedule and is highly predictable. Moreover, docked ships can rely on their own generators when the Company experiences its peak system load.

b. The Company's current standby tariff is not appropriate for docked ships because it is designed to meet customers' needs in an unlikely event, whereas Shore Power rates could be designed for off-peak, interruptible service. Moreover, electricity under the Company's current tariff would cost a ship $ 1.28 million more on an annual basis, making it unlikely that any ship owner would select this option.

c. A Shore Power Tariff would provide the Company [*388] with an incremental stream of revenues and allow the Company to spread fixed costs over more customers. The Company does not say why it is not interested in developing this new source of revenue.

d. A Shore Power Tariff would reduce combustion of No. 6 oil on ships and avoid significant air emissions and have positive environmental and environmental justice impacts discussed fully in EPA's comments (see below).

e. The Company's Electric Rate Panel did not contradict the argument that the Company's standby tariff would be unattractive and conducted no study of the feasibility of a new tariff rate.

f. The possibility that a Shore Power Tariff may be more effective for cargo ships instead of cruise ships is an issue that would be considered in the collaborative process.

g. The Company's Electric Rates Panel does not and cannot provide any explanation of how a standby tariff rate that has failed to attract any customer meets the needs of customers.

Region 2 of the United States Environmental Protection Agency (EPA) is not an active party. However, it filed comments in support of a Shore Power Tariff. [370] EPA comments as follows:

a. Shore power is a crucial step for cleaning [*389] our air and improving the health of New Yorkers.

b. Ocean-going vessels that dock in New York City typically burn high sulfur fuel in diesel engines to generate auxiliary power. This combustion results in exhaust containing NO[x], SO[x], and particulates and such exhaust is likely a carcinogen. A Port Authority study shows that use of Shore Power at the Brooklyn Cruise Terminal would annually eliminate 100 tons of NO[x], 100 tons of SO[x], and 6 tons of particulates.

c. New York City's air quality is among the worst in the nation and port-related air emissions are meaningful and avoidable.

d. Such air emissions are harmful to the public generally, and especially to children, the elderly, people with lung diseases, those who exercise outside, and low-income and minority communities located near ports.

e. Implementation of a Shore Power Tariff is consistent with economic development in New York City.

f. Implementation of an appropriate Shore Power Tariff in New York City would provide an impetus for ship owners to invest in ship-side Shore Power equipment and for widespread use of this technology in other ports on the east coast.

g. None of the Company's current tariffs [*390] accurately account for the unique service characteristics of ships that dock in New York City.

h. A rate-setting working group charged with delivering a Shore Power recommendation should be convened quickly.

---

[370] EPA's arguments are also reflected in the tabulation that is Appendix II of the recommended decision, the Summary of Public Comments.

The Company opposes implementation of a Shore Power Tariff for the following reasons: [371]

a. Assuming a Shore Power customer would be a retail customer of the Company -- something the Company thinks is not likely -- no showing has been made that a Shore Power customer would be any different from any other customer that would rely on the Company to back up customer-owned generation. Accordingly, the Company's existing stand-by tariff should apply. That rate includes a contract demand charge designed to recover the costs of local facilities put in place to serve the individual customer. That rate also includes an as-used demand component, for costs of facilities shared **[*391]** with other customers.

b. In fact, the Company has seriously considered the shore power tariff issue and tried unsuccessfully to identify customers under such a tariff. Vessels in New York City dock at Port Authority terminals, however, and the Port Authority is a NYPA customer (Tr. 1167), so NYPA, rather than the Company, will ultimately determine the rate for shore power service, including commodity supply costs.

c. A claim that the Company's stand-by rate is not a viable economic option for ships is not a good reason to cast aside a cost--based rate. That the Company's current stand-by service tariff might be ″economically unattractive″ to ocean-going vessels is irrelevant, since rates are designed to recover the Company's cost of service, not to be ″economically attractive.″ There has been no showing that other customers should subsidize service to ocean-going vessels.

d. Even if a new cost-based rate could be developed for Shore Power, it still might not be a viable economic option because a large portion of the costs incurred by the customer will be supply-related.

e. Studies have found that Shore Power is more viable for ships with large load factors, such as cargo ships **[*392]** that are in port longer.

f. At meetings with interested stakeholders previously attended by Company representatives, the Company offered specific suggestions to reduce the difference in costs between ship-generated and shore-generated power. In this light, no need for a technical conference has been established.

The Company adds these points on reply: [372]

a. External benefits that might be achieved through the proposed new shore power tariff are not relevant to cost-based rates. Moreover, the claimed benefits would not be realized when service was interrupted if, as the NYC Government Customers suggest, shore power service were interruptible.

b. That shore power service could be interruptible is also irrelevant, because the Company must provide the same level of necessary infrastructure to serve the customer's load at any time, whether it regularly or only rarely takes standby service. In addition, vessels to be benefited by the proposed tariff have a very **[*393]** poor load factor.

c. That the electrical requirements of a vessel exceed those of an average Company customer is irrelevant. The Company has customers with on-site generation of similar size and does not provide tariffs specially tailored to their circumstances.

The proponents of the proposed shore power tariff fail to address the Company's key point that vessels dock in New York City at terminals of the Port Authority, a customer of NYPA, which will determine the rate for service, including commodity cost. We conclude that there is insufficient justification for the proposal to require the Company to establish a shore power tariff. The interested parties should pursue this issue further with NYPA.

F. <u>Submetering</u>

1. <u>SC 8 and SC 12 Customers</u>

---

[371] The Company's Initial Brief, pp. 458-61.

[372] The Company's Reply Brief, pp. 152-55.

DPS Staff proposed that the Company be required to submit a plan for submetering, within four years, all individual living units in master-metered residential multi-family buildings with SC 8 (multiple dwellings-redistribution) **[*394]** or SC 12 (multiple dwelling-space heating) service (Tr. 3590). [373] Buildings that failed to convert to submetering would be switched to SC 1. DPS Staff supports its proposal on these grounds: [374]

a. Commission policy since 1977 has favored increasing use of direct metering or submetering of individual living units to promote individual electricity customers paying bills directly related to their actual consumption, in order to increase efficient use of electricity and mitigate rising electric rates (Tr. 3615), further State energy efficiency goals, and reduce environmental impacts. [375]

b. There are 455,000 unmetered individual residential units served under SC 8 and SC 12 (Tr. 3592).

c. Building owners, not Consolidated Edison, would be responsible for wiring and meter installation costs and could participate in financial incentive and other programs available through NYSERDA to offset costs (Tr. 3596).

d. Cost effectiveness in specific situations would be addressed through development of criteria for waivers.

[*395]

The Company expresses the following concerns with DPS Staff's proposal: [376]

a. No credible evidence was introduced to the effect that submetering would cause tenants to reduce energy usage. A program that could impose costs on the Company and many New York City building owners should have stronger support.

b. Submetering may not be an economically efficient way to achieve energy efficiency in instances where a building is not wired in a way that lends itself to submetering. In some instances, rewiring buildings could increase electric load, by bringing wiring up to code, allowing tenants to add appliances and electronics.

c. Unlike any other energy efficiency programs, the proposal here would be mandatory and affords no customer appreciation of the benefits of energy efficiency and of changing usage habits. The proposal is also contrary **[*396]** to the Commission's submetering regulations that provide for a participatory process. Moreover, the Company is placed in the unenviable position of threatening its customers with higher rates should they fail to comply timely with any new requirements.

d. No consideration has been given to whether NYSERDA should help to fund conversions.

e. Perhaps the issue should be transferred to the EEPS case.

f. If DPS Staff's proposal is nevertheless adopted, the Company will need to inform customers about the initiative and provide a process for monitoring progress and granting waivers. In that event, it should be allowed to defer all the associated costs of such activities.

In response to the Company's attack on the premise that actual energy usage information on bills will give customers price signals leading them to reduce consumption, Pace counters: [377]

---

[373] Under DPS Staff's proposal, the Company would have to submit an implementation plan within 60 days after an order is issued in these cases, including: a proposed mechanism to track meter installations; a plan to identify the un-metered SC 8 and SC 12 buildings; an education and outreach plan; and a plan for waivers to address individual buildings that cannot be converted because of internal building wiring or other cost prohibitive factors (Tr. 3632). DPS Staff's Initial Brief, pp. 277, 281.

[374] DPS Staff's Initial Brief, pp. 277, 281.

[375] Citing, e.g., Case 07-E-0820, New York University -- Petition to Remove Individual Apartment Meters, Order Denying Petition for Waiver (issued February 21, 2008) (Order Denying NYU Waiver).

[376] The Company's Initial Brief, pp. 461-63.

[377] Pace's Reply Brief, pp. 2-4.

a. DPS Staff's position is intuitively sound.

b. Commission precedent and policy since 1976 strongly support **[*397]** DPS Staff's position. [378]

c. The Company's contention that the effect of rewiring a building to accommodate submetering ″may″ increase building electrical load is what really lacks evidentiary support, despite the Company's burden of demonstrating by specific evidence the circumstances under which that would occur.

Pace also objects to the Company's suggestion that DPS Staff's proposal be moved to the EEPS proceeding, because the issue is specific to Consolidated Edison and the EEPS case should not be burdened with it, since the Company stands alone in questioning the concept that submetering promotes more efficient energy use. [379]

CPA opposes DPS Staff's proposal to submeter each separate apartment, because: [380]

a. The proposal is not founded on any estimate of its effectiveness as an incentive to conserve or of potential excessive cost impact on particular building **[*398]** owners or tenants (Tr. 3622). Studies offered in support fail to isolate or quantify the effectiveness of sub-metering alone.

b. Staff failed to identify the types and numbers of buildings for which sub-metering would be more costly than average and there is no public program to provide financing for the metering change (Tr. 3618).

c. Staff acknowledged the need to provide for waiver of the requirement, but offered no guidance on a process or criteria for waiver (Tr. 3626).

In its Reply Brief, CPA denies DPS Staff's assertion that NYSERDA funding is available to underwrite costs of submetering in master-metered SC 8 and SC 12 buildings. CPA contends NYSERDA funding is available only for use with other energy efficiency measures, not for simply rewiring to allow installation of sub-meters. [381]

The Retail Energy Supply Association (RESA) makes the following points concerning DPS Staff's proposal: [382]

a. RESA consistently supports Commission **[*399]** efforts to promote and enhance the efficient use of limited energy resources.

b. The submetering of master-metered residential buildings would promote and enhance the efficient use of limited energy resources.

c. However, the Company raises several reasonable concerns regarding implementation of DPS Staff's proposal.

d. Accordingly, RESA suggests a collaborative process be initiated for further discussion on this complex matter.

The Small Customer Marketer Coalition (SCMC) also supports continued discussion of this issue in a collaborative, observing that DPS Staff's proposal raises a number of logistical, administrative, legal, and financial issues that cannot be fully considered within the confines of an 11-month rate case schedule. [383]

---

[378] Citing, e.g., Order Denying NYU Waiver, pp. 2-3.

[379] Pace's Reply Brief, p. 4.

[380] CPA's Initial Brief, p. 3.

[381] CPA's Reply Brief, p. 5.

[382] RESA's Initial Brief, p. 4.

[383] SCMC's Initial Brief, pp. 2-3.

In its reply brief, DPS Staff adds the following: [384]

> a. The Company's claim that DPS Staff did not provide credible evidence that SC 8 or SC 12 customers receiving usage information would [*400] change behavior is not true. DPS Staff provided testimony that NYSERDA research data show that submetering installations in apartment houses have induced individually metered and charged tenants to reduce consumption by 18% to 26% (Tr. 3595). [385]
>
> b. The Company itself states that even those energy consumers on its system who do not have responsibility for electric bills ″should be guided by the same goal of conservation as customers″ (Tr.1240-41, 1326; the Company's Initial Brief, p. 203, n.90).

[*401]

The Company makes these additional points on reply: [386]

> a. Contrary to DPS Staff's claim, there are only 295,000 units in privately-owned buildings served by the Company under SC 8 and SC 12. The other 160,000 units DPS Staff includes in its figure are in publicly-owned buildings that NYPA serves, and DPS Staff does not intend to include publicly-owned housing in its submetering requirement (Tr. 3609).
>
> b. Exceptions and exemptions that DPS Staff now recognizes could be the basis for waiver of the requirement for particular individual buildings -- such as inability to convert because of internal wiring or inability to complete installation within the allowed time -- would undermine DPS Staff's expectation that this submetering proposal would aid the State in achieving its 15 by 15 energy efficiency goal.

Even assuming that only 295,000 units would potentially be addressed by DPS Staff's proposal, only 15 - 21% energy savings could be expected where submetering is [*402] undertaken, and some buildings might be exempted under waivers, the proposal does offer the prospect for substantial benefit toward achieving State energy efficiency goals. Still, significant questions remain with respect to the proposal, such as the availability of NYSERDA funding, circumstances that would warrant waiver or exemption, lack of input and participation of master-metered building owners and tenants on potential problems or concerns with submetering and the conversion process, the time that should reasonably be allowed for conversion to occur before building owners and tenants might be faced with a shift to SC 1 for failure to convert, and whether potential overall benefits from the proposal are likely to outweigh potential detriments. We believe this proposal remains too nascent and general at this point and requires further development before submission for our specific consideration. Transfer of the matter to the EEPS proceeding is not desirable. That proceeding is sufficiently complex already without adding this proposal to it.

The suggestion of RESA and SCMC to establish a collaborative to examine development of a more refined proposal is reasonable. We will require [*403] a collaborative process to consider development of a specific proposal for submetering living units in master-metered residential multi-family buildings with SC 8 or SC 12 service. In establishing the collaborative process, DPS Staff and the Company should identify representatives of building owners and tenants and other stakeholders who would be affected by such conversions. Those entities should be invited to participate in the effort. [387]

---

384 DPS Staff's Reply Brief, pp. 89-90. DPS Staff also notes its opposition to testimony by a CPA witness, seeking to exempt from the submetering proposal any building not subject to codes requiring wiring capable of supporting individual meters and any buildings used as ″temporary housing.″

385 The DPS Staff testimony actually cites NYSERDA studies as showing that usage in master-metered buildings is 18 - 26% higher than in submetered buildings (Tr.3595; Ex. 439, response to Company Interrogatory 13), which should mean that the savings in going in the opposite direction, from master-metering to submetering, would be 15 - 21%.

386 The Company's Reply Brief, p. 155-56.

387 Inasmuch as an additional 160,000 master-metered units are said to be in public housing facilities served by NYPA, public housing authorities and NYPA should also be invited to participate in the collaborative.

This submetering collaborative should consider any action we take in Cases 08-E-0836 et al., [388] as well as our continuing initiative on amendments to submetering regulations. [389] In addition, the collaborative should consider the issues identified above (availability of NYSERDA funding, circumstances that would warrant waiver or exemption, etc.) and the appropriateness of submetering where tenants may not have an opportunity to install measures to manage their energy use effectively.

[*404]

2. Dormitory Submetering

CPA proposes that academic institution dormitories (specifically, New York University (NYU) dormitories) with multiple individually-metered apartments on separate accounts, now billed at SC 2 (General Small) rates, be treated as residential accounts and allowed to convert to billing at residential rates as a single master-metered account under SC 8, without submetering, because: [390]

a. Individual metering and billing do not promote energy efficiency, because an individual university itself must pay the bills and only it can enjoy any efficiency savings.

b. Billing temporary student residents is not feasible, and, even **[*405]** if it were, they would not invest in efficiency measures that could not be recovered during their short-term residency.

c. Single-account billing and large-volume demand rates would give universities the price incentive to invest in efficiency measures and to manage peak loads.

DPS Staff argues against the CPA proposal on the grounds that: [391]

a. CPA repeats an argument that NYU is responsible for payment of individual direct meter billings, which was unpersuasive when the Commission rejected a waiver request by NYU in Case 07-E-0820. [392]

b. CPA's claim that having students as customers of record is administratively burdensome for Consolidated Edison is also without support in the record (Tr. 3514-15).

c. CPA's proposal to allow dormitories to be served under SC 8 is an attempt to avoid the prohibition in SC 9 of master metering dormitories with self-contained individual living units.

d. The Order Prohibiting Rent Inclusion of Electricity is applicable to individual **[*406]** living units leased by students as well as non-students. Educational institutions and owners of new dormitories have developed submetering plans that address CPA's concerns and were approved by the Commission. [393]

e. Submetering NYU's dormitory would allow NYU to obtain the more favorable SC 8 rate (subject to Commission approval of submetering), but NYU and CPA do not seem to have investigated that approach (citing Order Denying NYU Waiver, supra, p. 4).

---

388 E.g., Case 08-E-0836, Frawley Plaza, LLC - Submetering, Order Staying Order Granting Permission to Submeter (issued February 12, 2009) and Confirming Order (issued March 12, 2009). Similar stay and confirming orders were issued in Cases 08-E-0837, 08-E-0838, and 08-E-0839 on the same respective dates.

389 Case 08-M-1274, Electric Submetering Regulations, 16 NYCRR Part 96.

390 CPA's Initial Brief, pp. 3-4.

391 DPS Staff's Initial Brief, pp. 281-284.

392 Order Denying NYU Waiver, supra.

393 Citing Case 08-E-0390, United Development Corporation - Submetering, Untitled Order 1 (issued June 26, 2008)(Untitled Submetering Order 1), pp. 3-4; United Development Corporation - Submetering, Untitled Order 2 (issued September 17, 2008)(Untitled Submetering Order 2), p. 3.

CPA denies that the Order Prohibiting Rent Inclusion of Electricity is applicable to its proposal, apparently on the ground that order did not apply to ″temporary″ residents, occupying living units without leases for less than one year. [394]

[*407]

CPA's proposal is intended to benefit NYU and could be viewed as a minor variation on NYU's own petition that we rejected in our recent Order Denying NYU Waiver, of which NYU did not seek rehearing or reconsideration. [395] In any event, the issue is essentially the same: whether to permit master metering in certain multi-unit residential buildings without submetering of individual units. In the Order Denying NYU Waiver, we made quite clear that the policy the Commission established in 1976--requiring individual metering of residential living units in buildings in which the internal wiring was installed after January 1, 1977 [396]--remains in effect and its goals of reducing environmental impacts and improving energy efficiency are even more important today.

> Individuals have little incentive to reduce their consumption unless they are aware of their kilowatt hour (kWh) consumption and are responsible for the actual costs of that consumption. Individual metering of living units directly addresses this problem and is critical to meeting the goal of reducing New York State's demand for electric power by 15% from forecasted levels by 2015. [397]

We rejected the argument, which CPA **[*408]** repeats here, that the policy should not apply because all electric bills for living units in the dormitory would be paid by NYU and not the residents.

> This is contrary to our policy and the public interest. Removal of Con Edison's meters in each apartment and the master metering of the building would be a step in the wrong direction. Since the Dormitory is directly metered by Con Edison, students could be responsible for their electric consumption and become active participants in the effort to conserve electricity and protect our environment.
>
> While it is the University's decision as to whether it will include electricity as part of room and board, in light of the important public policy considerations discussed above we encourage it to reconsider its policies so that students are able to participate in the State's effort to reduce electric consumption and protect our environment, especially in dormitories with directly metered living units. Even if the University continues its policy of including electricity as part of room and board in directly metered dormitories, the meters could be used to inform the University of high consumption in particular units and facilitate efforts **[*409]** to reduce consumption in those units. NYU could play an important role in educating future electric customers about energy conservation. [398]

Our order in Case 07-E-0820 is dispositive here. CPA's argument that the prohibition in Opinion No. 76-17 does not apply to ″temporary″ residents is unavailing. Nothing in our order suggests that it does not apply **[*410]** to units for ″temporary″ residents of any kind, nor has CPA cited any authority for its position. CPA's argument that billing individual student residents of dormitories is not feasible is not credible, inasmuch as other educational institutions seem to be able to accomplish that feat in instances involving approved submetering. [399] We reject CPA's proposal.

---

394 CPA's Reply Brief, p. 5.

395 Whether the dormitory involved in Case 07-E-0820 is one of those for which CPA expresses concern here cannot be determined from the record. There might also be dormitories other than just those owned by NYU to which the proposal here, if approved, would apply. In addition, CPA's proposal here would qualify NYU dormitories only for SC 8 rates, which are higher than the SC 9 rates that were the subject of Case 07-E-0820. These differences are immaterial.

396 Case 26998, Proceeding of the Commission as to Rent-inclusion and Sub-metering for Electricity, Opinion No. 76-17 (issued August 16, 1976).

397 Ibid., p. 3.

398 Ibid., p. 4.

399 Untitled Submetering Order 1, supra , pp. 3-4, and Untitled Submetering Order 2, supra, p.3. CPA had also suggested in testimony that master metering of NYU dormitories would in some unexplained way facilitate connection of a dormitory with an NYU combined

G. Geography-Based Delivery Rates

Westchester proposes that we require the Company to conduct a study of whether geography-based electric delivery service rates are warranted **[*411]** to reflect cost disparities between serving customers in the County and serving customers in New York City. [400] Westchester argues that the Company and New York City have been strong proponents of geographic equity in recent filings on Renewable Portfolio Standard issues. It also contends that, through projects such as the East River Repowering Project (ERRP), off-shore windmills, and joint steam-electric projects the City advocates at Hudson Avenue and Hudson Yards, the Company seeks to make Westchester subsidize the cost of Consolidated Edison facilities specifically intended to serve New York City itself. Finally, the County maintains that the tax burden imposed by New York City is disproportionately higher than that imposed by the County. [401]

The NYC Government Customers observe **[*412]** that the County's reference to other parties' support for fair allocation of surcharges, such as for the Renewable Portfolio Standard, is irrelevant to the issue of whether the Company's delivery service rates should be geographically based. [402] That observation is correct. Support by any particular party for geographic equity *per se* has no probative value concerning whether a study of the need for rates in Westchester separate from those applicable in New York City is in order.

The County's reference to Company or New York City support for potential future off-shore windmill projects or joint steam/electric projects is also entirely irrelevant. Offshore windmill projects might or might not ultimately be developed. A potential Hudson Avenue cogeneration facility is subject to further study and options have not been determined yet. [403] Incipient, merely possible projects like these have no bearing on the Company's current or Rate Year costs, rates, or revenue **[*413]** allocations or whether there is any need for geographical distinction between rates applicable in Westchester and in New York City. The County will presumably have an opportunity to participate in whatever future regulatory proceedings might occur to consider such projects.

Nor do Westchester's allusion to the ERRP and suggestions that the Company's electric system subsidizes its steam system to the benefit of New York City and the County's detriment provide support for its call for a study of the need for geographic distinction in delivery rates. Just last September, in the 2008 Steam Rate Order, we most recently considered and explained our rejection of the County's arguments on the Company's electric system subsidizing the steam system. [404] In addition, that same order approved a cost allocation study for the ERRP, to be filed by April **[*414]** 30, 2009. Thus, the issue of ERRP cost allocation is now under consideration in a separate proceeding. [405]

To the extent the County argues that the ERRP costs properly allocated to the Company's electric system benefit New York City disproportionately, that contention also fails. The Company has provided persuasive evidence that its electric system throughout New York City and Westchester is operated on an integrated basis, with facilities designed to minimize costs and further reliability and efficiency throughout its service area on an integrated basis, and that facilities in New York City benefit Westchester and facilities in Westchester benefit New York City (Tr. 4181-84). The County has not challenged that evidence, except indirectly in testimony of its witness panel that limited transmission import capability into New York City and double contingency criteria claimed to be almost **[*415]** exclusively applicable to Manhattan and not at all to

---

heat and power (CHP) plant in the future. The nexus between the claimed need for master metering and the ability to connect with the CHP plant is unexplained. In any event, CPA does not include the argument on brief.

400 Westchester's Initial Brief, pp. 23-26.

401 The County also presented testimony making other arguments, which it does not pursue on brief. Those arguments and other parties' responses to them will not be considered further.

402 NYC Government Customers' Reply Brief, p. 21.

403 See Case 07-S-1315, Consolidated Edison Company of New York, Inc. - Steam Rates, Order Establishing Rate Plan (issued September 22, 2008)(2008 Steam Rate Order), pp. 37-38.

404 2008 Steam Rate Order, pp. 39-41.

405 Case 09-S-0029, Consolidated Edison Company of New York, Inc. - Steam Planning.

Westchester increase electric system costs (Tr. 4647-48). These factors are not new developments, but have been aspects of the Company's electric system for many years. The County's panel itself noted that the double contingency criteria date back to the early 1960s (id.). In determining several years ago that there was no need for the Company to incur the effort and cost of a study of whether differential electric delivery rates should be developed for New York City and the County, the Commission noted that there had been no significant changes to the basic system design since the 1980s that would affect that issue or provide any basis for assigning delivery costs any differently. [406]

The Company and NYC Government Customers, on the **[*416]** one hand, and Westchester, on the other, make several arguments about the comparative burdens that New York City or County taxes contribute to the Company's electric delivery system costs. [407] The points are immaterial. The property taxes are imposed on facilities and land held and used for the Company's electric delivery service and thus an ancillary cost of having and using the property for that purpose. It is already established above that the Company operates that system on an integrated basis for the benefit of both New York City and Westchester. Thus, whatever taxes are imposed by either New York City or Westchester are costs incurred for the benefit of Westchester as well as New York City customers and any differential that might exist has no bearing on whether there should be a rate differential between New York City and the County.

[*417]

For these reasons, we do not adopt Westchester's proposal for a study of geography-based electric delivery service rates.

H. Electronic Tariff

DPS Staff proposes that Consolidated Edison be required to submit a plan for converting its electric service tariff leaves to an electronic format using the Department of Public Service Electronic Tariff System (ETS). The plan would include identification of steps needed to convert the Company's electric service tariff schedules to ETS format, identification of any potential difficulties with conversion, incremental cost estimates, and a schedule to complete transition within three years (Ex. 429, Testimony, p. 5-6). DPS Staff justifies the proposal on these grounds: [408]

a. Nearly 10 years ago, the Commission stated that ETS will not reach its maximum effectiveness until it contains all utility tariffs and that the Commission expected an orderly transition of all tariffs to ETS. [409]

b. All major gas utilities, including Consolidated Edison, have converted to ETS, as have all major electric utilities except Consolidated Edison and its Orange and Rockland affiliate (and National Grid, which has just one tariff left to convert to **[*418]** ETS).

c. The Company's claim that its electric service tariffs are significantly larger than other companies' is not true.

d. The Company's claim that conversion is a complex process is not credible in light of other utilities' successful conversion.

e. The electric tariff on Consolidated Edison's web site does nothing to relieve the inefficiencies of the manual paper tariff filing process with the Department of Public Service. The tariff on the Company's website also provides no advantage over ETS and searching the Company's entire website tariff by word or phrase is very difficult.

f. ETS also provides a number of other efficiencies and advantages for filing and searching, to the benefit of regulatory activities and public access.

---

[406] Case 00-E-1208, Consolidated Edison Company of New York, Inc. - Plans for Electric Restructuring with respect to Service Provided in Westchester County, Order Adopting Staff Proposal (issued November 25, 2003), p. 23.

[407] Westchester's Initial Brief, p. 25; Westchester's Reply Brief, p. 13; the Company's Initial Brief, p. 465; NYC Government Customers' Initial Brief, p. 71; NYC Government Customers' Reply Brief, p. 23.

[408] DPS Staff's Initial Brief, pp. 285-88.

[409] Case 97-M-0508, Proposed Amendments to Commission Rules and Regulations, Memorandum and Resolution Adopting Regulations to Permit the Electronic Filing of Tariff Schedules (issued February 1, 1999), p. 12.

g. The Company's estimate of conversion cost, which amounts to $ 260 per page (Tr. 1100), appears to be excessive and fails to account for any offsetting cost savings.

[*419]

The Company opposes DPS Staff's proposal because: [410]

a. The Company's tariff is already available on its website and provides current and historical rate and tariff information in a user-friendly format to the same audience as the DPS web site.

b. The Company is not aware of any customer complaints about its tariff not being available in the ETS format.

c. The Company's web site allows one to access information by tariff section, subject, or leaf. The DPS site groups tariff leaves randomly.

d. The Company is willing to make further enhancements to its web site to allow tariff filings to be listed chronologically, along with a description of each filing.

e. Converting the Company's tariff to the ETS format is complex, time-consuming, and costly and no adequate justification has been provided given that the information is already available on the Company's web page.

f. The Company estimates it would cost it about $ 200,000 to make the conversion, excluding employee benefits. These costs should be recovered in rates, it says, if DPS Staff's proposal is to be adopted over its objection.

[*420]

The Company's position is unconvincing. The Commission's February 1999 order in Case 97-M-0508 recognized the need for a period of co-existence for paper and electronic tariffs, to allow for an orderly transition to electronic and elimination of paper tariffs. [411] The Company has had more than ten years now to prepare for converting its tariff leaves for use with the Commission's ETS, however, far more than necessary for it to be prepared for an orderly transition. In addition, DPS Staff's proposal would allow the Company yet another three years to complete conversion. The Company has no good excuse for failing to do so.

The tariffs available on the Company's website are not a substitute for tariffs available electronically through the Department of Public Service (DPS) website, as all other utilities' tariffs except the Company's Orange & Rockland affiliate's soon will be. Availability on the Company's website does not satisfy our desire for improving public access to tariffs [*421] through one-stop research and comparison ability through the DPS website or for greater efficiency for tariff processing and management internally at the DPS. DPS Staff correctly discounts the Company's claims that its tariffs are long and complex, pointing to the facts that there are longer tariffs already in ETS and other companies have managed to convert complex tariffs. The Company has already converted its gas tariffs to ETS. Moreover, the Company has had longer than other utilities to prepare for conversion of its electric service tariff schedules. The issue of conversion cost is premature at this time, because the DPS Staff proposal calls for cost estimates to be included in the plan to be considered. In any event, without more basis than what the Company has provided on the record here and an actual schedule for conversion, the Company's Rate Year costs for any conversion are speculative and might not occur at all. It is time for the Company to make plans to convert its electric service tariff schedules fully to ETS format within the next three years. We adopt DPS Staff's proposal.

I. Unbundling Delivery Rates

In its initial brief, the Company calls attention to the [*422] fact that it is actively considering whether to file for a transmission rate increase with the Federal Energy Regulatory Commission (FERC), the first such filing in more than ten years. Should it do so, any rate increase allowed by FERC could not be effectuated unless and until the Company re-filed

---

410 The Company's Initial Brief, pp. 466-467.

411 Case 97-M-0508, supra, p. 12.

its New York rates, removing or unbundling transmission costs. It argues that such unbundling is occurring elsewhere in the country and may be in the public interest. The Company intends to consult with DPS Staff before moving forward on any departure from the current method of bundling transmission and distribution delivery rates in its New York tariffs. We note that the Company has identified this issue for information only. No Commission action is necessary at this time.

J. Make-Whole

As discussed in the procedural history, we accepted the Company's offer to extend the final suspension date from April 5, 2009 to April 30, 2009, conditioned on the Company being made whole for incremental revenues forgone in the period April 6, 2009 through April 30, 2009. [412] The Company's proposal at the time was that incremental revenues forgone by it in the period April 6 through April 30, 2009, **[*423]** would be recovered, with interest, over the 23-month period ending March 31, 2011. The underlying premise is that neither the Company nor ratepayers would be any better or worse off then if there had been no extension of the final suspension date. We agree with these aspects of the Company's proposal as well. Given that the amount the Company is owed will be known by the end of this month, that the recovery will extend beyond the Rate Year, that the Company may accrue interest at its pre-tax rate of return, and that this will more likely result in long-term financing, the make-whole will be implemented as set forth in an ordering paragraph below.

K. PSL § 18-a(6) Assessment

Chapter 59 of the Laws of 2009 established a Temporary State Energy and Utility Service Conservation Assessment (Temporary Assessment) applicable to public utility companies. The April 1, 2009 effective date imposes an obligation on **[*424]** the Company to pay in full, on September 10, 2009, the Temporary Assessment for the 2009-2010 State fiscal year. Any delay in allowing recovery would result in a significant buildup, possibly necessitating a spike in customers' bills. Accordingly, we are establishing requirements for the recovery of the Temporary Assessment on the Company, pending any refinements that might be applied prospectively based on the outcome of an ongoing generic proceeding. [413]

The calculation of the Temporary Assessment requires the Company to add estimated energy service company (ESCO) revenues to its own revenues to arrive at the total revenue base subject to the Temporary Assessment percentage. [414] The Company shall estimate ESCO revenues by multiplying the known amount of kilowatt hours delivered to ESCO customers by the commodity/supply price levied **[*425]** by the Company for sales to its own bundled customers. We estimate that the change in the assessments will result in an annual incremental revenue requirement above what is currently in base delivery rates of approximately $ 198 million.

The current level of assessment cost recovery in base rates shall continue and the Temporary Assessment amount shall be recovered by separate surcharge. The surcharge shall be allocated to each customer class based on the class contribution (delivery and supply charges of the class) [415] to the Company's total electric revenues, including delivery and supply charges. The amount allocated to each class shall be collected by applying a [cent] /kWh or $ /kW (depending on the specific rate class) surcharge to the delivery rates billed by Consolidated Edison. [416] This rate design will keep the overall bill impact to approximately **[*426]** 1.8%, which is consistent with the intent of the assessment (to have a total assessment of 2.0% on total bills).

Given that the amount of the assessment is not under the Company's control, the amounts collected through the surcharge shall be subject to an annual reconciliation.

---

[412] Case 08-E-0539, Untitled Order (issued February 17, 2009).

[413] Case 09-M-0311, Implementation of Chapter 59 of the Laws of 2009, Establishing a Temporary Annual Assessment Pursuant to PSL § 18-a(6).

[414] The amount of the Temporary Assessment will be decreased by the amount designed to recover the Department of Public Service's costs (the Standard Assessment).

[415] For the NYPA and EDDS classes, only delivery charges shall be used.

[416] For the NYPA, EDDS, and S.C. 13 classes, the assessment surcharge can be recovered by applying a fixed total dollar surcharge per month, since these classes appear as a single customer to the Company.

The Company is authorized to implement the surcharge effective May 1, 2009, using an estimate of the surcharge amount of $ 198 million, to be collected over the subsequent twelve-month period. [417] The assessment surcharge should initially be included in the total delivery charges of each customer's bill. Effective June 1, 2009, or as soon thereafter as all requisite bill system programming requirements can be met, the surcharge amount shall be delineated separately [*427] on each customer's bill.

The Company is directed to file an updated assessment surcharge calculation amount with the Secretary within thirty days of this order's issuance. The update shall be based on the Company's April 6, 2009 filing, but include its most recent inputs for working capital, ESCO commodity prices, and delivery revenues. This will be used to facilitate assessment billing of the Company.

To the extent actual sales vary from the forecast underlying rates set here, the difference shall be reconciled by adjusting the assessment surcharge in the subsequent year once the actual difference is known.

XI. OTHER ISSUES

A. Performance Metrics

1. Reliability Performance Mechanism

a. Introduction

The Company is currently subject [*428] to a Reliability Performance Mechanism (RPM) that has been developed over a period of years. The mechanism in effect today focuses on the extent to which the Company does or does not meet criteria for overall reliability, using the frequency and duration of outages on its network and non-network (or radial) systems and numbers of major outages; remote network monitoring system performance; service restoration; and program specific standards for the timely replacement of damaged poles, the removal of temporary shunts, the repair of street lights, and the replacement of over duty circuit breakers. With the exception of the service restoration metric, portions of the Company's revenues will be forgone by it to the extent the specific criteria are not met in any calendar year and any applicable exclusions do not apply. The Company's maximum annual revenue exposure under the current RPM is $ 112 million.

b. RPMs in General

At a very basic level, the Company opposes any application of an RPM. It argues that such a mechanism is unnecessary, given its internally driven interest in providing good service and the significant financial exposure that exists after outages, including any costs [*429] of repairs that are not recovered in rates, payments for perishables and damaged property, and any disallowance pursuant to a prudence determination. It asserts, moreover, that revenue disallowances have the effect of depleting resources that would otherwise be used for the benefit of its customers.

DPS Staff disagrees, arguing that an RPM complies with a 1995 decision by this Commission that so long as there are no competitive alternatives to a utility's delivery service, there must be clearly defined consequences for a utility's failure to provide adequate service (Tr. 3586). [418] DPS Staff contends as well that revenue adjustments under the RPM are separate from and unrelated to funds used to address system needs (Tr. 3536) and that the RPM has improved the Company's overall reliability and benefited customers over time (Tr. 4147). DPS Staff denies that claims against the Company related to

---

[417] On April 6, 2009, the company estimated the annual revenue requirement effect to be $ 200 million. This shall be adjusted to $ 198 million to reflect exclusion of the EDDS supply revenues from the assessable revenue base as such customers receive their supply from NYPA.

[418] DPS Staff's Initial Brief, p. 291, citing Case 94-E-0952, Competitive Opportunities Regarding Electric Service, Opinion and Order Adopting Principles to Guide the Transition to Competition (issued June 7, 1995).

outages are a substitute for an RPM, on the ground that the consequences of such exposure are not definite and have no relation to an RPM. The NYC Government Customers agree with DPS Staff's arguments. [419]

[*430]

If we decide that it is essential for the Company to remain subject to an RPM, the Company's first alternative argument is that it should be afforded a reasonable opportunity to address any reliability concerns before any of its revenues would be at risk. Under the process it envisions, the Company would be informed if we have any reliability concerns, the Company would develop a plan to address the concerns, DPS Staff would monitor the Company's progress over a reasonable period of time, and the Company's revenues would be put at risk thereafter only if our concerns were not adequately addressed without a good reason. (In other words, the Company wants to eliminate the automatic nature of the existing RPM.) The Company maintains there are many instances in which it improved its performance in targeted areas without resort to an RPM. [420]

[*431]

The Company notes that while it does not agree that a service restoration metric should be part of an RPM (an issue discussed separately below), it finds support for its first alternative proposal to the extent the service restoration metric was adopted without any of its revenues being placed at risk for an initial period.

In its reply brief, DPS Staff contends: [421]

a. The Company's exposure to reimbursement claims by customers is no substitute for the RPM because:

i. There have been many years when the Company was exposed to adjustments under the RPM, without being exposed to reimbursement claims or exposure to prudence inquiries.

ii. Reimbursement and loss claims provide compensation only to individual customers and only in response to specific claims, while credits from operation of the RPM offset rates generally.

iii. Prudence inquiries are associated with how a company operates its system and need not be associated with any RPM component.

b. The approaches supported by the Company fail to do what the RPM does effectively, which is to hold shareholders accountable for system reliability, which is affected by a mix of different programs affecting rates. The Company [*432] has control over its performance and should be held accountable.

We reject outright the Company's proposal to eliminate or reduce the effect of the Reliability Performance Mechanism that applies to it. The identification of performance criteria and specific consequences for failure to meet those criteria help to focus management attention on the provision of reliable electric service. The fact that the Company might have to pay food spoilage costs in certain circumstances could reasonably be a consideration in determining the amount of revenues to be put at risk, but is not a valid reason to eliminate an RPM. Revenues at risk under the RPM could also be considered in any case in which the prudence of the Company's past actions is under review, when ascertaining the appropriate ratemaking consequences of any imprudent Company acts. Again, however, this argument is not a valid basis to eliminate an RPM.

The Company's claim that it has adequate incentives to provide reliable [*433] service without an RPM is also belied by past experience. The four program standards, for example, were adopted in 2005 because the Company had failed to

[419] NYC Government Customers' Reply Brief, pp. 25-27.

[420] The Company's Reply Brief, pp. 158-59. An example is the Company's implementation of 87 recommendations set forth in DPS Staff's 2007 report concerning the 2006 Long Island City outage. It says these are being implemented without any Company revenues being at risk automatically. (The distinction is a fine one, however, as we are required to consider in major rate cases a utility's compliance with its most recent audit recommendations. Public Service Law (PSL) § 66(19)).

[421] DPS Staff's Reply Brief, pp. 90-91.

provide reliable service in each of the pertinent areas even after numerous complaints were brought to its attention. [422] Likewise, to the extent that the Company has experienced revenue disallowances from the RPM in the past, this confirms that the Company's internal incentives alone are not adequate.

The record in this proceeding with respect to the Company's failure to fill funded positions, its incentive compensation proposals, and the tremendous emphasis the Company places on the ″headline″ rate of return are also good reasons to believe that the Company is heavily focused on earnings and as a result indicates that financial incentives related to the provision of safe and adequate service are likely to achieve their intended results.

Another Company argument is that an RPM is not necessary on the grounds that it frequently adopts audit recommendations [*434] without any of its revenues being placed at risk. However, management audits are not conducted frequently [423] and their recommendations are commonly focused on improving operations and performance. As noted above, moreover, compliance with management audit recommendations is supposed to be considered automatically in all major rate cases. The RPM (and Customer Service Performance Index Mechanism discussed below) are aimed at maintaining reasonable quality service levels that the Company has been able to maintain in the past. This Company argument is rejected.

c. Frequency and Duration of Outages

(i) The Arguments

The next issue presented concerns whether and, if so, how the existing criteria for the frequency (System Average Interruption Frequency Index, or SAIFI) and duration (Customer Average Interruption Duration Index, or CAIDI) of outages should be modified for the Rate [*435] Year. [424]

The Company and DPS Staff agree that the current SAIFI and CAIDI criteria for the Company's radial service need not be changed. These parties disagree, however, about what should be done about SAIFI and CAIDI for the Company's network service.

Both agree that the Company has a new outage management system, called STAR (System Trouble Analysis Response), that records more accurately than the Company's legacy system the start time of an outage and that predicts a greater number of customers will be affected by an outage as compared to the Company's legacy system.

Both agree as well that the effect of the new system is that with absolutely no change in the level of reliability, STAR results will suggest a change in reliability when compared to the legacy system's results. An important factor [*436] here is that studies prepared by the Company in 2008 and 2007 (Exs. 316 and 317, respectively) both suggest network SAIFI results will be approximately 167% to 175% higher with no change in reliability and that network CAIDI results will be approximately 25% to 41% higher with no change in reliability. [425]

Based on these study results, and some support for STAR-based change to SAIFI and CAIDI in the recommended decision in the Company's last electric rate case, the Company proposes that network SAIFI be increased from .015 to .022 (a 46.66% increase) and that network CAIDI be increased from 3.74 to 4.61 (a 23.26% increase).

As to the Company's proposed network SAIFI increase, DPS Staff is leery of the quality of the data underlying the proposal, arguing that it is basically the same as what had been provided in the Company's last electric rate case, at which time a similar proposal was rejected. DPS Staff also suggests there is not enough experience [*437] with the new STAR

---

[422] Tr. 3536-37.

[423] As discussed elsewhere in this order, PSL § 66(19) calls for such audits every five years.

[424] SAIFI equals the number of customer outages in a year divided by the total number of customers. CAIDI equals the total customer outage duration hours in a year divided by the number of customers interrupted that year.

[425] The Company's initial brief focuses much more on the SAIFI results.

system to warrant such a significant increase in SAIFI, suspecting that more might be going on than the change to STAR and that more time will clarify things. DPS Staff proposes instead that network SAIFI be suspended temporarily, with two interim alternative measures adopted, including (a) Network Interruptions, and (2) Summer Feeder Open-Autos (Tr. 3545). These are measures that are indicative of reliability, that have been tracked for a long time, and that are not affected by the use of the STAR system.

DPS Staff proposes no change in network CAIDI, arguing that an assessment of network frequency is independent of network duration, that network duration is greatly affected by manual interventions required before the Company had STAR (Tr. 3538), and that an increase in customer outage numbers from STAR can reduce network duration performance level and make it easier for the Company to meet the existing duration target. DPS Staff also argues that the Company failed to produce any concrete evidence that a 25% increase in the indicated duration of outages is due solely to STAR.

The Company counters along these lines: [426]

a. The Company's proposed adjustments [*438] to the frequency and duration targets are intended to reflect the impact of the STAR system and are based upon studies of the actual differences between results of its legacy and STAR systems recorded during 2007 and 2005. The actual results agree closely with the differentials predicted by the study model (Ex. 316).

b. DPS Staff's claim--that manual intervention creates doubt about the differential between the legacy and STAR system results for the duration standard--is off target because manual adjustment is not new to STAR, but was used with the legacy system, as well; and, in fact, to a greater degree (Tr. 4402).

c. DPS Staff is inconsistent to rely on the Company's study results for purposes of concluding that the existing network SAIFI criterion should be abandoned while ignoring the results of the same studies suggesting that the current CAIDI criterion is also problematic, albeit not to the same degree as for SAIFI.

d. While the Company believes that a change in network SAIFI and CAIDI is most appropriate under all of the circumstances, any decision to abandon network SAIFI temporarily should be matched by a decision to abandon network CAIDI temporarily. Specifically, [*439] CAIDI should be replaced with a "Network Outage Duration" metric that would operate in parallel with the "Network Interruption" criterion that DPS Staff supports in lieu of SAIFI.

e. As to DPS Staff's support for a Network Interruption criterion of 5,700 outages per year as a partial substitute for SAIFI, the Company argues this proposal does not adequately account for differences in the number of customers served per network. It argues this metric should measure network outages per customer (Tr. 4112).

f. As to DPS Staff's support for a Summer Feeder Open Automatic criterion of 650, excluding those from major outages, the Company argues this is not a reasonable partial substitute for SAIFI because its networks are designed so that the loss of up to two feeders should not have any impact on customers. The focus, it says, would more properly be on the concentration of feeder open automatics per network. Moreover, according to the Company, DPS Staff's figure is erroneously based in part on an historic average that includes radial feeders and the latter is not a proper basis for a network reliability metric.

g. Given that it is clear that the existing SAIFI and CAIDI are suspect [*440] for network service, any decision with respect to them for calendar 2009 should apply as well to calendar 2008.

A related issue is whether the amount of revenue at risk for failure to meet a frequency or duration criterion should be a lump sum, regardless of the extent of deviation from that criterion, or a sum that grows incrementally up to a fixed cap, the greater the deviation from the objective criterion. This issue is broached with respect to both network and radial criteria. For the following reasons, the Company argues in support of the latter approach: [427]

---

[426] The Company's Initial Brief, pp. 475-82 and the Company's Reply Brief, pp. 161-67.

[427] The Company's Initial Brief, pp. 482-484 and 486-487.

a. Under the current RPM, outages from major events are not counted in assessing the frequency and duration of outages.

b. However, even ignoring major events, weather and other variables beyond the Company's control have a significant impact on the frequency of outages and Company revenues should not be at risk based on these variables. A Company study of the [*441] impacts of weather, for example, shows that the standard deviation of outages around an average during inclement weather [428] is five times greater than the standard deviation of outages around an average in good weather. Other variables include the Company's inability to make repairs because of parked vehicles, disconnections ordered by any fire department, Mylar balloon contacts with overhead lines, and pole damage resulting from motor vehicle accidents.

c. Likewise there is significant volatility in the duration of outages from year to year and the average duration of outages can actually be longer with major events excluded.

d. Under the current RPM, the revenues forgone by the Company for failure to meet an objective criterion are precisely the same regardless of the extent to which the criterion is missed. Thus, a de minimis change in reliability can have a significant revenue impact. Moreover, in situations where one objective criterion is missed in a calendar year, the Company is provided a financial incentive to put its resources into making sure all other performance criteria are met rather than devoting resources to the problems that resulted in the Company missing [*442] the first criterion.

e. As a matter of principle, the judges in the Company's last electric rate case agreed a change along these lines might be in order.

In light of these contentions, the Company proposes that none of its revenues be at risk when the actual frequency or duration of outages falls within one standard deviation of the historic mean, that $ 1 million be at risk for actual results falling between one and 1.5 standard deviations above the historic mean, that an incremental $ 2 million be at risk when actual results fall between 1.5 and two standard deviations above the historic mean, and that an incremental $ 3 million be at risk when actual results exceed two standard deviations, or the upper end of the 95% confidence level, above the historic mean. [429] Thus, the Company's revenues would not be at risk in circumstances where it believes [*443] there is a significant chance natural weather variability is at fault and revenues at risk would grow gradually to the extent it is more likely the Company rather than the weather is at fault for the outages.

DPS Staff disagrees with the Company's proposal for the following reasons: [430]

a. Natural weather variability is nothing new to the Company or the industry, nor are its effects beyond the Company's control.

b. The Company has long had to deal with mitigating the effects of adverse weather and equipment failures through measures such as tree trimming, pole relocations, new cable technology, weather predictions, and pre-storm planning, all of which [*444] are under its control.

c. Current performance thresholds were set at levels higher than historic average performance values, which takes into account natural weather variability. Historically, Consolidated Edison has met most targets. When it did not meet targets, it fell well below them (Ex. 189).

d. Setting frequency and duration targets at two standard deviations above the target would provide Consolidated Edison far too much leeway.

---

[428] Caused by falling limbs, lightning, water intrusion, ice accumulation, and corrosive salts.

[429] In its Initial Brief, p. 486, the Company uses these precise figures which add up to $ 6 million, but suggests they only add up to $ 5 million. Ex. 316, p. 1-5 suggests the correct figures are $ 1 million above 1 standard deviation, $ 2 million more above 1.5 standard deviations, and $ 2 million more above 2.0 standard deviations, for a total of $ 5 million.

[430] DPS Staff's Initial Brief, pp. 294, 298-99, and 302.

e. The Company's use of only five data points is not sufficient to set reasonable standard deviations (Tr. 3541).

f. The Company failed to show that two standard deviations would promote existing policy to maintain or improve reliability; it is simply a novel way to decrease the probability of a revenue adjustment.

g. The Company failed to provide evidence that use of two standard deviations accounts only for natural weather variability.

Anticipating DPS Staff's arguments, the Company maintains that DPS Staff has [*445] not identified the performance data used to develop the current performance targets and there is no proof that natural weather variability is reflected in the current criteria. It argues that such criteria are more than likely based on average results in the five years ending in 1989, that such results are stale, and that any fixed percentage adjustment above that average to set the existing criteria does not account adequately for natural weather variability. [431]

In reply, DPS Staff contends: [432]

a. The Company exaggerates when it suggests it is exposed to tens of millions of dollars a year for failure to meet outage frequency and duration targets. Its maximum annual exposure for frequency and duration targets for the radial and network systems is currently $ 5 million each or a total of $ 20 million.

b. The Company is misleading to argue that adverse weather and natural weather variation cause it to miss targets. For example, the Company's attempt to blame [*446] the weather for missing the radial system frequency target in 2006 ignores the interruptions from equipment failures that were within the Company's control.

c. Contrary to the Company's claim, exclusion of major outages does not affect duration target performance. The 2007 Yorkville/West Bronx network outage to which the Company refers was not a major outage. All large, short duration outages similar to that one would not adversely affect the annual duration target.

d. The Company's claim that its maximum proposed level of adjustment would be the same as DPS Staff's proposed maximum of $ 5 million per threshold standard is incorrect. The Company would limit the maximum to $ 3 million (Tr. 3547).

e. The Company's contention, that the outage frequency and duration targets currently in effect for 2008 should also be changed, should not be accepted. The 2008 Rate Order set the targets currently in effect. That order recognized the possibility of changing future targets but did not provide for changes to targets it set.

f. The Central Hudson electric rate case [433] the Company cites as recognizing the potential impact of a new outage management system on frequency and duration performance [*447] targets is not apposite. The standards adopted there were based on a joint proposal.

The Company makes these additional points: [434]

a. DPS Staff's claim that the Company has long had to engage in mitigation to deal with the natural weather variability reflected in the historic mean is unavailing, because the historic average already reflects the results of the Company's mitigation efforts.

b. Although DPS Staff criticizes the Company's proposed standard deviation increments for making revenue adjustments based on the Company's use of only five data points, the current performance targets DPS Staff supports appear to be based on only five data points and the two temporary substitute measures DPS Staff proposes in place of network frequency clearly are based on only five data points.

---

[431] The Company's Initial Brief, pp. 488-489.

[432] DPS Staff's Reply Brief, pp. 90-94.

[433] Case 00-E-1273, Central Hudson Gas & Electric Corporation, Order Staying Reliability Targets and Rate Adjustments (issued September 29, 2003).

[434] The Company's Initial Brief, pp. 475-82 and the Company's Reply Brief, pp. 160-67.

c. In the 2008 Rate Order, [*448] we left open the possibility of revising the frequency and duration targets set there, based upon further development of facts regarding the efficacy of the STAR system. Here, the facts have been developed sufficiently to warrant changing those targets for 2008, as well as going forward.

(ii) Discussion

With respect to network SAIFI and CAIDI, it seems clear that one or both should be modified to reflect the Company's use of the STAR system, or that substitutes for both should be adopted, pending additional Company experience with the STAR system. Unfortunately, neither option is a panacea in the short run.

The Company argues in support of modification of the existing SAIFI and CAIDI based on comparisons of results of the STAR and legacy systems for calendar year 2007 and 2005. DPS Staff suggests this is basically the same information presented in the Company's last electric rate case, but that is true only with respect [*449] to the study for 2005 (Ex. 317). In the Company's last case, we ordered that the then-existing network criteria remain in place and that the Company should provide further evidence in support of its proposal. Exhibit 316 is responsive to that order and the results for 2007 are very close to those of the study for 2005 examined in the Company's last electric rate case.

No evidence has been produced that identifies what if anything is wrong with Ex. 316. However, DPS Staff suggests that more time is needed (at least one more year), that something else might be going on (STAR may be systematically overestimating the number of customers affected), and that the Company has not provided adequate proof in support of the changes it proposes. DPS Staff does not, however, explain what exactly would comprise a satisfactory level of proof.

The best reason to be gleaned from the evidentiary record for ignoring the results of the Company's two studies is that, while such results suggest the SAIFI network criterion should be increased by 167% to 175%, the Company actually proposes an increase of only 46.66%. Thus, the Company's own position raises doubts about the accuracy of its study results. [*450]

The other key option, as noted, is to substitute other measures for network SAIFI and CAIDI. A problem is that the Company criticizes and proposes alternatives to DPS Staff's proposals (i.e., use network outages per customer and the number of open automatics per network in lieu of SAIFI), but DPS Staff does not respond on brief. A related problem is that the Company's counter-alternative proposals are very general, with no specific criteria calculated and explained.

As to network CAIDI, similarly, the Company claims that whether or not manual interventions are key in determining actual outage deviations, its studies nevertheless establish that STAR will predict outage deviations that are at least 25% higher. DPS Staff's position is that the two Company studies to date do not comprise adequate proof.

Based on all of the information presented, our preference would be to set network SAIFI and CAIDI criteria that reflect the new STAR system. In our judgment, however, the Company should have a total of at least three to five years' data from and experience with the STAR system before we would rely on either for these purposes. The issue thus becomes what would be the best substitute [*451] for network SAIFI and CAIDI in the interim.

Of the alternatives offered, the best for SAIFI is derived from DPS Staff's proposal to substitute 5700 network interruptions per year and 650 summer open automatics, excluding those from major outages, in lieu of SAIFI, while simultaneously taking into account valid concerns raised by the Company. For network interruptions, the target should account for differences in the number of customers served. Therefore, the target will be 2.50 network interruptions per 1,000 customers served. For summer open automatics, the Company is correct that radial outages should not be included in the metric. Based on the Company's rebuttal testimony, this would result in a target of 510 for summer network open automatics. We reject, however, the Company's arguments that this target should be based on open automatics per network as no specific proposal was put forth on which to establish such targets.

As to the network CAIDI, the two years' of STAR data provided by the Company persuade us that an interim criterion should likewise be substituted. Specifically, network CAIDI should be replaced with network outage duration along the lines of the Company's alternative [*452] proposal. For reasons explained below, however, we are adopting a single outage duration target of 4.90.

With these substitutions in place, the Company will be in the same position as it is today in terms of its ability to meet the criteria. In this context, it remains reasonable that $ 5 million of revenues be at risk for each of the substitutes for network CAIDI and SAIFI. [435]

As DPS Staff suggests, it would not be appropriate to revisit in this case the prior decision for calendar 2008. That decision was based on the best information available at the time.

Turning to the related issue of whether SAIFI and CAIDI revenue disallowances should be imposed on a flash-cut or gradual basis, the Company's basic position appears to be that it should be subject to little if any revenue disallowance when bad weather might be the sole or [*453] partial root cause of any deterioration in the reliability of its electric delivery service. DPS Staff's basic position, meanwhile, is that the Company can install and operate its system in a manner so that reliability can be maintained and that it is appropriate to provide the Company an incentive to ensure the Company maintains reliability in the future to the same extent it has been able to do so in the past. At a fundamental level, we are more persuaded by DPS Staff's position. We also disagree with the Company's approach because it can produce the situation when the Company's reliability slips and its incentive to prevent such an effect also decreases. Moreover, the Company is incorrect when it claims that current reliability targets are based on 20-year old data and that such targets do not already reflect the effects of natural variability. The network targets previously in effect and the radial targets that will continue in effect were first adopted in the 2005-2008 rate plan based on a joint proposal. Such targets were re-evaluated in the Company's last case and readopted. As these targets were based on the Company's actual experience in past years, and as results actually [*454] achieved by the Company reflected what it calls natural variability, there is no need to provide for such variability a second time. In sum, we reject the Company's proposal in support of gradual revenue disallowances. [436]

d. Major Outage Mechanism for Networks

DPS Staff proposes to continue the existing Major Outage mechanism under which the Company would be at risk of forgoing $ 10 million of revenue to the extent any outage impacts 10% or more of customers on a network for three hours or more, subject to an annual cap of not more than $ 30 million.

The Company objects, noting that it has large and small networks and that it would be vulnerable to a $ 10 million revenue disallowance on account of outages impacting as few as 50 customers. Indeed, it says, an outage on 14 of its 61 networks affecting less than 500 customers each would result in a $ 10 million revenue adjustment (subject to the $ 30 million annual cap). In the period 1998 through 2007, [*455] the Company continues, it experienced eight outages that would have warranted a revenue adjustment, with four involving less than 100 customers. Forty million dollars of revenue adjustments in those instances would have amounted to $ 275,862 per customer interrupted. Accordingly, the Company proposes that the proposed mechanism not apply to networks with fewer than 25,000 customers except in the event of a complete network shutdown. For networks serving 25,000 or more customers, the Company proposes a threshold of 50% or 25,000 customers, whichever is greater.

DPS Staff argues for continuation of the current existing Major Outage mechanism as it applies to networks, which became effective on June 19, 2008, and rejection of the Company's proposal because: [437]

> a. Outages under this metric fall within the full control of the Company and it should be held accountable for its performance.

[435] The $ 5 million revenue adjustment exposure previously applicable to network SAIFI will be divided between network outages ($ 4.0 million) and summer open automatics ($ 1.0 million).

[436] Appendix VI is a summary of the mechanism we adopt here.

[437] DPS Staff's Initial Brief, pp. 303-305.

b. The purpose of the metric is not only to capture outages affecting a large number of customers, but also outages in smaller networks that would have an impact on large businesses.

c. The definition of a major outage was evaluated in the Company's last electric rate case, and a provision was [*456] included at that time for the Company to seek exemption on a case-by-case basis for outages that affect more than one building but are still small scale and do not warrant being classified as major outages. [438]

The Company is correct to say that it has some networks with a large number of smaller customers and some networks with a small number of large customers. However, the Company never explains why it would be reasonable to provide it an incentive to avoid major outages for smaller customers, but no incentive to avoid major outages for its largest customers. Such an explanation certainly should [*457] have been provided given that it was only last year that a new definition of a major outage was adopted based on the percentage rather than the number of customers out of service. For that reason, and as the Company would retain the right to petition for exemptions where only a few buildings are affected, we reject the Company's proposal to modify the major outage component of the Company's RPM.

e. Service Restoration Metric

The Company accepts DPS Staff's proposal that the existing service restoration metric remain in place, without any Company revenues being at risk, including the requirement that following any applicable storm it would file a report detailing its restoration performance.

Nevertheless, the Company continues to have concerns about the need for or appropriateness of a service restoration metric for the following reasons:

a. The Company is in the process of implementing audit report recommendations in Case 06-M-1078 concerning its performance in outage emergencies and it is premature to establish performance criteria while that work is ongoing.

b. The focus of the audit report in the referenced case is on adoption of best practices and the report expressly [*458] cautions against a narrow focus on restoration times.

c. The establishment of restoration targets based on the number of customers affected is not reasonable because the key variable is the extent of the damage sustained during an event.

d. The restoration metric does not account for factors beyond the Company's control.

Anticipating these points, DPS staff argues:

a. The Company is incorrect in its claim that DPS Staff's proposal uses the number of customers out of service as a target. The restoration mechanism states a restoration time for a specific emergency level set forth in the Company's own emergency plan, and the Company itself sets each emergency level.

b. Nothing in DPS Staff's proposed restoration mechanism prohibits the Company from establishing other restoration-related requirements on its own. DPS Staff has recommended various measures in previous outage investigations and they have not interfered with Consolidated Edison's ability to resolve system emergencies.

c. If the Company is unable to get mutual assistance from other utilities during widespread events, it may seek exemption from the target on a case-by-case basis.

On reply, DPS Staff adds: [439] [*459]
d. There is no merit to the Company's argument that the restoration mechanism conflicts with the implicit purpose

---

[438] Case 07-E-0523, supra, Order Adopting Changes to the Definition of Major Outage (issued June 19, 2008). DPS Staff quotes language to the effect that the 10% threshold is justified in any network, because the criterion would have come into play for both the Long Island City and Washington Heights network outages, while the previously effective threshold did not.

[439] DPS Staff's Reply Brief, pp. 94-95.

of the audit report on its response to outage emergencies. The restoration performance mechanism sets targets, without dictating how to achieve them. The audit report gives recommendations on how the Company should achieve the targets, without affecting how targets are set.

e. Having a pre-set time certain within which the Company must re-establish service or face a revenue adjustment will give it incentive to use its best efforts to derive a restoration time quickly and assess its resources continually to ensure the time is met.

In its Reply Brief (p. 177), the Company states that it appreciates DPS Staff's discussion on this issue and will be guided by it when preparing reports for future storms during the trial period.

We decline to adopt any modifications to the existing outage restoration terms of the Company's RPM. Those terms are in effect without any **[*460]** associated potential revenue disallowances as a step in the direction of adopting a refined mechanism at a later date. As stated in the 2008 Rate Order (p. 175), the communication of and achievement of estimated restoration times are essential components of the provision of safe and adequate service. The Company's concerns are more appropriately addressed when we take up the issues of whether and when to place Company revenues at risk for its failure to achieve projected restoration times.

f. Remote Monitoring System Metric

The Company has approximately 24,000 Remote Monitoring System (RMS) devices on its network transformers. The devices transmit information to operating personnel. A third of the transmitters are about 20 years old and characterized as first generation technology. Another 22% are second generation technology and about 10 years old, and the remaining 45% are third generation, latest available technology. [440]

[*461]

DPS Staff proposes to continue the RMS Metric, under which the Company forgoes $ 10 million (up to an annual cap of $ 50 million) of revenues if less than 90% of the RMS units in each network are functioning (or reporting). DPS Staff envisions this as an interim metric, pending re-adoption of a 95% threshold for functioning RMS units.

The Company argues as follows: [441]

a. The RMS metric should be discontinued as the Company needs no incentive to maintain RMS availability.

b. The Company's internal goals are more ambitious than 90% and it is currently meeting its internal goals.

c. The Company was able to bring about significant improvements on its own initiative through early 2007 even though an RMS metric did not exist at the time.

d. $ 10 million per network and a $ 50 million cap for RMS revenue disallowances are disproportionate relative to other amounts at risk and caps under the other reliability metrics applicable to Consolidated Edison.

e. An RMS reporting problem does not mean there are service interruptions. Accordingly, far fewer revenue dollars should be at risk, such as no more than $ 100,000 per network with a maximum of $ 3 million per year (Tr. 4151-52).

[*462]

f. A minimum 90% availability rate is too high given that the Company is involved in a ten-year program to upgrade all RMS transmitters to third generation equipment.

---

[440] Note 238 in the Company's Initial Brief, p. 497, seems to say the third generation equipment is 45% and 20% of the total. Its arguments collectively suggest that 45% is the correct figure.

[441] The Company's Initial Brief, pp. 497-500.

DPS Staff opposes any reduction of the 90% RMS reporting rate for each network because: [442]

a. In the Long Island City network outage investigation, Consolidated Edison's own operating procedure requires a 95% RMS effective rate for each network. [443]

b. The Company continually operated below the 95% rate, operating its system with an unacceptable level of uncertainty. This shortfall was first identified following the 1999 Washington Heights outage and again following the Long Island City Network outage.

c. In response to the Company's renewed claim that first and second generation RMS devices were at fault for the failure to maintain the required reporting rate, the RPM standard was dropped from 95% to 90%, below the Company's own specification (Tr. 4148).

d. Funding has been provided for **[*463]** the Company to improve the RMS system reporting rate in each network in recent rate cases.

e. The RMS remains the only way for the Company to receive continual information on the state of its network system, which is very complex, below ground, and much more difficult to monitor than an overhead system (Tr. 3548).

The remote monitoring system metric of 90% was first adopted in the 2008 Rate Order (pp. 171-172), based in part on evidence that the Company's internal goal was to achieve 95% performance on a regional basis and not less than 90% performance in any network and that this internal goal was repeatedly not achieved. The $ 10 million revenue disallowance per occurrence was proposed by DPS Staff with no annual cap, while **[*464]** the Company opposed adoption of any revenue disallowance, either per occurrence or annually. The 90% target was described as a step in the direction of a 95% target in the long term and there was also discussion about a report to be submitted by the Company in May or June 2008.

We do not put much stock in the Company's assertion that it needs no incentive to achieve a target of 90%. Network reporting below the 90% level was experienced prior to both the major Washington Heights and Long Island City outages in the Company's system.

DPS Staff does not reply to the Company's arguments that a $ 10 million per event and a $ 50 million annual cap for failure to meet this metric is excessive relative to other RPM metrics especially given that service might not be affected. That issue was also not addressed in the direct testimony of DPS Staff's reliability performance mechanism panel (Tr. 3531-3551).

The reason for this, however, is that the Company's contentions about the RMS dollars at stake are presented in its update/ rebuttal testimony (Tr. 4151). Given that the remote monitoring component of the RPM is already in effect and the Company presented this information at a time when DPS Staff **[*465]** would have no opportunity to reply with testimony, we conclude the record on this issue is not adequate to justify any change at this time.

g. Program Standards

Performance criteria for repairs to damaged poles, the removal of temporary shunts, repair of street light services, and the replacement of over-duty circuit breakers were adopted in 2005. Annual revenues of up to $ 3 million each are at risk when the Company fails to meet the applicable criteria. For example, the Company is subject to a revenue adjustment of $ 100,000 for each of 60 over-duty circuit breakers it does not replace in a rate year. [444]

The Company argues that these performance criteria should be eliminated for the following reasons: [445]

---

442 DPS Staff's Initial Brief, pp. 306-308.

443 Case 06-E-0894, Proceeding on Motion of the Commission to Investigate the Electric Power Outage of Consolidated Edison Company of New York, Inc.'s Long Island City Electric Network , DPS Staff Final Report (issued February 9, 2007).

444 A $ 3 million annual cap also applies. Other examples are shown in the Attachment.

445 The Company's Initial Brief, pp. 500-501.

a. The Company has met or exceeded all these performance targets since they were established in 2005.

b. The Company has met or exceeded another performance metric adopted in 2005 (related to the time for energizing **[*466]** new street lights) even though there were no revenues at risk for that metric. That metric has since been discontinued.

Alternatively, the Company proposes that the performance metrics remain in place with no revenues at risk, so that it can be afforded an opportunity to prove that it can provide good service without being at risk for a revenue loss.

Anticipating these arguments, DPS staff supports continuation of the program standards because these are areas in which the Company failed to complete work on its own initiative in the past (Tr. 3550). DPS Staff opposes the Company's rebuttal claim that if it exceeds expected performance levels over time, there is no need to continue a performance metric because: [446]

a. The components of the mechanism should continue so that Consolidated Edison will be held accountable for items not properly handled on its own initiative in the past.

b. If the Company continues to meet the targets, it will not be subject to any **[*467]** revenue adjustments.

The NYC Government Customers also oppose the Company's proposal to eliminate the four metrics. According to these parties: [447]

a. The four metrics were first adopted in March 2005 in part to encourage the Company to correct serious deficiencies in streetlight service it provides. Problems included numerous streetlights without electric service and a proliferation of streetlights served by shunts or cables installed to provide service pending a permanent repair.

b. The four metrics were re-adopted in the Company's last electric rate case at which time it was determined that the RPM was an essential component of just and reasonable rates for the Company. The Company has not demonstrated any change in circumstances that warrants a different outcome.

c. The fact that the Company has met all four metrics since they were first adopted in 2005 shows that the RPM worked and that safety and reliability have improved. However, this improvement is not **[*468]** a reasonable justification for eliminating the metrics from the RPM.

We decline to drop the program standards for pole repairs, stunt removal, no-current street lights and traffic signals, and over-duty circuit breakers. The shunt removal and over-duty breaker standards are critical. We are also reluctant to remove the pressure these criteria place on the Company to address pole repairs and no-current street lights and traffic signals.

h. Effective Period of the Reliability Performance Mechanism

DPS Staff proposes that Consolidated Edison be required to file proposed revisions to the RPM based on the mechanism in place at the time of its rate proceedings. [448] It also urges that the RPM for this proceeding should become effective January 1, 2009, and remain in effect until reset, because the majority of items subject to the RPM are reported and evaluated on a calendar year basis (Tr. 3542).

[*469]

The Company does not discuss the first topic in its initial brief. However, it disagrees with DPS Staff's proposal that the RPM remain in effect until modified. It argues the RPM should be effective during the period for which base rates are set in these proceedings. Citing the 2008 Rate Order (p. 163), the Company asserts that the RPM should be reset each time

---

446 DPS Staff's Initial Brief, pp. 311-312.

447 NYC Government Customers' Initial Brief, pp. 73-76.

448 DPS Staff's Initial Brief, p. 293.

the rate of return is considered, to ensure revenues at risk are reasonable in the context of the return allowed at that time. [449]

The Company's Reply Brief also objects to the statement in DPS Staff's Initial Brief that "the Company should be required to file proposed revisions to the RPM based on the existing mechanism in rate proceedings." [450] The Company complains that this proposal was not presented in DPS Staff testimony and is unsupported in the record; it amounts to micro-management; [*470] it is inappropriate because the RPM mechanisms themselves are inappropriate; it will inhibit innovation regarding incentive regulation and undermine even-handed and more effective approaches to maintaining good service; it unfairly shifts the burden of proof to the Company for a mechanism that it does not support and that is not an element required for a rate filing under Commission regulations; and it unfairly targets the Company when no other electric utility is subject to such a requirement.

We reject the Company argument that DPS Staff and other parties have the burden of proof with respect to a Reliability Performance Mechanism, simply because the Company disagrees in principle with the use of such mechanisms. This Commission has long held that incentive mechanisms are appropriate for ensuring the quality provision of monopoly utility services. The 2008 Rate Order stated that various elements of the Company's RPM are essential to [*471] the provision of safe and adequate service. If the Company wants permission to increase its rates and charges, accordingly, it must be prepared to meet its burden of proving that its overall rate plan would be reasonable in light of prior precedent. [451]

There is no dispute about the proposed effective date of January 1, 2009 for RPM terms adopted in this case. As to how long such terms should remain in effect, the Company was previously understood to recommend that such terms should expire automatically at the end of the Rate Year. Now that it is clear that the Company agrees the RPM terms should apply until rates are set again in another electric rate case, we do not believe there is any meaningful difference between the Company's and DPS Staff's positions.

Turning to DPS Staff's proposal about the appropriate timing of the Company's direct presentation, the record in this case is deficient in part because the Company's presentation on one or more RPM [*472] criteria is part of its update/ rebuttal case filed in late September 2009. DPS Staff's proposal would avoid a recurrence of this problem and that proposal is adopted.

2. <u>Customer Service Performance Mechanism</u>

DPS Staff proposes that the Company's electric Customer Service Performance Incentive (CSPI) be continued. The existing CSPI is summarized on the record as follows: [452]

> A maximum revenue adjustment in favor of customers of up to $ 40 million annually (equivalent to approximately 33 basis points of electric common equity) is applicable if the Company does not meet customer service threshold targets. The Company files a report annually on its performance under the incentive mechanism. The customer service performance metrics... [concern] the following areas: PSC complaint rate; satisfaction of electric emergency callers and other non-emergency callers to the Company's telephone centers and visitors to the Company's service centers; time to complete new and initial service jobs, initial phase; time to complete new and initial service jobs, final phase; meter reading, percent read on cycle; telephone calls, percent answered; billing accuracy (percentage of bills not adjusted [*473] due to Company error); routine investigations (percentage completed within 30 days); and the Outage Notification Incentive Mechanism (ONIM), a measurement of the Company's performance in customer notification of service outages. For measurement purposes, under the terms

---

449 The Company's Initial Brief, p. 501-502. We understand the Company to be referring to each time the return on equity is considered for its electric operations.

450 The Company's Reply Brief, p. 178, citing DPS Staff's Initial Brief, p. 293.

451 PSL § 66(12)(i).

452 Tr. 4713-14.

of the existing rate plan, performance resulting from abnormal operating conditions, such as strikes, natural disasters, major storms and other unusual events, are not considered. In such cases, Con Edison will omit data for the affected geographic area from the calculation.

DPS Staff points out that the CSPI was updated in the 2008 Rate Order, and states that it opposes the Company's rebuttal request that the CSPI be discontinued, because: [453]

a. The Company's Customer Operations Panel maintains the CSPI should be discontinued for reasons stated in the rebuttal/update testimony of the Company's Infrastructure Investment Panel (Tr. 1436).

b. The Infrastructure Investment Panel's discussion was limited to the RPM and did **[*474]** not address the CSPI.

c. Thus, the Company has presented no justification for discontinuing the CSPI.

The Company opposes DPS Staff's proposal for the following reasons: [454]

a. The Company provides excellent service because customer focus is the essence of its mission.

b. The Company expects its employees to exhibit customer focus and the Company understands it is responsible for ensuring its employees have the resources they need to do this work effectively.

c. The Company disagrees with DPS Staff's assertion that good customer service will occur only if a portion of the Company's revenues are at risk. The Company has operated with a customer service performance mechanism in place since 1992 and during that time, there was only one revenue disallowance associated with missing a communication metric during the LI City outage. The Company's long-standing performance is the result of dedication to customer service, not the result of possible negative financial **[*475]** consequences.

Alternatively, the Company argues the mechanism should be retained but with no revenue adjustment provision, to afford it an opportunity to test DPS Staff's assertion that possible financial consequences are the driving force behind the Company's long history of high quality customer service.

The Company's direct case was silent on the CSPI mechanism and its reasons for opposing such a mechanism are offered in update/ rebuttal testimony to which DPS Staff had no reasonable opportunity to respond. This problem will be avoided in the future because we are requiring the Company to present its position on the existing customer service performance mechanism in its future rate case filings.

Turning to the merits, the CSPI measures whether the Company is providing good customer service using a broad number of indices. It is consistent with the long-standing policy of using performance metrics as an incentive for good utility performance. In this light, the fact **[*476]** that the Company experienced only one revenue adjustment under this mechanism over more than 15 years is not a reasonable basis for discontinuing this general service quality mechanism. DPS Staff's position is adopted.

B. Three-Year Rate Plan

The judges recommended against a three-year rate plan, observing that such a proposal was initially supported by the Company, that the Company's support for a multi-year plan gradually became more nominal than real, and that the Company had not committed to refrain from filing for another rate increase to be effective during the three-year rate plan. [455]

---

453 DPS Staff's Initial Brief, pp. 312-13.

454 The Company's Initial Brief, pp. 502-503.

455 R.D., pp. 314-316.

The Company excepts, pointing out that it never updated its second- and third-year revenue requests as they would build on amounts allowed for the Rate Year using escalation factors. [456] It argues further that it is entirely proper that it reserve its right to file for new rates if it is dissatisfied with the rate plan terms adopted for any or all of the rate years. In light of our long-standing [*477] support for multi-year rate plans, the Company says that it is confounded by the fact that consideration of a multi-year rate plan in these cases did not go beyond reasons why such a plan should not be adopted and did not include an exchange of ideas that could lead to a multi-year rate plan beneficial to all.

Westchester, the only party to reply, opposes the Company's exception on the grounds that a three-year rate plan would be ill-advised for both ratepayers and the Company in light of the current economic turmoil. This turmoil, it says, makes it more difficult to estimate many factors affecting revenue requirement. [457]

We generally prefer multi-year rate plans in instances where the terms are broadly seen to be better than those that might result from a litigated one-year [*478] rate case. In addition, we note that this proceeding includes many of the same, or similar, issues and major cost drivers as did the Company's last one-year electric rate case. These circumstances raise a significant concern that the public benefit might not be optimized if the upcoming Consolidated Edison electric rate filing--the third in three years--ultimately boils down to consideration of the same, or similar, issues on which parties largely just replicate arguments we have already carefully reviewed and either accepted or rejected. We also question how well the public interest may be served by the demands on time and resources of the Company, DPS Staff, and other parties in the face of continual annual rate proceedings.

In these particular cases, however, we do not see a sufficient record basis to compare the results of one three-year litigated rate case and three one-year litigated rate cases, much less to conclude that one approach would be superior to the other. We therefore agree with the judges' recommendation against a three-year rate plan here and deny the Company's exception. Nonetheless, we encourage the Company, DPS Staff, and other parties to explore the possibility [*479] of a multi-year rate plan seriously and fully as part of Consolidated Edison's next electric rate case, whether on a litigated or negotiated basis.

We wish to impress upon the Company the importance that its next rate request be complete in all respects upon filing, including all underlying workpapers, studies and analyses, calculations, and assumptions. We also underscore the Company's obligations under Part 61 of our rules of procedure, [458] to which we believe it gave too little attention in these cases. We expect DPS Staff and the other parties to identify formally or informally any elements missing from the Company's presentation, and seek appropriate relief, as promptly as possible. If the Company includes a multi-year rate proposal as part of its initial filing--although the level of detail required in support of the filing is to some extent dependent on the scope and complexity of the proposal itself--the quality and specificity of the supporting information accompanying that proposal must be sufficient to provide the parties a reasonable opportunity to review and analyze it in a timely manner. If the judge finds material deficiencies in the Company's filings, she or he has [*480] the power to fashion appropriate remedies. For example, any decision to allow the Company to supplement its filing may be made subject to appropriate conditions to protect the interests of other parties and ratepayers. Finally, consistent with our discussion in section XII(D) below, any multi-year rate plan proposal the Company submits must include a detailed explanation of all steps it will take to achieve appropriate austerity savings during the period the rate plan is proposed to be in effect.

C. Deferral Accounting/Reconciliations

1. New Laws and New Taxes

---

[456] The Company's BoE, pp. 60-61.

[457] Westchester's BOE, pp. 11-12.

[458] 16 NYCRR Part 61.

The Company proposed numerous deferral and reconciliation terms, including one concerning changes resulting from new laws and new taxes. The judges noted this Company proposal and made clear that they were not recommending it. However, they gave no reason. [459]

[*481]

The Company excepts, complaining about the judges' failure to give any reason. [460] DPS Staff had opposed this Company proposal, arguing a reconciliation for new laws and tax changes is inappropriate in the context of a one-year rate case and that the Company would be free to petition for relief (a deferral petition) if any such changes had a material impact on the Company's earnings. The Company disagrees with both of these arguments. As the recommended decision properly acknowledges in connection with property taxes, the Company continues, there is no substantial difference between providing for a true-up in a one-year rate case and in the first rate year of a multi-year rate plan. It asserts, moreover, that the proposed reconciliation would be beneficial to the Company and ratepayers. The Company maintains as well that allowing it to file a deferral petition is an inadequate remedy in the current environment, where there is an abnormally high level of legislative activity that could materially affect its costs. The Company concludes, asserting that the judges' reasons for supporting full reconciliation of property taxes applies as well to the revenue requirement impacts of other [*482] changes in law and taxes.

No party replies.

The basic issue presented concerns what level of the Company's delivery service revenue requirement should be subject to full reconciliation. We authorize here a continuation of all full reconciliations currently in effect. In light of the economic downturn, we are also authorizing full reconciliation for property taxes and debt costs in the context of a one-year litigated rate case. In our judgment, this provides the Company with a reasonable level of downside earnings protection and simultaneously minimizes the chances of ratepayers paying too much. The Company also undermines its exception to the extent it contends new laws or other tax changes could materially affect its income. In appropriate circumstances, a material impact on income can be a reasonable basis for authorizing deferral and subsequent amortization in rates.

2. Offsets of Deferred Debits and Credits

The Company proposed that it be allowed to offset deferred debits [*483] against deferred credits in order to simplify its reporting and make its financial reports more meaningful to investors. It argued as well that such a set-off would minimize net deferrals to be passed back to or recovered from customers. The judges recommended the Company's approach, citing the absence of any arguments about why deferred debits and credits should not be automatically offset against one another. [461]

DPS Staff excepts, noting that its reply trial brief explained that the Company's proposal would make it more difficult for it to monitor the Company's accounting of deferrals for regulatory purposes. [462]

The Company replies, noting for the record that it does not agree that netting deferred debits and credits would make it more difficult for DPS Staff to monitor the Company's accounting. [*484] [463]

DPS Staff's exception is granted for the reasons it states and as the Company does not explain the reasons behind its responsive comment.

D. Mandatory Hourly Pricing (MHP)

---

459 R.D., pp. 316-319.

460 The Company's BoE, pp. 62-63.

461 R.D., pp. 317-319.

462 DPS Staff's BoE, p. 67.

463 The Company's BOE, p. 79, n. 76.

In the 2008 Rate Order we approved expansion of Mandatory Hourly Pricing (MHP) to customers with demands over 500 kW in any month, which the Company is currently implementing in two phases. DPS Staff proposes that the Company be required to: (1) evaluate the current expansion to customers with demand of over 500 kW, including load responsiveness, customer satisfaction, and lessons learned; and (2) based upon that evaluation, develop a plan and schedule to extend MHP to customers with demand of 500 kW or less. [464] The Company agrees there should be such an evaluation before further expansion of MHP to lower demand customers, but contends that the nature and cost of the evaluation should be determined in a future proceeding, after completion of the second phase of the current expansion, which will **[*485]** not take place until after the Rate Year. [465] DPS Staff did not interpose any objection to the Company's point.

We expect DPS Staff to continue to monitor the Company's implementation of its expansion of MHP to customers with demand greater than 500 kW. We will require the Company to file, within six months after completion of implementation of the second phase of that expansion, a report evaluating the expansion program that addresses at least those factors DPS Staff set forth, together with any others the Company believes significant. The evaluation should also include an assessment of expanding MHP to customers with demand of 500 kW or less. Unless the evaluation clearly shows major obstacles to effective expansion, the report shall also include a plan and schedule for implementing MHP expansion and an estimate of the costs of expansion.

1. <u>MHP Billing</u>

CPA proposes that Consolidated Edison be required to provide shadow **[*486]** billing to all new MHP customers for one year before implementing MHP, because: [466]

> a. An extensive period of familiarization and opportunity to reduce usage is necessary to implement MHP without excessive customer confusion (Tr. 3499).
>
> b. A year of shadow billing of the MHP price is reasonable and similar to the approach used to implement steam demand rates.

The Company, supported by RESA and SCMC, objects to CPA's proposal. The Company states: [467]

> a. Although there were some billing problems during earlier implementation of MHP for greater demand customers, CPA agreed all prior MHP billing issues had been resolved (Tr. 3506).
>
> b. The Company has successfully billed its current MHP population for two years.
>
> c. The Commission has already rejected shadow billing as unnecessary.
>
> d. The Company is planning extensive outreach and education efforts to assist customers with MHP-related issues.
>
> e. Shadow billing, as proposed, would necessarily delay implementation of **[*487]** MHP.

RESA supports the Company's current schedule for the expansion of MHP, but suggests the Commission should tweak the Company's MHP program by requiring Consolidated Edison, upon request by an ESCO, to provide access to a customer's full 24 months of historic hourly interval data, instead of the 12 months currently provided. RESA suggests: [468]

> a. This data can be provided without any administrative obstacles.
>
> b. The requested additional information is already provided by National Grid, RG&E, NYSEG, and Central Hudson.

---

[464] DPS Staff's Initial Brief, pp. 327-28.

[465] The Company's Initial Brief, p. 509.

[466] CPA's Initial Brief, p. 4.

[467] The Company's Initial Brief, pp. 509-19.

[468] RESA's Initial Brief, p. 8. SCMC generally supports the same proposal. See SCMC's Initial Brief, p. 12.

> c. Provision of such data will afford ESCOs an opportunity to develop more accurate, efficient, and less costly pricing models and better products.

Contrary to the **[*488]** Company's claim, in the 2008 Rate Order we did not consider, much less reject, shadow billing prior to expansion of MHP for customers with demand >500 kW and </=1.5 MW. We did, however, require the Company to include sufficient time in the implementation schedule to provide six months of hourly interval data for customers with demand >1.0 MW and </=1.5 MW and one year of interval data for customers with demand >500 kW and </=1.0 MW. [469] We found there that: [470]

> ...[A]doption of this schedule strikes a reasonable balance between expediency, on the one hand, and, on the other hand, the desire to ensure that eligible MHP customers have sufficient time and data to see how their load is affected by season, production patterns, weather and the like, and to effectively make adjustments to their load patterns in an anticipation of the new Hourly Pricing Tariff.

CPA does not respond to the Company's criticism of its shadow billing proposal. Nor does it explain why the extent of the information we have already required as part of the Company's MHP expansion program, together with the Company's associated outreach and education efforts and customer assistance, are insufficient and **[*489]** warrant further delaying MHP expansion. We will not adopt CPA's shadow billing proposal.

The Company offers no objection to RESA's proposal that the Company be required to provide an ESCO, upon request, with a customer's full 24 months of historic hourly interval data. We find RESA's proposal reasonable and we adopt it.

E. Retail Access Issues

1. Outreach and Education

DPS Staff agreed with the Company's proposal to discontinue its "Power Your Way" outreach and education program on retail access, reducing revenue requirement by approximately $ 1.662 million plus revenue taxes. The Retail Energy Supply Association and the Small Customer Marketer Coalition opposed the proposal, arguing that some level of outreach and education on retail access should continue even if past promotion of retail access will not be continued.

The judges recommended that $ 730,000 of the $ 1.662 million be restored (exclusive of revenue taxes) to cover the costs of a Green **[*490]** Power Campaign ($ 650,000), a Green Power bill insert ($ 72,000), and the Company's maintenance of an up-to-date list of retail electric energy suppliers ($ 8,000). [471]

DPS Staff excepts, arguing (as it did in its reply trial brief), that an October 27, 2008 order makes clear that objective outreach and education about retail access should continue to be disseminated within the ambit of usual utility outreach and education budgets for customer education. [472] DPS Staff contends as well that there is no record support for the two larger amounts the judges recommended and that it can be expected that the Company would continue to maintain up-to-date lists of retail electric energy suppliers as part of its general outreach and education.

[*491]

Responding in opposition to DPS Staff's exception, the Retail Energy Supply Association (RESA) argues that there is nothing in the October 2008 order cited by DPS Staff that precludes a utility from allocating a specific level of expenditures

---

469 2008 Rate Order, supra, p. 67.

470 Id.

471 R.D., pp. 320-321.

472 DPS Staff's BoE, pp. 67-69, citing Case 07-M-0548, Proceeding on Motion of the Commission - Retail Access, Order Determining Future of Retail Access Programs (issued October 27, 2008), p. 13.

within its overall outreach and education budget to address retail access activities. [473] It adds that the record is replete with information about specific retail access programs the Company should fund in the Rate Year. This includes expenditures for bill redesign, business and residential events, Power Your Way educational reminders, and the distribution of ESCO lists.

RESA also excepts, arguing as follows: [474]

a. The budget for outreach and education or retail access should be on the order of $ 300,000 to $ 400,000 so that the Company can comply with the October 2008 order cited by DPS Staff and in light of the fact that the Company initiates approximately 300,000 new services per year. The $ 8,000 recommended by the judges for a list of energy **[*492]** suppliers is woefully inadequate.

b. The Company acknowledged during cross-examination that much of the $ 1.622 million Test Year amount was related to educational rather than promotional activities.

c. Providing educational materials on retail access and energy efficiency is more important in more difficult economic times, so that customers can enjoy bill savings.

There is a record basis for the amounts proposed by the judges [475] and RESA's exception is undermined to the extent its proposed $ 300,000 to $ 400,000 annual retail access outreach and education budget is proposed for the first time in its brief on exceptions. RESA also overstates its argument when it suggests the Company is adding 300,000 customers per year. The record shows that figure includes existing customers taking service at new locations. [476]

[*493]

More fundamentally, however, DPS Staff is correct that we now anticipate that New York utilities' retail access outreach and education should continue within the ambit of their general outreach and education budgets. [477] In this case, that budget is $ 3.631 million annually. [478] DPS Staff's exception is granted and RESA's exception is denied.

2. <u>Display of Full Service Supply Costs on Retail Access Bills</u>

CPA proposes that the Company be required to display its full energy supply cost under its electric tariff on all bills, including retail access bills, because: [479]

a. Consolidated Edison bills are particularly complex and difficult for consumers to interpret. Displaying full service supply costs would facilitate understanding and transparency essential to evaluate alternative supply options and make competitive markets work efficiently (Tr. 3595).

b. Although the Company argues price volatility **[*494]** in monthly costs can confuse customers, that is no reason to withhold information from them. In any event, consumers need monthly costs to compute annual costs for comparative purposes.

c. Any burden on the Company of providing this information is outweighed by the burden on consumers of either trying to develop this cost on their own or accepting unfavorable supply offers based on incorrect evaluation of the Company's complex rates.

---

[473] RESA's BOE, pp. 3-4.

[474] RESA's BoE, pp. 4-7.

[475] Ex. 382, Table 2.

[476] Tr. 4723.

[477] The judges acknowledge that they missed this argument in DPS Staff's trial briefs.

[478] Ex. 382, Table 2.

[479] CPA's Initial Brief, pp. 4-5.

d. Full supply costs are displayed on bills in other jurisdictions, even New Jersey.

The Company opposes CPA's proposal, maintaining: [480]

a. Showing monthly costs of supply for full service would not provide enough or relevant information and could induce customers to switch supply based on insufficient, short-term comparisons. Offerings of alternative suppliers are usually based on long-term pricing models and best compared over a longer period, such as 12 months, which also would take seasonality into account.

b. Customer inquiries about [*495] various supply alternatives and requests to switch suppliers could increase call center volume, necessitating an increase in call center staffing and capital and O&M costs, which would have to be determined and recovered.

c. There are complex system requirements for providing full service billing amounts on all customers' bills, such as those for customers subject to MHP billing, and the requirements would have to be determined and associated costs would have to be computed and recovered from customers.

d. The value of this information has not been established well enough to overcome the potential time and expense necessary to provide it to satisfy one consulting firm's interest.

RESA and SCMC both support the Company's contentions and add: n481

a. To assist consumers in comparing costs and benefits of supply from the Company and alternative suppliers, it would be better for the Commission to require the Company to continue [*496] publishing monthly market supply charge (MSC) estimates.

b. CPA's proposal ignores that there are non-commodity savings associated with retail access, such as the avoidance of merchant function charges, possible reductions in tax obligations, and other benefits.

c. CPA's proposal is anticompetitive. The utility and all ESCOs compete to provide commodity. Just as it would be inappropriate to require the Company to show an ESCO's commodity costs on a retail access bill, it is unwarranted to include the Company's supply costs on bills it renders to its full service customers.

d. The large customers CPA represents are sophisticated enough to examine all the options without any need for CPA's proposal.

CPA disputes RESA's and SCMC's claim that CPA's proposal would misstate full service costs by ignoring savings related to the merchant function charge, tax obligations, or other benefits, since its proposal is to display on the bill all the charges [*497] that apply to full service customers. [482] In addition, it argues that RESA and SCMC err in maintaining that disclosure of the Company's rates would be anticompetitive, because the Company's rates are determined by tariff, not by market forces or marketing strategy, and are publicly available by law. [483]

In its Reply Brief, RESA responds to CPA's arguments, stating: [484]

a. CPA provides no persuasive factual support: that customers require historic Company full service supply costs on all retail access bills; or that would assuage concerns that the data could be confusing or inaccurate and fail to provide a complete picture of all costs and benefits of retail access versus full service supply.

---

480 The Company's Initial Brief, pp. 511-12; the Company's Reply Brief, pp. 181-82.

482 CPA's Reply Brief, p. 6.

483 Id.

484 RESA's Reply Brief, pp. 2-3.

b. Although the bill display CPA seeks is included in New Jersey's retail access program, retail access there has not advanced to the significant level achieved in New York, especially for small customers.

[*498]

CPA's proposal has theoretical appeal. More information for consumers on costs of alternative supply can improve transparency and efficiency in competitive markets. RESA's and SCMC's argument that showing the Company's supply costs on bills would be anti-competitive has it precisely backwards. [485] Consumers can obtain commodity costs of electricity provided by alternative suppliers from those alternative suppliers, without those costs being shown on the Company's bills. They must obtain information on the cost of electricity that the Company supplies from the Company, whether on the bill or some other way. The easier it is for customers to get information on the cost of taking supply provided by the Company itself, the easier it will be to compare that cost with the cost of electricity from an alternative supplier and the more competition will be enhanced. Suggestions from the Company, RESA, and SCMC that the proposal would benefit only CPA as a consulting firm, or large customers sophisticated enough to examine all available options on their own, hit wide of the mark, since the proposal would apply to all customers' bills.

[*499]

CPA's contention that potential customer confusion from more information is no reason to withhold information also has surface appeal, as does its point that customers would be able to determine annual supply costs from summing monthly data. RESA's and SCMC's argument that there are non-commodity savings associated with retail access, such as the merchant function charge, is undercut because CPA, as it notes, proposes that each applicable charge be shown on the bill. The difficulty arises in anticipating customer ability to put the information on the bill to proper use. CPA argues that the Company's bills are already particularly complex and difficult for customers to interpret. Adding more cost information, and perhaps advice on how to apply it (such as an admonition to look at an annual commodity charge total, rather than a one-month snapshot, for comparison purposes) can only increase bill complexity. The added information might be particularly confusing for a retail access customer, which would see a cost that it did not bear and that did not figure into calculation of its bill.

Given the risk of exacerbating the complexity of customer bills and difficulty of interpreting them **[*500]** -- together with the lack of information on what modifications the Company would have to make to provide the proposed information on all customer bills, regardless of service class or rate category, or associated costs -- we cannot at this time determine whether the potential benefits of adopting CPA's proposal are likely to outweigh the potential detriments. Therefore, we will not adopt CPA's proposal.

3. <u>Unaccounted for Energy</u>

RESA, supported by SCMC, explains that electric commodity service costs include the value of losses incurred in transmitting and distributing energy from the point of generation to the point of delivery. These losses are calculated as the difference between total load (net of station power load) and metered load (net of station power load) in a particular zone. ESCOs and their customers must provide compensation for those losses as part of the overall cost of the commodity, based on an ″unaccounted for energy″ (UFE) percentage determined by dividing that difference by net metered load. [486] The Company currently calculates the UFE as a single aggregated, average <u>monthly</u> figure by zone.

[*501]

---

485 CPA's suggestion that showing the Company's supply cost on the bill would not be anti-competitive because the Company's rates are set by tariff, not market forces, is hardly more logical. The Company's charge for commodity it supplies is a flow-through based on the cost of its commodity purchases in competitive markets.

486 Ex. 383, Response to Question 19A.

RESA and SCMC propose that the Company be required to provide ESCOs with hourly UFE data, rather than a single monthly figure, for these reasons: [487]

a. Based on a 2002 Company study, its total losses comprised more than 7% of total generation and purchases. Retail access customers have to purchase enough energy to replace these losses.

b. The Company acknowledges that UFE increases when demand increases, that UFE varies by hour, and that it is possible UFE increases when energy costs increase. [488]

c. The Commission should grant ESCOs access to hourly UFE data by zone to ensure customers receive timely and accurate information concerning the cost of their usage.

d. While the Company's current retail access plan does not require the Company to provide hourly UFEs by zone, neither does it prohibit dissemination of that information.

e. The proposal is practical because the Company acknowledges that it could provide such data on an aggregated basis without having to install any additional meters or undertake costly infrastructure improvements. [489]

[*502]

The Company responds with two points. [490] First, it cites a NYISO Market Tariff provision relying on the transmission owner's retail access plan, together with a section of the Company's Retail Access Implementation Plan and Operating Procedure, which sets forth how the Company will provide hourly usage data for ESCOs to the NYISO. Second, the Company appears to argue that, although it theoretically could attribute UFE to particular customers, it is not responsible for providing UFEs to ESCOs on a customer-specific basis.

The Company does not explain the relevance of its citation to its retail access plan. If its point is that its own document does not require it to provide the hourly UFE information RESA and SCMC seek to ESCOs, but only to the NYISO, that response is inadequate. The simple answer is **[*503]** that we can require it to change its retail access plan to provide the information sought. In response to the Company's second point, RESA stresses that it does not propose that the Company provide ESCOs with information on line losses attributed to particular customers. It seeks only provision of hourly loss data on an aggregated basis by zone, rather than just one monthly factor on an aggregated basis by zone, which currently prevails. [491] The Company has not offered any reason why it could or should not reasonably be required to supply such information. We thus will require the Company to provide that information to ESCOs and to file within 30 days of the date of this order a revised retail access plan incorporating changes reflecting that requirement.

Joint Supporters states its agreement with RESA's and SCMC's proposal that the Company provide hourly loss data by zone to ESCOs, but recommends that such data be made available to all load serving entities, including **[*504]** providers of energy efficiency, demand response, and distributed generation (DG) services, to promote more effective decisions on purchasing and consumption of their services. [492] Inasmuch as this expanded proposal was first made in Joint Supporters' reply brief and other parties never had any opportunity to consider it in hearings or in brief, the expanded proposal's full implications -- whether positive or negative -- are unknown and untested on the record here. We reject the proposal as untimely.

4. Timely Meter Reading Information

---

[487] RESA's Initial Brief, pp. 16-17; SCMS's Initial Brief, pp. 10-12.

[488] Ex. 383, Response to Question 19E and Tr. 4358 and 4360.

[489] Tr. 4363.

[490] The Company's Initial Brief, pp. 512-13.

[491] RESA's Reply Brief, pp. 3-4.

[492] Joint Supporters' Reply Brief, pp. 3-4.

NYECC proposes that Consolidated Edison be required to reconcile differences between what the Company and NYECC member Constellation New Energy (Constellation), respectively, contend is the average lag time between the date when the Company collects meter data and the date when it reports the data to Constellation. If Consolidated Edison is not in compliance with reporting time requirements, NYECC asks the Commission to compel the Company [*505] to lower the lag time to a period similar to that achieved by its affiliate, O&R. NYECC argues that: [493]

a. Constellation receives billing data from O&R within three days of collection, on average, compared to about ten days on average from the Company (Tr. 4596-97).

b. The Company should be able to achieve the same performance level as its affiliate.

c. Delays in receipt of billing data adversely affect Constellation and other NYECC members because they employ a range of sophisticated market monitoring and hedging strategies that depend on timely information to respond to market conditions that can change daily, or even hourly (Tr. 4597).

d. Delay in receiving billing data from the Company can undermine the effectiveness of these risk management strategies.

The Company argues as follows: [494]

a. The Commission's established deadline for the transfer of utility meter reading information to an ESCO is set forth in the Electronic Data Interchange Rules, i.e [*506] ., one day from validation of the reading of the estimate.

b. The Company has consistently met this requirement, except in one recent instance in which a system problem delayed a data transmittal by one day.

In its reply brief, NYECC notes that inconsistencies between information from Constellation and the Company on lag time in communicating usage data to Constellation might be due to data validation issues the Company cited in brief. [495] NYECC suggests that the Commission reconcile reporting times between the Company and Constellation and, if the Company is not in compliance with reporting time requirements, require it to come into compliance. [496]

There seems to be no substantial reason for us to become involved in reconciling this [*507] reporting time issue at this point. Constellation should take the initiative to meet with the Company and seek to resolve the differences it perceives in timing of meter reading information transmission, including whether they might be due to data validation problems. If Constellation and the Company fail to resolve the issue, Constellation can seek further relief. Any required action at that time could and should be taken outside the context of a major rate case.

F. Estimated Billing/Use of Automated Meter Reading (AMR)

1. Use of Load Shapes and Rectifying Data Aberrations

NYECC proposes that the Commission (a) establish a collaborative effort to consider rectifying gaps in Consolidated Edison's collection of load profile data on interval meters for MHP and (b) require the Company to publish a prioritization protocol for rectifying the data gap problem, on the grounds that: [497]

a. When the failure in collecting load profile data for an MHP customer exceeds 4%, Consolidated Edison routinely uses class average load curves, rather than extrapolate from the customer's actual data (Tr. 1443, 4595).

---

[493] NYECC's Initial Brief, pp. 30-31.

[494] The Company's Initial Brief, pp. 510-11.

[495] Ibid., p. 511, n. 243.

[496] Ibid., pp. 20-21.

[497] NYECC's Initial Brief, pp. 28-30.

b. Despite MHP customers' efforts to modify actual consumption in response **[*508]** to hourly price signals, they are charged according to only class average performance, which undercuts the purpose for mandating hourly pricing for larger customers (Tr. 4596).

c. Wholesale electricity providers cannot justify commodity cost discounts based on actual load profiles as long as Consolidated Edison reports consumption based on class average profiles rather than actual usage levels (Tr. 4596).

d. The mandate to extend hourly pricing to even more customers increases the urgency of eliminating use of average load slopes instead of actual interval consumption data.

e. The Company is willing to participate in a collaborative on this issue (Tr. 1468).

Similarly, RESA contends that the Company unreasonably rejects the use of all interval data recorder information for a billing period even when not all of the information is suspect. It argues that the Company should be required to modify its current billing system so that interval meter data is retained for purposes of billing customers and reporting hourly load obligations to the NYISO. According to RESA, defaulting to class load shape data for billing purposes should be a last resort, because it is inconsistent with **[*509]** the goals of billing customers based on their actual usage and providing accurate billing data to customers and their commodity providers. [498]

The Company counters that it is implementing a ″Meter Data Management System″ (MDMS) in connection with MHP expansion for customers with demand greater than 500 kW. [499] It says the MDMS has ″a robust capability for verifying and estimating interval data,″ which should resolve data recording and tolerance failure issues (Tr. 1418-19, 1420-21). The Company also states that NYECC and RESA appear to be under the misimpression that the Company uses the same process for retail billing as for reporting data to the NYISO for reconciliation. [500] In fact, for retail billing, when interval recorder data are invalid, missing, or anomalous, the Company **[*510]** estimates the customer's usage based on historical usage information (Tr. 1443-45, 1460-66; Ex. 385); it does not use load shapes. It uses load shapes, when the tolerance check fails, only for reporting data to the NYISO for reconciliation.

Turning to the related NYECC proposal that the Company establish and publish a prioritized protocol for rectifying data aberrations, the Company states that it expects the MDMS, and the use of less complicated meter configurations for larger customers with demands of less than 1.5 MW, will resolve most of the issues with data aberrations. [501] NYECC rejoins that a prioritization schedule remains reasonable because the MDMS will not eliminate using average load shapes rather than actual consumption data and will not resolve many issues related to data aberrations. [502]

[*511]

The Company's Customer Operations Panel testified that, although the MDMS will help resolve many of the problems associated with interval meter data gaps, it will, as NYECC notes, not eliminate all problems or the use of load shapes. In addition, the panel said the Company would be willing to participate in a collaborative effort to consider the problems and seek a resolution (Tr. 1460-68). Accordingly, we adopt the proposal for a collaborative effort to examine and resolve the issues NYECC and RESA have raised, including the issue of whether the Company should establish a prioritized protocol for rectifying data aberrations.

2. Strategic Installation of AMR

---

[498] RESA's Initial Brief, pp. 9-10. RESA states that the Company currently serves 904 large time-of-day customers with interval meters. Those customers are responsible for 3,076 MWs of load.

[499] The Company's Initial Brief, p. 513.

[500] The Company's Reply Brief, pp. 182-83.

[501] The Company's Initial Brief, p. 513.

[502] NYECC's Reply Brief, p. 20.

The Company proposed to:

a. Invest $ 23.679 million over two years to complete its AMR saturation program in Westchester County.

b. Invest $ .5 million per year to replace at a rate of 3,500 per year, 93,000 existing AMR devices on meters of those who are infirm or have trouble providing meter access.

c. Invest $ 1.3 million per year for ten years to place 100,000 AMR devices on other meters to which **[*512]** it has not been given access for over 120 days.

d. Invest $ 1.28 million per year to install AMR devices or meters in all new and refurbished buildings.

DPS Staff opposed all but the first of the Company's proposals while the NYC Government Customers supported a more expansive program for placing AMR devices on meters to which the Company has difficulty obtaining access. [503]

The judges summarized the competing considerations including costs involved, the degree to which cost savings might be achieved by the Company outside of the AMR saturation program in Westchester, the customer and public policy benefits of bills based on actual rather than estimated bills, and the potential for some or all of the planned investment becoming stranded based on whether and when we might approve the Company's Advanced Metering Infrastructure (AMI) proposal pending in another case.

Taking these considerations into account, **[*513]** the judges recommended that the Company be allowed to recover on the planned completion of the AMR saturation program in Westchester. They also recommended that $ 34,000 per year of incremental O&M expenses plus carrying charges on an investment of $ 3.08 million per year (the total investment planned by the Company) be allowed, but that these revenues be devoted solely to replacing, at an accelerated rate, 93,000 existing AMR devices that the judges understood to be obsolete. The judges stated that this would essentially maintain the status quo, much like DPS Staff's proposal to support the Company's planned investment for completing the AMR saturation program in Westchester. [504]

The Company excepts, arguing as follows: [505]

a. The purpose of the program the judges propose be funded involves the replacement of remote reading devices with AMR meters when they fail. It used the word ″obsolete″ to describe the remote metering devices because they will be obsolete once they fail. In **[*514]** other words, the Company does not plan to invest more than $ .5 million per year in this single program.

b. The judges did not give adequate attention to its other proposals based on DPS Staff concerns about a lack of cost savings and possible stranded costs, but there is record evidence to suggest the stranded cost concern is unwarranted.

c. Adoption of the judges' recommendation would limit the Company's ability to reduce the number of estimated bills.

d. Curtailing AMR installations in new buildings will require the Company to incur and seek recovery of incremental meter-reading costs that would have been included in its May 2008 rate filing.

DPS Staff excepts, arguing that: [506]

---

[503] Indeed, no party objects to the Company's proposal to complete its AMR saturation program in Westchester.

[504] R.D., pp. 320-324.

[505] The Company's BoE, pp. 63-64.

[506] DPS Staff's BOE, pp. 69-70. DPS Staff states that the recommended decision ″mistakenly″ refers to the replacement of ″obsolete AMR devices,″ and simultaneously describes the Company's proposal as one to ″replace existing but obsolete remote meter reading devices... .″

a. The recommended decision ″directs″ expenditures proposed by no party.

b. There is no evidence the Company should invest up to $ 3.08 million per year to replace existing AMR devices.

c. At most, the Company should be allowed carrying charges on $ .5 million per year for that purpose.

[*515]

The NYC Government Customers except to the extent the judges did not support the Company's proposal to invest $ 1.3 million per year to replace with AMR devices existing meters to which the Company has difficulty obtaining access. Its arguments are as follows: [507]

a. Estimated bills obstruct state and local energy efficiency goals.

b. From July 2004 through June 2007, approximately 32% of New York City's bills were estimates, a rate almost three times that of the Company's system average.

c. Advanced Metering Initiatives are being considered because they help to increase energy efficiency.

d. Customers prefer actual meter readings over estimates because their bills are more accurate.

e. AMR devices will reduce the number of times the **[*516]** Company will have to attempt to read meters that are not easily accessible, reducing labor required to read meters.

f. DPS Staff's concerns about stranded costs are speculative at best, given that no appropriate AMI technology or comprehensive plan have been adopted for the Company, that the Company expects any AMI initiative to be implemented gradually over seven years, and that the Company's $ 713 million AMI proposal, pending in another case, might never be approved.

g. Moreover, DPS Staff's stranded cost concerns ignore the possibility that AMR technology might be upgraded to establish a virtual AMI system. h. Customers unable to receive actual meter reads should not be denied that right based on a belief that AMI might be in place 5-10 years from now.

i. DPS Staff is inconsistent to support a Company investment of $ 23.679 million over two years in 12% of the system (Westchester), but to oppose a $ 1.3 million investment in 88% of the system (New York City).

j. The recommended decision does not offer either justification of, or an explanation for, the recommendation against funding the Company's targeted AMR proposal.

[*517]

Responding to the exceptions of the Company and the NYC Government Customers, DPS Staff argues: [508]

a. With respect to hard-to-access meters, no evidence has been provided to show that the customer and public policy benefits exceed the costs that would be incurred or that such costs should be assigned to the general body of ratepayers rather than the customers who fail to provide the Company ready access to its meters.

b. The NYC Government Customers fail to provide any evidence or otherwise explain how anyone would benefit from the Company's proposal other than itself.

c. The Company provided no record evidence to support its argument that placement of AMR meters in new construction would avoid future incremental costs for meter readers.

The NYC Government Customers also respond to DPS Staff's exceptions, contending: [509]

---

[507] The NYC Government Customers' BoE, pp. 27-32.

[508] DPS Staff's BOE, pp. 36-37.

[509] The NYC Government Customers' BOE, pp. 16-18.

a. Both it and the Company refuted DPS Staff's stranded cost concerns (referring to anticipated slow progress on the AMI front and the possibility [*518] the AMR equipment can be upgraded to virtual AMI). b. DPS Staff's concern about the $ 1.3 million producing

fewer savings relative to the Company's AMR saturation program is ″curious″ because the $ 1.3 million investment in New York City is much less than the $ 23.679 million investment planned for Westchester and as the $ 1.3 million will provide benefits that are substantial to the customers now impacted by estimated bills.

c. The modest cost of achieving those benefits should not be disallowed simply because labor savings would be lower compared to those in Westchester.

d. New York City reports that electric bills for 53% of its meters were based on estimates in December 2008, a level described as an all-time high.

At a session on February 12, 2009, the day after briefs opposing exceptions were filed in these cases, we established minimal functional requirements for AMI, created a process for the development of a generic approach to the benefit/cost analysis [*519] of AMI, and required the Company to file an updated proposal for an AMI pilot project. In light of this action, additional action anticipated soon concerning AMI, and the Company's clarification that 93,000 existing AMR devices are not already obsolete, we are authorizing allowances for completion of the saturation program in Westchester and for the proposed $ .5 million annual investment in the replacement of existing AMI devices as they become obsolete. It is premature to fund the Company's other AMR proposals.

G. Contributions in Aid of Construction

1. DPS Staff's Proposals

DPS Staff proposed that Consolidated Edison develop and submit for our consideration a methodology for requiring a customer or developer to make a reasonable Contribution in Aid of Construction (CIAC) towards the cost of facility reinforcements necessary to serve new or added load that exceed some threshold amount. [510]

The Company has these concerns about DPS Staff's proposal: [511]

[*520] a. Economic development could be adversely affected because system reinforcement costs might lead a developer to go elsewhere or dissuade an existing customer from expanding its business in the Company's service territory. This contrasts with the current approach under which a broader customer base supports recovery of common costs and the region benefits from increased business and employment opportunities.

b. Assignment of expansion costs to specific customers can be unfair because system reinforcements typically benefit more than one customer. Allocating costs and benefits fairly can be complicated.

c. The Company is subject to federal income tax on any contribution in aid of construction. To maintain revenue neutrality, the CIAC would have to be grossed up for taxes, compounding the economic development impacts.

d. The topic would be better addressed in a generic case with affected parties at the table beyond those that participate in its rate cases. Such a proceeding would be the proper forum for consideration of alternative approaches for ensuring that those coming on the system will provide revenues sufficient to cover the costs incurred to serve them.

[*521]

CPA opposes DPS Staff's proposal because: [512]

---

510 DPS Staff's Initial Brief, pp. 332-33.

511 The Company's Initial Brief, pp. 517-20.

512 CPA's Initial Brief, p. 5.

a. It inequitably treats new customers differently.

b. As Consolidated Edison argues, the proposal:

i. Creates a barrier to economic development (Tr. 3519).

ii. Requires a problematic allocation between the cost of facilities required for specific load and the cost of building excess capacity to allow for future growth.

iii. Would not allow the Company to earn a return on those facilities, eventually leading to unacceptably low cash flow.

c. DPS Staff's witness agreed that Consolidated Edison's concerns should be considered, but offered no guidance on how they should be addressed (Tr. 3521).

DPS Staff anticipates CPA's criticism, contending: [513]

a. Under DPS Staff's CIAC proposal, customers would pay only a portion of the necessary system upgrades; not all, as CPA claims.

b. Once the CIAC is paid, the customer would take and pay for service just like all other customers in the class.

c. Like any change in Commission [*522] policy, there is always a possibility that new customers will be treated differently going forward.

Responding to DPS Staff's argument that its CIAC proposal would result in more equitable allocation of costs going forward, CPA contends: [514]

a. New customers required to make CIAC payments would obviously pay more than existing customers otherwise similarly situated; and be forced to fund improvements to property they do not own, without the ability to finance with mortgage secured debt or to recover the costs in the event of business liquidation.

b. DPS Staff has failed to answer what ″portion″ of system upgrades would be paid by new customers or whether they would wind up funding future excess capacity that would be installed from time to time.

2. The Company's [*523] Proposal

The Company maintains that another way of minimizing its costs of providing service would be to afford it greater flexibility to require customers to take service at high voltage where that is most economic for the Company. This would require a change in the definition of ″premises″ as the term is used in the Company's tariff so, for example, a shopping center of attached stores could not use a subdivision as a way to require the Company to serve each store separately. The Company asks that its proposal along these lines be approved. [515]

DPS Staff proposed a sample definition of ″premises″ to add to the Company's tariff language on its single service line obligation, intended to help the Company avoid having to serve a development by multiple service points when one would suffice (Tr. 2549). In response to the Company's concerns over the DPS Staff's proffered definition of ″premises,″ DPS Staff notes that the Company is free to offer a different one and, [*524] since it currently has only an operational definition, should be required to include a definition of ″premises″ in its revised tariffs effectuating the Commission's order in these cases. The Company's filing of a recommended CIAC methodology, DPS Staff says, should also recognize the provisions and impacts of the proposed ″premises″ definition. [516]

---

[513] DPS Staff's Initial Brief, pp. 335-36.

[514] CPA's Reply Brief, pp. 6-7.

[515] The Company's Initial Brief, pp. 516-521.

[516] DPS Staff's Initial Brief, pp. 334-35.

3. Discussion

DPS Staff's and the Company's proposals are correctly grounded on the fact that some new developments impose significant capital costs for Company facility reinforcements that benefit the individual customer or developer rather than the general body of ratepayers. Reasonable ways of limiting such ratepayer exposure are in order. That ratepayers as a whole have borne all of those costs in the past does not justify the continuation of that practice. We agree with DPS Staff that steps should be taken to permit imposition of a greater share on the individuals or groups of customers directly benefited by the capital [*525] outlays needed to serve them. Other electric utilities, including National Grid and Central Hudson Gas and Electric Corporation have tariff provisions that do so. [517] We will require the Company, after consultation with DPS Staff, to make a filing, within 90 days after the issuance of this order, of revised tariff language that would generically allow the Company to require a customer to make a reasonable contribution toward the cost of significant system improvements or reinforcements necessary to provide new or expanded service. The revised tariff language should include a proposed additional load level or cost level that would trigger the Company's ability to require a contribution in aid of construction. It should also include a proposed revised definition of ″premises.″

H. Changes to Encourage CHP/DG/Solar

The NYC Government Customers state that clean distributed generation [*526] (DG) can make a vital contribution towards energy independence and reduced greenhouse gases and other pollutants. This is evident, they say, because Congress recently extended the Renewable Energy Tax Credit, the New York State Renewable Energy Task Force recommended expanded distribution of DG in key target markets, and a goal of New York City's PlaNYC is to increase DG in the Company's service territory by 800 MW by 2030.

In order to eliminate barriers to the implementation of clean DG, these parties recommend the Company be required to do the following: [518]

a. Promulgate rules that promote and facilitate the participation of clean DG in the load relief process. For example, the Company could provide load relief credits for generation as a function of unit size (smaller units given greater credits), number of units in the network, and reliability.

b. Give priority to the resolution of fault-current constraints on the development of DG in parts of the Company's delivery system requiring load relief.

c. Expedite the development of solar generation through net metering, consistent with a recently enacted state law authorizing net metering of up to 2 MW of solar and wind generation [*527] for non-residential customers. [519] Among other things, this would require the Company to (1) modify its protection procedures to accommodate expected growth in net metering; (2) establish processes by which clean DG can communicate with the Company's network; (3) file a comprehensive and detailed model contract and rate schedule that will minimize the need for negotiations; [520] and (4) file semi-annual reports on progress implementing the new law.

d. Work collaboratively with the NYC Economic Development Corporation and other interested agencies to craft a process by which district-energy arrangements may be developed in coordination with large redevelopment projects.

e. Discontinue publication of semi-annual reports summarizing the interconnection status of DG projects, which reports are said to be incomplete and out of date. Replace the reports with a web-based interconnection system to facilitate the completion of proposed DG resources.

---

[517] E.g., Central Hudson Gas and Electric Corp., PSC No. 15 - Electricity, Leaf 98, Rule 26: Unusual Conditions and Increased Loads.

[518] NYC City Government Customers' Initial Brief, pp. 85-88. See, also, Ex. 447, pp. 24-29.

[519] 2008 NY Laws, Ch. 452.

[520] This specific proposal is an overlay on an existing mandate that required the Company to file a model contract and rate schedule late last year to implement net metering.

f. Maximize solar photovoltaic resources, particularly in midtown Manhattan where tall buildings dominate, to help relieve T&D problems on high-load days that are frequently sunny days. Thus, for example, the Company should offer incentives [*528] for photovoltaics in day-peaking targeted areas, commensurate with the T&D benefits they provide. Such maximization would advance important national, State, and local policy initiatives.

Pace Energy and Climate Center (Pace) proposes that the Commission adopt an incentive program that would provide payments to Consolidated Edison for facilitating installation of combined heat and power (CHP) projects in its service territory. The program would have the following features: [521]

a. Incentive payments would be made after the project commences commercial operation, on a showing that the Company played a material role in facilitating its installation (one-half paid one year after commercial operation, with the [*529] balance paid two years after commercial operation).

b. An eligible project would require: a minimum annual efficiency standard of 60%; a NYSERDA-approved audit after Consolidated Edison staff referred the project to a NYSERDA audit program; and documented evidence that the project resulted from a contact at a Consolidated Edison-sponsored outreach and education program.

c. Payments would be tiered, with a greater $ 125/kW for targeted areas where the project would enable deferral of transmission and distribution investment or have an efficiency level of 70% or more. Projects not meeting either of these criteria would yield a payment of $ 70/kW.

d. The total lifetime cost of this program would be capped at $ 20 million, representing 160 to 285 MW of incremental installed CHP, depending on the tiers into which projects fell.

e. Payments would be recovered in revenue requirement from all customers, given the benefits to all from greater CHP deployment.

[*530]

Pace contends that this CHP incentive program should be implemented as a reasonable means to stimulate deployment within the Company's service area, because: [522]

a. Consolidated Edison is familiar with its customer base and in a good position to play a more proactive role in identifying and facilitating potential CHP projects that best meet its system planning needs.

b. CHP provides significant benefits to Consolidated Edison customers since it: promotes greater energy efficiency; reduces the need to invest in T&D facilities; increases reliability by having more onsite generation during outages, and reduces greenhouse gas emissions.

c. There is great potential for CHP within Consolidated Edison's service territory: about 3,200 MW, or 38% of the total statewide technical potential. [523]

d. Experience in other jurisdictions, like Connecticut, suggests that the availability of incentives produces tangible results in CHP deployment.

[*531]

Pace opposes Consolidated Edison's suggestion that Pace's CHP proposal should instead be considered in Case 08-E-1018, concerning Standard Interconnection Requirements, because: [524]

---

[521] Pace's Initial Brief, p. 2 and Ex. 365, pp. 19-23.

[522] Pace's Initial Brief, pp. 5-7 and Ex. 365, pp. 4-5.

[523] "Combined Heat and Power Market Potential for New York State," NYSERDA Final Report 02-12, www.nyserda.org/chpnys/market.asp .

[524] Pace's Initial Brief, pp. 7-8.

a. The purpose of its CHP proposal is to change the Company's corporate culture by giving it an economic incentive to facilitate CHP.

b. Interconnection is not a barrier to CHP projects.

c. The interconnection proceeding does not involve economic incentives to change corporate culture on CHP.

Pace also challenges Consolidated Edison's suggestion that the CHP incentive proposal should be considered in the Energy Efficiency Portfolio Standard (EEPS) proceeding, because: [525]

a. CHP does not fit neatly into the category of energy efficiency measures, given that it provides a source of electric generation.

b. It does not fit well in the category of distributed generation, since it offers energy efficiency benefits.

c. A general rate case is an appropriate forum to consider a CHP incentive [*532] mechanism, since costs of incentive payments are proposed to be included in calculating revenue requirement in subsequent general rate cases.

d. The CHP mechanism is consistent with the Commission's policy on incentives to "promote better program performance" and "motivate utilities to pursue energy efficiency programs as a resource option." [526]

In its Initial Brief (pp. 2-3), Pace modifies its incentive proposal to make it bi-directional, like NYECC's. Thus, if Consolidated Edison's actual performance in a year fell below 75% of the prior two-year average, the Company would be subject to a negative adjustment for the difference between the actual new CHP installations and the 75% threshold level. Pace does not say whether the negative adjustment should be based on the $ 125/kW [*533] tier or the $ 70/kW tier of the positive side of its proposed incentive program.

Pace also proposes that the Commission consider a proceeding to evaluate comprehensively the interrelationships among Consolidated Edison's electric, steam, and gas operations. [527] In addition to seconding NYECC's point that some CHP projects might be seen by Consolidated Edison as having negative implications for its steam system, Pace argues that the steam system would provide potential benefits to the electric system by driving chillers to reduce air conditioning loads and thus summer system peaks; and that the Company's natural gas system could benefit from increased penetration of CHP.

NYECC proposes an incentive program for DG and CHP that would provide bi-directional incentives to Consolidated Edison, because of the benefits of DG/CHP in high-rise buildings within the area served by the Company's steam system (Tr. 4598). [528] NYECC also believes Consolidated Edison may need incentives to facilitate DG/CHP [*534] installations because some potential projects may be perceived as having negative effects on the Company steam system (Tr. 4598), a view supported by Pace. [529] NYECC's bi-directional incentive program would have these features: [530]

a. If Consolidated Edison maintains a level of annual new CHP installations in its service territory from 75% to 125% of the prior two-year average, no incentive payment would be due to or owed by the Company.

b. If annual new CHP installations exceed 125% of the prior two-year average, the Company would receive an incentive payment of $ 100/kW for the actual number of kW of installed CHP exceeding 125% of the prior two-year average.

---

[525] Case 07-M-0548, Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard, Order Concerning Utility Financial Incentives (issued August 22, 2008), p. 34.

[526] Pace's Initial Brief, pp. 7-8.

[527] Ibid., p. 4

[528] NYECC's Initial Brief, pp. 31-33.

[529] PACE's Initial Brief, p. 4.

[530] NYECC's Initial Brief, pp. 31-33.

c. If annual CHP installations fall below 75% of the prior two-year average, Consolidated Edison would be liable for a negative adjustment of $ 100/kW for the difference between the actual number of installed kW of CHP and 75% of the prior two-year average.

[*535]

Joint Supporters maintains that the arguments in support of measures to further CHP opportunities for large projects also apply generally to residential micro-CHP systems (25 kW or less). [531] Specifically, it supports New York City's recommendation that Consolidated Edison should prioritize resolution of fault-current constraints at substations in areas requiring load relief. [532] It also echoes NYECC's and Pace's calls for an incentive program to encourage the Company's facilitation of DG/CHP deployment, but favors a program like NYECC proposes, which would provide a positive incentive only upon reaching a particular level of system installations, rather than one that would provide payments on a ″per project″ basis, as Pace proposes. [533]

Joint Supporters also makes several proposals never introduced or explored on the record. [534] First, it states that Consolidated Edison should be required to develop a simplified [*536] application for micro-CHP systems available for one- to four-family homes and businesses, because the systems are standardized and do not require the same level of review as larger customer systems; and that external disconnect switches should not be required, since they are inverter-based. Joint Supporters also contends that various detailed changes to Rider U should be made to allow use of DG/CHP systems. In addition, it urges that an on-line application and project management process be established for DG/CHP systems. Finally it states that any total resource cost test requirements should include environmental benefits as part of the calculation because environmental issues are of paramount concern in New York now.

Anticipating various proposals by the NYC Government Customers, NYECC, and Pace related to the interconnection of DG, the Company states: [535]

a. The proposals are not necessary as not one of these parties described a single instance in which the Company failed to work cooperatively [*537] with a customer seeking to install DG.

b. The proposals are more properly raised and addressed in Case 08-E-1018, concerning standard interconnection requirements, Case 07-M-0548, the EEPS proceeding which has a working group concerning the role of DG in achieving the State's energy efficiency goals, or Case 03-E-0188, the Renewable Portfolio Standards proceeding that is considering the role of solar in New York City.

DPS Staff supports the Company's suggestion that the interconnection issues Pace, the NYC Government Customers, and NYECC raise for DG be considered in Case 08-E-1018, on interconnection standards, for the sake of uniformity. [536]

In response to the Company, the NYC Government Customers state: [537]

a. No one alleged that the Company has failed [*538] to cooperate with any particular customer because that is not the problem. The NYC Government Customers' recommendations are designed to reduce or eliminate barriers that are embedded within the interconnection process that affect all customers generically.

b. The other proceedings the Company cites are not preferable for considering the NYC Government Customers' DG proposals because:

---

531 Joint Supporters' Initial Brief, p. 2.

532 Ibid., at 3.

533 Ibid., at 4-5.

534 Ibid., at 3-5.

535 The Company's Initial Brief, pp. 520-521.

536 DPS Staff's Reply Brief, p. 103.

537 NYC Government Customers' Reply Brief, pp. 28-31.

i. Case 08-E-1018 on standard interconnection requirements has had little activity to date and there has been no indication of any Commission intent to develop standardized DG interconnection rules or whether the rules to be developed would resolve the issues raised here. In addition, it is impossible to predict when any standardized rules would be promulgated.

ii. The EEPS proceeding is not appropriate for consideration of these DG issues because it is focusing on identification of potential new programs to be developed, not on the refinement of an existing program, which is what the NYC Government Customers and other parties seek here.

iii. The renewable portfolio standard proceeding is not appropriate because the DG interconnection issues raised here focus more broadly in a fuel source neutral **[*539]** manner on DG, which might include many natural gas fired units, not just renewable resources, and gas-fired units are not eligible to participate in the RPS program.

Joint Supporters on reply states its support for the NYC Government Customers' proposals for improved, more complete and consistent and web-based periodic disclosure of information on the status of clean DG projects, which, it says, contrary to the Company's claim, are not being addressed in EEPS Working Group VIII. It also supports the NYC Government Customers' proposal for semi-annual Company reporting on implementation of net metering. In addition, Joint Supporters denies the Company's claim that resolution of fault current constraints is being addressed in EEPS Working Group VIII. [538]

[*540]

In its Reply Brief, Pace supports Joint Supporter's recommendation that: (a) the Company should develop a simplified application process for micro-CHP systems (25 kW or less); and (b) the Company should modify Rider U in a manner that permits DG/CHP to be included in the program. [539]

Pace opposes the new suggestion in the Company's Initial Brief that the issue of an incentive program for facilitating CHP installation be referred to the Renewable Portfolio Standards, inasmuch as:

a. The issues currently being considered in the RPS proceeding are unrelated to that of a financial incentive program for the Company to facilitate CHP installation.

b. CHP is not currently the subject of a procurement obligation under the RPS scheme.

c. Pace's incentive program proposal is designed in recognition of the Company's own familiarity with its customer base and the steps it can reasonably take to facilitate CHP installation in its own service territory.

d. Pace proposes that incentive **[*541]** payments to the Company be financed as part of its general revenue requirement, not from RPS-related funding.

We believe the Company continues to work effectively, in the wake of an exhaustive formal study completed several years ago, to replace fault-current breakers, consistent with the Company's unique and complex system design, physical and scheduling limitations, and reliability criteria. The Company has been replacing at least 60 breakers a year. We see no need for additional study of this matter. With respect to Rider U issues, Joint Supporters failed to raise them in a timely manner in this proceeding. In any event, they do not belong in this rate case, but in a proceeding specifically focused on changes to Rider U, such as the one that was the subject of notice and comment during the first quarter of this year. [540]

Several other issues raised by the parties concerning **[*542]** facilitation of an increase in the amount of clean DG on the

---

[538] Joint Supporters' Reply Brief, p. 2.

[539] Pace's Reply Brief, p. 6.

[540] E.g., Cases 08-E-0176 and 08-E-1463, Revisions to Rider U -- Distribution Load Relief Program, Untitled Order (issued April 8, 2009).

Company's delivery system have been the subject of important developments since they filed their briefs. We have now issued newly revised Standard Interconnection Requirements (SIR) for DG of 2 MW or less. [541] Among other things, the modifications to the SIR implement New York's newly expanded net metering law, eliminate the external disconnect switch requirement for inverter-based systems of 25 kW or less, and establish an expedited, Internet-based interconnection application process for systems of 25 kW or less, an Internet-based system to provide customer-generators and contractors with up-to-date information on the status of applications, and a requirement for semi-annual reporting by utilities to facilitate monitoring of compliance and timeliness of interconnection application processing.

[*543]

In our judgment, the Renewable Portfolio Standards proceeding provides an appropriate vehicle for consideration of ways to increase solar generation in the Company's service area. In addition, on February 27, 2009, the Company filed a proposed solar energy pilot program, which DPS Staff is currently reviewing. The pilot program includes initiatives for customer sited distribution system solar projects, Company property sited solar installations, and a request for proposals process to solicit large-scale solar projects in its service territory. NYSERDA is already conducting a program under SBC 3 that provides opportunities for expansion of CHP penetration. The several proposals in this proceeding for additional incentives to promote greater DG penetration in the Company's service area appear to be insufficiently well-developed in a number of respects. In view of these considerations, we decline to adopt additional DG proposals presented here.

I. Outreach & Education Reporting

DPS Staff proposes that Consolidated Edison be required to submit an annual Outreach and Education (O&E) plan to the DPS Director of Consumer Services at least 90 days before implementation, for expedited [*544] review and refinement of program content and budget in a collaborative process with DPS Staff and other parties (Tr. 4705). DPS Staff maintains: [542]

> a. The Company admits that it files O&E plans with DPS Staff twice annually and does not dispute that those filings should continue (Tr. 1324).
>
> b. The Company also acknowledges that its O&E plans incorporate input from DPS Staff and from other agencies (Tr. 1325).

The Company disagrees, arguing: [543]

> a. DPS Staff acknowledges that the Company's $ 3.6 million outreach and education budget is reasonable and in line with past expenditures.
>
> b. The Company's practice is to submit such plans to DPS Staff.
>
> c. DPS staff is not bashful about making its views known about what messages should be promoted.
>
> d. Past communications took place well in advance of program implementation.
>
> e. Consultations within 90 days of implementation are too late in the process. The Company would lack sufficient flexibility to deal with [*545] issues of current importance to consumers if it had to file a plan months in advance of implementation.

DPS Staff replies: [544]

---

[541] Case 08-E-1018, Rules and Regulations on Interconnection and Operation of Customer--Owned Generation, Order Modifying Standard Interconnection Requirements (issued February 13, 2009).

[542] DPS Staff's Initial Brief, pp. 336-37.

[543] The Company's Initial Brief, p. 521; the Company's' Reply Brief, pp. 185-86.

[544] DPS Staff's Reply Brief, pp. 104-05.

a. DPS Staff agrees with the Company that collaboration with other parties should occur during development of an O&E plan, not after one is filed and the Company is preparing for implementation.

b. DPS Staff is not proposing submission of O&E plans for Commission approval, but only for DPS Staff review and opportunity to provide feedback to the Company for reflection in the plans along with input from other parties.

This proposal appears originally to have contemplated that consultation with DPS Staff and other parties occur during the 90-day or longer period after the Company files its O&E [*546] plan. In its reply brief, however, DPS Staff seems to abandon that position and now concedes that collaboration should occur before the plan is filed with the Director of Consumer Services. The Company already submits its tentative O&E plans to DPS Staff for review and comment before implementation. No other party has expressed support for DPS Staff's proposal or indicated any interest in reviewing and commenting on the Company's draft plans in a collaborative process. Since the proposal's intended beneficiaries have no interest in it, we see no need to change the current process and will not adopt DPS Staff's proposal.

J. Process for Aggregating / Using Building Usage Data: Access to Information for Building Owners

The NYC Government Customers urge us to direct that a working group be established within 30 days of the final order in this case. [545] The purpose of the working group would be to help ensure the Company will cooperate in a possible New York City initiative to require qualifying buildings to report annually on their energy and water usage. The required reporting is described as part of a "benchmarking" process intended to help building owners consider the energy [*547] performance of their buildings and to make it easier for potential renters and buyers to assess the energy performance of properties they are considering. That, in turn, is expected to help the City meet its goals for increased energy efficiency and decreased air emissions. The NYC Government Customers specify several issues that they wish the collaborative discussion to address.

The Company and NYECC indicated during the hearings that they would participate in the working group. The Company, however, expressed concern about divulging the confidential financial information of individual customers. The NYC Government Customers suggest that this concern is not valid because the goal is to obtain aggregate energy usage data from the Company for buildings and, in any event, that this is an issue for consideration by the working group.

NYECC requests that the Company be required to give building owners access to tenant electric load information for the purpose of [*548] maximizing energy efficiency efforts and attaining New York City and New York State efficiency goals, because: [546]

a. Building owners and managers need unlimited access to electric load profiles of tenants to ensure safe and reliable electric supply within their buildings (Tr. 4590).

b. Many existing leases do not include specific provisions allowing building owners and managers to require tenants to provide this information, so the only practical way to obtain it is from the Company (Tr. 4590).

c. Confidentiality of customer financial data or electric bills does not have to be violated; NYECC seeks disclosure only of load consumption data, which might not be confidential (Tr. 4608-10).

d. Building owners are concerned with: (a) their ability to meet reporting requirements for the EPA portfolio manager, Energy Star applications, and pending New York City legislation on building profile data; and (b) knowing how electricity flows through building systems, to ensure safe and reliable energy use (Tr. 4610).

[*549]

The Company confirms that it is willing to discuss issues associated with providing landlords with data about their tenants' energy usage, provided the confidentiality of customer usage information and the recovery of costs to be incurred in

---

545 NYC Government Customers' Initial Brief, pp. 89-92.

546 NYECC's Initial Brief, pp. 33-34.

developing and implementing such a program are on the agenda. [547] The Company is also concerned that aggregation of information on a per-building basis might not be sufficient to protect confidentiality in the case of premises occupied by a single tenant or one very large tenant and a few smaller tenants, and that this concern would also have to be addressed. [548]

DPS Staff responds to NYECC's proposal stating that Consolidated Edison and interested parties should submit a proposal, within 60 days after our rate order in this case, that addresses concerns identified by NYECC and the Company, such as the billing system's capability, a process for sharing aggregate building energy data, **[*550]** the treatment, confidentiality, and type of customer information that may be released, frequency and method of delivery of information, and method of cost recovery. NYECC concurs. [549]

In response to DPS Staff's suggestion, the NYC Government Customers contend that a collaborative process would be a more productive and efficient method to develop the issues than a formal Commission review of written proposals from multiple parties. [550] They believe a collaborative process will help sharpen the issues and perhaps lead to compromise many can support and might avoid a premature hardening of positions that could slow or stymie resolution of the issues. The Company agrees with the NYC Government Customers that 60 days would be an insufficient period within which to develop a proposal for addressing the issues. It suggests that, since both the NYC Government Customers and the Company envision a collaborative process, the goal would be better served **[*551]** by giving the Company a 60-day period to perform an initial analysis of requirements before meeting with interested parties, with a deadline for submission of a proposal to the Commission subsequently developed by the group. [551]

The only real issue among the parties is timing for initiation of the collaborative and submission of a proposal to resolve concerns considered in it. The 60-day period that DPS Staff suggests for submitting a proposal resolving the issues seems insufficient to allow proper consideration and negotiation of the issues among interested parties. The Company's counterproposal that it be allowed 60 days from the date of our decision here to analyze the issues and initiate the collaborative, with the deadline for submission of a proposal to be developed by the group, appears reasonable. We adopt it.

K. Clean Air Act and Regional Greenhouse Gas Initiative (RGGI) Costs

The judges recommended **[*552]** that the Company be allowed to recover outside base rates approximately $ 5.064 million to offset Clean Air Act Section 185 fees for the emission of nitrous oxides and volatile organic chemicals in a severe non-attainment area. [552] They also recommended that, pending any decision to provide for their recovery otherwise, the Company be permitted to recover in its Market Supply Charge and Market Adjustment Clause (MSC/MAC) an estimated $ 10.8 million per year for the Company to purchase 2.1 million CO_2 allowances at an estimated cost of $ 5 per ton. The Company ultimately declined to seek recovery of any RGGI costs associated with out-of-state purchases and, thus, the recommended decision does not discuss that topic.

On exceptions, the Company argues that the revenues for the Clean Air Act fees should be recovered through the MSC/MAC. It states that no better alternative has been **[*553]** offered to date. [553] DPS Staff does not reply.

DPS Staff excepts as to RGGI costs, however, suggesting the judges' recommendation amounts to a "blank check," that a recommendation on a specific cost recovery mechanism was not provided, and that MSC/MAC should be used only for

---

547 The Company's Initial Brief, pp. 521-22.

548 The Company's Reply Brief, p.186.

549 DPS Staff's Initial Brief, pp. 337-38. NYECC's Reply Brief, p. 22.

550 NYC Government Customers' Reply Brief, pp. 32-33.

551 The Company's Reply Brief, p. 187.

552 The Company clarifies on exceptions that this is a total Company estimate, a share of which should be borne by its steam department.

553 The Company's BoE, pp. 64-65.

recovery of RGGI costs associated with the Company's retained generation. The method for recovering any RGGI costs for purchases from others' plants should be determined at a later date, states DPS Staff, once the Company demonstrates the certainty and magnitude of such costs. [554]

The Company replies that DPS Staff's exception is of no account because the Company is proposing recovery at this time through the MSC/MAC of only those RGGI costs to be incurred in connection with its own generation. [555]

[*554]

It appears that DPS Staff understood the judges to be recommending relief on RGGI costs beyond what was being requested by the Company. However, the only disputed issue before the judges concerned whether to adopt the Company's MSC/MAC recovery proposal for RGGI costs for its self generation or whether to put off to the future a decision on that request, as had previously been proposed by DPS Staff. The judges recommended the Company's proposal for recovery of RGGI costs associated with the Company's retained generation only (i.e., approximately $ 10.08 million per year) and nothing more and DPS Staff now agrees with that recommendation. DPS Staff's exception is moot. There is no dispute concerning Clean Air Act fees and they, too, may be recovered through the MSC/MAC.

L. Business Incentive Rate Lost Revenue

The Company had $ 3.339 million of net-of-tax Business Incentive Rate lost revenues, including interest, for the period November 2003 through May 2004. There were issues in these cases about whether the Company was previously authorized to defer this amount and about whether the $ 3.339 million should be included in rate base pending a final determination about whether [*555] the $ 3.339 million was properly calculated.

The Company and DPS Staff ultimately agreed the $ 3.339 million should be excluded from rate base for now, pending a separate evaluation of how the $ 3.339 million was calculated. The judges recommended that the separate review, if feasible, be conducted in time so that the results could be reflected in the final decision in these cases. [556]

DPS Staff states that the Company's proposal to include these lost revenues in rate base in its last electric rate case was rejected because of the Company's failure to prove that it had been authorized to defer revenue losses associated with Business Incentive Rate discounts in the identified period. [557] As such a demonstration has still not been provided almost one year later, and as no further documentation for further evaluation has been filed by the Company, DPS Staff continues, it seems highly unlikely that any separate review will be conducted and completed prior to our final decision in these cases. [*556]

The Company does not reply.

Two issues presented concern whether the Company was allowed to defer a specific type of lost revenues in a specific period and, if so, whether in fact the lost revenues deferred by the Company are consistent with the deferral authorization. The Company's initial brief [558] describes the relevant deferral authorization and DPS Staff did not reply. DPS Staff cites Tr. 2757 for the proposition that the Company did not previously receive the requisite authorization. While BIR revenues are discussed at that page, the issue of deferrals is not. In sum, the record establishes that the Company was authorized to defer lost BIR revenues in the relevant period of November 2003 through May 2009.

On the other hand, DPS Staff is correct that the Company has not provided the information necessary [*557] for us to determine if the lost BIR revenues deferred by the Company are consistent with the prior authorization. Consistent with

---

554 DPS Staff's BoE, p. 70.

555 The Company's BOE, pp. 79-80.

556 R.D., pp. 326-327.

557 DPS Staff's BoE, p. 71.

558 Pp. 524-25.

the agreement of the Company and DPS Staff, the requisite evaluation will take place after the Company provides the necessary information. A final decision will be made in the ordinary course of business thereafter.

M. Compliance with Public Service Law § 66(19)

The judges reported on the Company's compliance with the recommendations set forth in the Independent Audit of Consolidated Edison Company of New York, Inc.'s Emergency Outage Response Program, dated October 24, 2007. [559]

Pursuant to PSL § 66(19), we find that 26 of 62 recommendations were satisfied as of June 2008, that target dates for compliance with most other recommendations fall in 2009, and that compliance with a smaller number of recommendations is expected in 2010-2011. DPS Staff will continue to monitor the Company's progress and report any deficiencies.
[*558]
N. DOJ Investigation

Arrests resulting from a Department of Justice (DOJ) investigation were announced one week after the recommended decision was issued. [560] Accordingly, the recommended decision does not discuss the ratemaking implications of that investigation.

In its brief on exceptions, the Company: [561]

a. Expresses shock and outrage upon learning that ten active employees and one retired person were arrested on January 14, 2009 for allegedly accepting kickbacks and inflated invoices from a contractor who performed work for the Company.

b. Reports that it is taking steps to further mitigate the risks of such illegal activities, including the hiring of an independent firm with fraud investigation experience to conduct a review.

c. Advises that it will seek restitution from those involved as well as reimbursement under its crime insurance policy.

d. Estimates on a preliminary basis that the electric revenue requirement impacts associated [*559] with the illegal activities amount to about $ .28 million per year.

e. Asserts that its practices and procedures are reasonable and prudent and that these illegal acts were beyond its control.

f. Offers to accept a temporary disallowance, subject to later collection, of $ 2.8 million per year, or approximately ten times its preliminary estimate, pending a full investigation of the full extent of the illegal acts as well as its culpability for some or all of such costs.

g. Notes that, pursuant to the 2008 Rate Order, it is recovering over ten years about $ 237 million per rate year in carrying charges, subject to refund, on capital expenditures previously incurred.

CPB replies that the Company's proposal is wholly inadequate and premature given that a thorough investigation has not yet been completed. [562]

[*560]

---

559 R.D., p. 330.

560 Additional arrests were announced in mid-April 2009.

561 The Company's BoE, p. 38, n. 32.

562 CPB's BOE, p. 2.

Addressing the same topic, DPS Staff: [563]

a. Reports that preliminary indications are that there were over $ 1 million of kickbacks since 2004 and that there is some information suggesting kickbacks began in 2000 or 2001.

b. Describes the illegal activities as involving the offering of work outside a competitive bidding process, inflated pricing after a contract award, payments for work not performed, back dated billing, and the distribution of bid specifications to some contractors in advance of a request for proposals.

c. Points out that those arrested held high level supervisory positions in the Company's construction management and project payment review and approval processes.

d. States that there are indications that the Department of Justice investigation is continuing and that more contractors may be involved.

e. Explains that the recent allegations make it impossible for DPS Staff to attest to the accuracy of the Company's historic information and projections in these cases as to capital expenditures, removal costs, interference expenditures, and site investigation and remediation costs.

f. Proposes that to protect ratepayer interests, a complete and thorough **[*561]** investigation be initiated and that, pending the results of that investigation, that the $ 236.7 million per year currently being recovered by the Company through the Rate Adjustment Clause (adopted in the 2008 Rate Order) be augmented. [564]

g. Suggests that it lacks adequate information to propose a specific dollar amount for such augmentation.

h. Urges that we be conservative and limit any revenue increase to an austerity budget level with all incremental revenues recoverable through the Rate Adjustment Clause.

In its brief opposing exceptions, **[*562]** CPB agrees with DPS Staff on points ″e″ through ″h″ immediately above. [565]

Westchester refers to the DOJ investigation and argues that the allegations raise serious questions about the Company's oversight of its projects and the size of the ″required″ capital program. [566]

The Company replies to DPS Staff and others, stating that it does not oppose the concept of temporary rates being set for a reasonable but limited amount. It contends, however, that there is no basis for applying such treatment to the majority of its Rate Year costs that are not implicated by this unfortunate development. [567] Elsewhere, it notes that the published agenda for the February 12, 2009 open session makes clear that the anticipated investigation of these matters would soon be (and now is) under way.

[*563]

There is an ongoing investigation by the Department of Public Service concerning transmission and distribution plant placed in service during the 2005-2008 Rate Plan. There is also another ongoing investigation of the implications of alleged illegal activities involving numerous Company personnel starting as early as 2000 or 2001, and about how any such

---

[563] DPS Staff's BOE, pp. 73-74. NYECC raises many of the same points and expresses its expectation that these and any related matters will be fully investigated. It does not propose any actions to be taken in these cases. NYECC's BOE, pp. 16-17.

[564] Id. Contrary to a statement by the judges, DPS Staff points out that rates subject to the Rate Adjustment Clause are not temporary rates as that term is used in the Public Service Law. DPS Staff's BoE, pp. 71-73.

[565] CPB's BOE, p. 2.

[566] Westchester's BOE, pp. 2-3.

[567] The Company's BOE, pp. 84-85.

activities might have affected the Company's capital and operation and maintenance expenditures during that time. [568] We have no preconceived notions about how either of these investigations will turn out. Accordingly, the Company continues to recover carrying charges on all related investment and there has been no adjustment to the Company's O&M expenses on account of either investigation.

At the same time, we need to maintain flexibility to disallow unreasonable costs in the event either or both ongoing investigations **[*564]** establish such a disallowance is warranted. To that end, we have evaluated a range of possible outcomes for the two investigations in light of the $ 236.7 million per rate year currently being recovered through the Rate Adjustment Clause. At this point, we conclude that updating that amount, to reflect known changes in the cost of capital, updated deferred carrying charges, and amortization of deferred carrying charges, reasonably maintains the flexibility we need if either or both of these investigations establishes that some adjustment is warranted. Accordingly, the Company is directed to increase the amount to be collected per rate year through the Rate Adjustment Clause from $ 236.7 million to $ 254.4 million per rate year. Specific ordering language is set forth below.

XII. CUSTOMERS' ABILITY TO PAY

A. Introduction

This section concerns arguments to the effect that the revenue increase is simply too large, especially in the context of the current economic downturn. The arguments concern the nature and extent of the current economic downturn (economic impacts in general) and several competing options (the proposed options) for minimizing customer bill impacts. The pertinent **[*565]** background and arguments are summarized first, followed by one discussion.

B. Economic Impacts in General

The judges observed that numerous parties had expressed concern about the customer impacts of the Company's proposed delivery service revenue increases. However, none of the parties had provided any evidence about the impact of the economic downturn on customers' collective ability to pay higher rates. The judges said that they did not intend to suggest that customers are not affected by the economic downturn, only that the evidentiary record provides no clear picture of how and the extent to which they are affected. [569]

The judges also discussed the Company's contention that the bill impacts of its proposed delivery service revenue increase would be reasonable because of forecast reductions in electric commodity prices in the Rate Year. The judges would not give much weight to the Company's latest forecast of commodity prices because those prices are not economically regulated and **[*566]** can be volatile. [570] Earlier in the case, moreover, when commodity costs were expected to continue to increase, the Company had argued that commodity costs should be ignored when setting delivery rates.

The judges also cautioned that concern about bill impacts is not a reasonable basis for determining any element of the Company's minimal but reasonable cost of electric delivery service. Accordingly, they recommended that we consider separately from our cost of service determinations, and one time only, the question of whether the Company's revenue requirement should be based solely on the Company's minimal but reasonable cost of providing electric delivery service in the Rate Year or whether other factors--including customers' ability to pay--should also be considered. [571]

NYPA excepts, asserting **[*567]** that the judges improperly "disposed of all arguments about economic impacts." Its reasons

---

[568] Case 09-M-0114, Consolidated Edison Company of New York, Inc. -- Prudence of Certain Capital Program and Operation and Maintenance Expenditures.

[569] R.D., pp. 9-10.

[570] Id., p. 11.

[571] Id., pp. 9, 234, and 331-332.

are as follows: [572]

a. The judges have it backwards. The presumption should be that ratepayers' ability to pay has been and will continue to be negatively affected by the ongoing economic crisis.

b. There is no evidence in the record to suggest ratepayers are better able to pay in these difficult times.

c. Judicial notice should be taken of the facts that the Federal Reserve recently signaled that the recession might be deeper and longer than previously expected, that non-farm unemployment nationally is 7.2% and is expected to climb through 2010, and that consumer confidence nationally declined to a ″new all-time low″ in December 2008 based on deteriorating economic conditions through the fourth quarter of 2008.

d. Judicial notice should also be taken of the facts that the recession commenced in December 2007 (following 73 months of expansion) and that the judges' recommended 17% T&D revenue increase would follow an increase of more than 20% in April 2008.

e. We should exercise our judgment to strike an appropriate balance between what New York ratepayers can reasonably afford and **[*568]** what the Company has proven that shareholders need.

The County argues that the judges correctly acknowledge our statutory obligation to balance ″just and reasonable rates″ with the provision of ″safe and adequate service.″ However, it suggests the judges accorded too much weight to how rating agencies might react. [573] The County also asserts that: [574]

a. A recession is the worst time to saddle businesses with additional costs.

b. It is safe to assume that judicial notice can be taken of the fact that the current economic climate is forcing businesses to contract or close.

c. The cost of electricity is one of several factors that can negatively affect a business.

d. Businesses are closing every day and moving out of the Company's service territory and some of this can be blamed on the cost of electricity.

e. Based on a New York Times article in January 2009, unemployment rose to 7.2% in New York City and to 5.7% in Westchester in December 2008.

f. These factors must and **[*569]** should be taken into account.

g. If the recommended decision is adopted, delivery service rates will have increased by more than 50% over five years. This is severely disproportionate compared to inflation of 13.39% over the same period.

h. Volatility in commodity markets exacerbates the impacts of delivery revenue service increases. For example, the cost of New York Independent System Operator (NYISO) energy in New York City jumped from less than 8 [cent] /kWh in July 2007 to over 14 [cent] /kWh in July 2008, an increase of 75%.

i. It would not be reasonable to assume lower commodity costs in the Rate Year will ameliorate bill impacts, because it is anticipated any such hiatus will be temporary.

As to economic impacts generally, the Company responds as follows: [575]

a. As discussed in the recommended decision, general intuitive statements about a declining economy do not

---

[572] NYPA's BoE, pp. 7-9.

[573] Westchester's BoE, pp. 1-2.

[574] Id., pp. 3-6.

[575] The Company's BOE, pp. 80-83.

provide a legal basis for a downward adjustment to the Company's revenue **[*570]** requirement. [576]

b. The judges already considered the impact of the economy to the extent they attempted to ascertain the minimal but reasonable costs of electric delivery service.

c. The Company forecasts a decline in commodity (energy and energy related) costs. As these comprise in excess of 60% of its full service customers' electric bills, such reductions will offset in whole or in large part any electric delivery service rate increase. [577]

d. Arguments to the effect that the judges gave too much weight to the interests of shareholders should be rejected. The courts have rejected suggestions that shareholder interests not be considered. [578]

[*571]

C. The Options

1. A Macro Adjustment to the Company's T&D Investment and Expenses and the Austerity Budget Proposal

A big dispute between the Company and DPS Staff as to projected T&D plant investment concerns whether the Company will invest as much capital as it forecasts for various projects and programs. This dispute is discussed in Section IX (A)(1)(b) above. The NYC Government Customers raised a slightly different issue, having to do with whether rates should be set in a manner intended to reduce the amount the Company will invest in T&D plant in order to ameliorate rate impacts. Specifically, the NYC Government Customers proposed that 8% of all of the Company's' planned T&D capital and O&M expenditures be disallowed, reducing annual revenue requirement by $ 14 million and $ 11 million, respectively, for **[*572]** a total of approximately $ 25 million. Westchester separately proposed an overall 15.5% reduction in the Company's T&D capital construction program, the effect of which would be to reduce revenue requirement by approximately $ 45 million per year.

As discussed in some detail above, the judges offered firm recommendations on the T&D investment disputes between the Company and DPS Staff, because they affect the minimum reasonable cost of providing electric delivery service. As to the proposals of the NYC Government Customers and Westchester, the judges: [579]

1. Noted that an 8% downward adjustment to the Company's planned T&D capital investment was adopted in the 2008 Rate Order.

2. Acknowledged the Company's claim that its original revenue request here was ameliorated by $ 426 million and that its construction budget already reflects deferment of $ 155 million of needed work.

3. Recommended that all cost of service determinations be made first followed by separate consideration of the pros and cons of all alternatives presented for setting rates based on considerations other than costs.

While the judges recommended that these alternative proposals be considered separately, **[*573]** the judges themselves did not go through that process. Accordingly, they offered no firm recommendation either in support of or in opposition to the proposals of the NYC Government Customers and Westchester. [580]

---

[576] Id., p. 81, citing Cohalan v. Gioia, 88 A.D. 2d 722, 723 (3d Dept. 1982). That opinion notes that the 1981 Statement of Policy Concerning Evidence of Economic Impact in Rate Cases properly recognizes that economic hardship on customers may not justify reducing rates below the minimum necessary for a utility to recover its prudent costs, including the cost of capital.

[577] Full service customers purchase delivery and commodity from the Company. Retail access customers purchase delivery service from the Company and commodity service elsewhere.

[578] Id., p. 82, citing Abrams v. PSC, 62 A.D. 2d 205 (1986).

[579] R.D., p. 271.

[580] That the cost of service calculations attached to the recommended decision did not reflect the proposed adjustments was not intended to imply any recommendation on these proposals.

It appears that the Company understands the judges to have recommended some sort of macro adjustment and it excepts. The Company argues: [581]

a. The judges' recommendation to consider separately some macro adjustment is counter-intuitive given the extent to which the recommended decision focuses on determining the minimal but reasonable cost of electric delivery service. Any downward adjustment from there would result in rates that are too low.

b. There is precedent to the effect that it would be plainly incorrect economically and clearly illegal[to] deliberately set rates below a utility's **[*574]** cost of service because the Company's customers are having difficulty paying their bills. [582]

c. The Statement of Policy Concerning Evidence of Economic Impacts in Rate Cases permits parties to submit evidence on economic impacts but states that the key to a convincing evidentiary demonstration is a party's ability to identify a nexus between the evidence and the specific problems at issue in the rate case. As the judges noted (R.D., pp. 9-10), no solid information was offered in these cases about customers' collective ability to pay higher rates for electric delivery service.

d. It would be an error to ignore projected commodity cost declines when setting delivery rates.

e. The economic challenges faced by customers should not be ignored. However, it should be noted that electric bills for the vast majority of the Company's residential customers, due to efficient usage, are low in comparison with the rest of the country and that the total average annual rate projected to be in effect at the start of the Rate Year would be approximately 7% less than in 1987 adjusted for inflation (no analysis is provided in support of either of these contentions).

f. It is in the long term **[*575]** interest of the service territory that due regard be given to maintaining a financially strong utility, i.e., one that recovers all reasonable costs of electric delivery service.

DPS Staff opposes the Company's exception, contending: [583]

a. It is imperative that a macro adjustment be considered after balancing the long-and short-term impacts on customers and shareholders; this should not be done on an issue-by-issue basis.

b. The Company seeks a 17% delivery service revenue increase in the context of a severe national recession. [584]

c. The Company is attempting to shift its business risk from shareholders to ratepayers through numerous reconciliation terms. To the extent these terms are adopted, they should be considered when **[*576]** determining the Company's rate of return.

d. While competitive firms are downsizing, the Company is seeking to increase its workforce and to charge customers more. If the Company's management is unwilling to trim its capital and expense budgets, we should put the Company on an austerity budget that eliminates anything that is discretionary.

e. The Company is incorrect to contend that delivery rates can be increased on account of anticipated commodity cost reductions. Commodity costs can be extremely volatile and should not be relied upon as a basis for setting delivery service rates.

In its brief opposing exceptions, the County adds that the Statement of Policy Concerning Evidence of Economic Impacts in Rate Cases states that it may make sense to moderate a rate increase at a time of economic distress, when higher rates

---

[581] The Company's BoE, pp. 65-67.

[582] Id., citing Case 27094, Orange and Rockland Utilities, Inc. - Order Denying Petition for Rate Investigation (issued October 3, 1978), p. 2 and Case 27361, NYSEG - Rates, Opinion No. 79-11 (issued April 20, 1979), p. 4.

[583] DPS Staff's BOE, pp. 37-39.

[584] Others agree. See NYC Government Customers' BoE, p. 4.

would adversely affect the public by precipitating or aggravating economic dislocations and [*577] problems such as unemployment, dependence on public assistance, and the departure of industries. [585]

The NYC Government Customers do not except. However, they urge that we adopt adjustments offered by parties that would reduce the Company's revenue requirement without jeopardizing the Company's ability to provide safe and adequate service. [586]

The Company criticizes this last argument because it ignores that approximately 50% of the judges' $ 632.5 million cost of service recommendation is necessary to cover New York City property tax increases. [587]

[*578]

In the context of addressing the $ 100 million reduction in the Company's 2009 capital budget that is not reflected in the judges' cost of service calculations, DPS Staff characterizes as ironic the judges' reluctance to consider in any substantive manner the 8-15% reductions proposed by the NYC Government Customers and Westchester. If we are not willing to reflect as an update the Company's $ 100 million reduction in planned 2009 capital spending, DPS Staff continues, we should consider those other adjustments. [588] This would be reasonable, DPS Staff says, because of current economic conditions and as the Company acknowledges that 8% of its budget is ″discretionary.″ Given that austerity budgets are already in place for most businesses, DPS Staff asks why the Company should be any different.

In a related argument, DPS Staff denies that the Company's revenue request is ameliorated by $ 426 million. According to DPS Staff, [*579] all but one of the Company's amelioration proposals amount to the Company agreeing to continue to adhere to terms of the 2008 Rate Order that are already reflected in the Company's rates. [589]

The Company opposes these arguments noting that: [590]

a. DPS Staff's support for across-the-board reductions in capital spending is raised for the first time in its brief on exceptions.

b. The Company's objections to across-the-board cuts in spending are discussed above in its own exception.

c. The record clearly establishes that the Company's projected T&D investment is mitigated. [591]

d. The proposed across-the-board reductions in capital expenditures will pose risks to reliability.

e. It is not correct to state that 8% of the Company's T&D budget is discretionary as to whether or not the work needs to be done. The record shows that 75-80% of the capital budget provides capacity and conductivity to customers, meets growing load and government mandates, and addresses [*580] equipment replacement specifications. The other 20-25% is used to address reliability and is discretionary only in the sense that the Company gets to decide which reliability needs are paramount.

---

585 Westchester's BOE, p. 2.

586 NYC Government Customers' BoE, p. 4.

587 The Company's BOE, p. 80. The percentage is overstated somewhat.

588 The referenced $ 100 million reduction in a Company forecast is discussed separately above.

589 See, generally, DPS Staff's BoE, pp. 53-54.

590 The Company's BOE, pp. 59-62.

591 It notes, for example, its demand reduction efforts, project deferrals, productivity and process changes, system efficiencies, and the use of competitive bidding that are collectively intended to minimize T&D investment. The demand reduction initiative alone allows the Company to defer from two to seventeen years numerous capital projects totalling $ 1.2 billion. Another $ 155 million of capital work was also deferred.

Responding more broadly, the Company contends that: [592]

f. No party proposing a macro adjustment or favoring an austerity budget cites any legal basis for adopting either.

g. With two exceptions, DPS Staff provides no clear indication of what costs it reasonably believes should be cut under its austerity budget proposal. The two exceptions concern the **[*581]** Company's proposed Regulatory Affairs Department and the Emergency Child and Elder Care program. As to these, the Company says, DPS Staff opposed recovery but not on the grounds that they are discretionary. The record shows both programs are reasonable.

h. The record includes much testimony to the effect that the Company is pursuing a mission of providing reliable service at the lowest reasonable cost.

i. The Company's delivery system plays a critical role in the ongoing success of its service area and resources appropriate for maintenance of system integrity are of vital importance.

j. A macro adjustment is not in order because it would be contrary to the short-and long-term interests of customers and undermine the Company's ability to maintain investor confidence and access to financial markets.

2. NYPA's Cost-Effectiveness Proposal

NYPA excepts to the extent the judges did not recommend that the company be required to prioritize its capital investments in an economic **[*582]** fashion. [593] NYPA points to testimony by its witnesses to the effect that the Company has an incentive to "gold-plate" its rate base, that the Company is already the most reliable distribution company in the country, and that it is likely that some of the Company's investments go beyond the optimum level of spending. It notes as well that there is testimony by Company witnesses that the Company had never studied whether it had reached an optimum point of spending. Given this record, NYPA chastises the judges for focusing too much on whether the Company will invest up to the level it forecasts and not enough on whether the Company's investments will be cost effective.

The Company does not respond.

D. Discussion

In setting just and reasonable rates, we consider all reasonable costs that the Company will incur in order to provide safe and reliable service. In setting such rates, we recognize that many of the expenses that the Company incurs are difficult to avoid or control and while the **[*583]** Company is challenged to achieve efficiencies and productivity gains, we generally allow some level of costs that are discretionary in nature(i.e., expenses associated with areas that are not strictly necessary for the provision of safe, adequate, and reliable service, but fund certain corporate goals and priorities that could be delayed to another day without impact). Expenditures that are reasonable during average or good economic times are not necessarily reasonable when economic conditions are extremely poor. When consumers are experiencing the extraordinary harsh economic realities we see today, a certain measure of frugality is properly expected from utilities and a reprioritizing of expenditures may be needed.

The record provides only general information about the effect of our deteriorating economic circumstances on customers' ability to pay. However, it is not seriously disputed that we are now experiencing significant weakness in the New York State economic climate. [594] Indeed, the Company itself acknowledges that the economic challenges faced by customers should not be ignored. Evidence of economic distress is plentiful, and distress shows up most pointedly in customers'

---

[592] The Company's BOE, pp. 80-83.

[593] NYPA's BoE, pp. 9-10.

[594] According to the New York State Department of Labor, unemployment has jumped dramatically in New York City. While the city's unemployment rate averaged 5.5% last year, it has increased to over 8% in recent months. This means that the number of people in New York City seeking, but not finding, employment in both February and March of this year exceeded 330,000, an increase of over 100,000 above the 2008 average. (NYS Dept. of Labor, Local Area Unemployment Statistics Program at http://www.labor.state.ny.us/workforceindustrydata/lslaus.shtm). Unfortunately, the Department of Labor notes that "the evidence suggests that the national economic

[*584] ability to remain current on their utility bills. The Company testified to an increased level of uncollectible expenses. [595] The Company's willingness to work with these customers in recent months to minimize the number of terminations is a helpful response to the immediate economic impacts that customers are facing. But more can and must be done to provide whatever relief is possible to ameliorate the adverse impacts of escalating delivery costs.

[*585]

In these extraordinary times, we recognize the need for utilities to implement austerity programs to constrain costs and tighten belts to limit discretionary spending. [596] We will require a meaningful further downward adjustment to the Company's revenue requirement amounting to $ 60 million, half of which will be subject to further review and potential deferral based on a review of the Company's ability and best efforts to implement the required measures effectively. This amounts to approximately 3.6% of non-fuel operation and maintenance costs.

[*586]

The Company's management will be responsible for determining how best to achieve the $ 60 million revenue requirement reduction while maintaining reliability, service quality, and safety. To that end, the Company is directed to file a plan with the Secretary within 30 calendar days of this order's issuance to achieve at least $ 60 million of annual revenue requirement savings. It is also required to report quarterly thereafter on progress achieved in meeting that level of savings.

We believe the Company could achieve a significant portion of our austerity program revenue adjustment by reducing costs in the areas such as management and executive compensation and benefits, [597] research and development, and informational advertising. We fully expect the Company to use its best efforts to achieve the entire $ 60 million revenue requirement reduction. If the Company does not achieve the full amount despite its best efforts, following completion of the Rate Year the Company can petition to defer that portion of cost related to the austerity revenue adjustment, up to $ 30 million, that the Company fails to achieve. Following an evaluation of whether the Company used best efforts to achieve [*587] the full $ 60 million of savings reflected in rates, we would make a decision as to the amount of deferral, if any, to allow. The Company should understand that it will have to carry its burden in establishing that cost cuts could not be achieved to make the full $ 60 million revenue requirement reduction.

Finally, the Company should include in its next rate filing, or within not more than 30 days thereafter, testimony describing the austerity program efforts it plans to continue beyond the Rate Year.

XIII. CONCLUSION

Having carefully reviewed the evidence; the arguments of the active parties; comments by interested public officials, organizations, and members of the public; and the recommendations of the judges and Advisory Staff, we authorize the Company to increase its annual electric revenues by $ 721.405 million per year, including $ 198 million for the increased [*588] PSL § 18-a assessment to be surcharged. This amount is a 19.7% increase over forecast electric delivery service revenues at current rates and 6.1% increase on a total bill basis assuming current rate year commodity costs.

Key factors driving the need for a revenue increase include the following, in order of magnitude:

---

downturn will likely continue to negatively affect the state's labor market in the coming months." (NYS Dept. of Labor April 16, 2009 Press Release at http://www.labor.state.ny.us/pressreleases/2009/April 16_2009.htm).

[595] Tr. 1880.

[596] We note from our limited review that in New York State and elsewhere in the U. S. utilities have recently disclosed various austerity measures designed and implemented to effectuate substantial cost savings. Such actions have included, among other things, freezing management, executive or other employee salaries (Iberdrola, American Electric Power, Inc. (AEP), Wisconsin Energy Corp. (WEC), and Duke Energy (Duke)), restricting hiring (WEC, Seattle City Light(SCL)), non-essential travel (Duke, SCL), deferring discretionary projects (AEP), and reducing capital expenses(AEP, SCL) and other operating expenses (Duke, SCL).

[597] We note that the Company forecast a 3.5% management wage increase, effective April 2009, or approximately $ 7.8 million inclusive of loadings.

1. Increased property taxes	$ 239 million
2. Increased PSL § 18-a assessment	$ 198 million
3. Increase in rate base (including depreciation)	$ 176 million
4. Increased costs for pensions and other post employment benefits	$ 118 million
5. Increased capital costs	$ 95 million

All of these factors reflect the sharp economic downturn since we last considered the Company's electric rates generally and the rate base increase reflects as well the Company's continuing need to replace outdated equipment in order to ensure safe, reliable, and otherwise adequate electric service and its need to maintain access to capital on reasonable terms.

The Commission orders:

1. Consolidated Edison Company of New York, Inc. is directed to file cancellation supplements, effective on not less than one day's notice, on or before April [*589] 28, 2009, cancelling the tariff amendments and supplements listed in Appendix I to this order.

2. Consolidated Edison Company of New York, Inc. is directed to file, on not less than one day's notice, such further tariff revisions as are necessary to effectuate the provisions adopted by this order, including a $ 721.405 million annual revenue increase to take effect May 1, 2009, as detailed in Appendix II to this order. The Company shall serve copies of its filing on all active parties in these cases. Any comments on the compliance filing must be received at the Commission's offices within 14 days of service of the Company's proposed amendments. The amendments specified in the compliance filing shall not become effective on a permanent basis until approved by the Commission.

3. Consolidated Edison Company of New York, Inc. shall file, on not less than one day's notice to become effective May 1, 2009, such further tariff revisions as are necessary to continue the adjustment clause mechanism established in Case 07-E-0523 and to modify such clause to recover, in the same manner as the Company's delivery revenue requirement is recovered in base rates, a portion of the Company's revenue [*590] requirement equal to the amount set forth in the body of this order ($ 254.4 million). Such language shall specify that this portion of the revenue requirement shall be subject to refund based on the Commission's audit and review of the Company's capital expenditures as described in Case 07-E-0523 (the 2005-2008 overspend investigation) and, as set forth in Case 09-M-0114, on the Commission's audit and review of the Company's 2000-2009 contract-related capital, O&M, and related expenditures resulting from the employee and contractor corruption allegations brought to light by the United States Department of Justice. Such amount shall continue to be recovered in this manner until such time as the Commission determines otherwise. The tariff amendments specified above shall not become effective on a permanent basis until approved by the Commission.

4. The requirement of Section 66(12)(b) of the Public Service Law that newspaper publication be completed prior to the effective date of the proposed amendments directed in Clauses 2 and 3 above is waived and the Company is directed to file with the Commission, not later than six weeks following the amendments' effective date, proof that a [*591] notice to the public of the changes made by the amendments has been published once a week for four successive weeks in newspapers having general circulation in the areas affected by the amendments.

5(a). Consolidated Edison Company of New York, Inc. is authorized, under the Revenue Decoupling Mechanism (RDM), to record and recover the non-competitive delivery service revenue shortfall, including interest at the Company's allowed pre-tax rate of return, for the 25-day period April 6, 2009 through April 30, 2009. The shortfall by service class shall be calculated as the difference between forecast sales revenues the Company would have billed at new rates for the 25-day period and the same level of sales revenues at current rates. Any revenue shortfall calculation shall also include any applicable surcharges that would have been effective during the 25-day period, such as for energy efficiency programs. The non-competitive RDM deferral will be recovered over 23 months.

5(b). Consolidated Edison Company of New York, Inc. is authorized to recover the competitive delivery service revenue shortfall (revenue associated with Merchant Function, Metering and Billing, and Payment Processing charges) **[*592]** including interest at the Company's allowed pre-tax rate of return, for the 25-day period April 6, 2009 through April 30, 2009. Any such recovery, with the exception of uncollectible bill expense, shall be reconciled and recovered through the Company's Transition Adjustment for Competitive Services in the 12-month period immediately following the Rate Year (i.e., in the period April 1, 2010 through March 31, 2011). The uncollectible bill expense portion of any competitive delivery service revenues shall be recovered over a one-month period.

6. Consolidated Edison Company of New York, Inc. is directed to file with the Secretary, within 30 days of this order's issuance and in accordance with the body of this order, its updated assessment surcharge for use in the orderly processing of assessment amounts to be billed to the Company.

7. Consolidated Edison Company of New York, Inc. is directed to provide in its next rate case filing, or otherwise in its next rate case in accordance with the body of this order, specified information concerning property taxes, multi-year rate plans, the depreciation reserve deficiency, and austerity plans for beyond the Rate Year ending March 31, 2010. **[*593]**

8. Consolidated Edison Company of New York, Inc. is directed to file with the Secretary, and serve on all existing active parties, within 30 days of this order's issuance, its plan to achieve the austerity cuts called for by this order. Following that submission, Consolidated Edison Company of New York, Inc. is directed to file with the Secretary and serve on all existing active parties, on or about every 90 days, reports concerning the Company's progress in achieving all the called for austerity cuts.

9. The revenue requirement determination in these cases reflects, among other things, the ratepayers' $ 357,087, or 86%, share of the net proceeds of the tax refund subject to Case 08-M-0618. The Company's petition in that case is granted to the extent it is consistent with that outcome.

10. Except as herein granted, all exceptions to the January 7, 2009 Recommended Decision are denied.

11. Except as specified herein, the January 7, 2009 Recommended Decision is adopted as part of this order.

12. The Secretary is authorized to extend filing deadlines set forth in the body of this order to the extent good cause is shown.

13. Case 08-E-0539 is continued and Case 08-M-0618 is closed.

By **[*594]** the Commission

APPENDIX I

Filing by: CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Amendments to Schedule P.S.C. No. 9 -- Electricity

First Revised Leaf No. 168-E
Ninth Revised Leaf No. 296-A
Eleventh Revised Leaves Nos. 137, 163-A
Fifteenth Revised Leaves Nos. 100, 251-A
Sixteenth Revised Leaf No. 89
Seventeenth Revised Leaves Nos. 202-A, 212-A, 240-A-1
Eighteenth Revised Leaf No. 311-A-2

Twenty-Seventh Revised Leaves Nos. 96, 230, 232, 233,
240, 262, 264, 265, 272, 274, 275, 311, 313, 322
Twenty-Eighth Revised Leaves Nos. 245, 314
Twenty-Ninth Revised Leaves Nos. 202, 315
Thirtieth Revised Leaves Nos. 212, 251

Amendments to Schedule P.S.C. No. 2 -- Retail Access

Sixth Revised Leaves Nos. 181, 182
Eighth Revised Leaf No. 177
Ninth Revised Leaves Nos. 146, 147, 148, 149, 150, 151,
152, 153, 154, 155, 178
Tenth Revised Leaf No. 156

Amendments to PASNY No. 4

Fourth Revised Leaf No. 10-C
Seventh Revised Leaves Nos. 6-A, 6-C, 6-E, 6-F
Tenth Revised Leaf No. 4
Fourteenth Revised Leaf No. 5
Fifteenth Revised Leaf No. 3

Amendments to Economic Development Delivery Service No. 2

Twelfth Revised Leaves No. 4,5

Appendix II

Schedule 1

Consolidated Edison Company [*595] of New York, Inc.

Electric Operating Income, Rate Base & Rate of Return For the Rate Year Ending March 31, 2010

($ 000's)

	Per Recommended Decision	**Adj. No.**	**Commission Adjustments**
Operating Revenues			
Sales Revenues	$ 7,285,444	1	($ 12,775)
Unbilled Revenues	14,000		0
Other Operating Revenues	265,220	2	(7,398)
Total Operating Revenues	7,564,664		(20,173)
Operating Expense			
Fuel	3,147,757		0
Operation & Maintenance Expenses	1,670,819	3	(35,863)
Depreciation Expense	591,346	4	(5,519)
Taxes Other Than Income Taxes	1,289,862	5	(39,770)
Gains from Disposition of Utility Plant	0		
Total Operating Expenses	6,699,784		(81,151)
Operating Income Before Income Taxes	864,880		60,978
New York State Income Tax	26,851	6	5,736

	Per Recommended Decision	Adj. No.	Commission Adjustments
Federal Income Tax	76,198	7	25,457
Net Utility Operating Income	$ 761,831		$ 29,785
Rate Base	$ 14,404,702	8	($ 307,379)
Rate of Return	5.29%		

	As Adjusted by Commission	Revenue Requirement Adjustment
Operating Revenues		
Sales Revenues	$ 7,272,669	$ 523,405
Unbilled Revenues	14,000	0
Other Operating Revenues	257,822	1,832
Total Operating Revenues	7,544,491	525,237
Operating Expense		
Fuel	3,147,757	0
Operation & Maintenance Expenses	1,634,956	3,507
Depreciation Expense	585,827	0
Taxes Other Than Income Taxes	1,250,092	13,661
Gains from Disposition of Utility Plant	0	
Total Operating Expenses	6,618,633	17,168
Operating Income Before Income Taxes	925,858	508,069
New York State Income Tax	32,587	36,073
Federal Income Tax	101,655	165,199
Net Utility Operating Income	$ 791,616	$ 306,798
Rate Base	$ 14,097,323	
Rate of Return	5.62%	

[*596]

	As Adjusted For Revenue Requirement
Operating Revenues	
Sales Revenues	$ 7,796,074
Unbilled Revenues	14,000
Other Operating Revenues	259,654
Total Operating Revenues	8,069,728
Operating Expense	
Fuel	3,147,757
Operation & Maintenance Expenses	1,638,463
Depreciation Expense	585,827
Taxes Other Than Income Taxes	1,263,753
Gains from Disposition of Utility Plant	0
Total Operating Expenses	6,635,800

	As Adjusted For Revenue Requirement
Operating Income Before Income Taxes	1,433,928
New York State Income Tax	68,660
Federal Income Tax	266,854
Net Utility Operating Income	$ 1,098,414
Rate Base	$ 14,097,323
Rate of Return	7.79%

	Per Recommended Decision	Adj. No. 2	Commission Adjustments
Miscellaneous Service Revenues	$ 13,174		
Rent from Electric Property	15,601		
Interdepartmental Rents	11,063		
Other Electric Revenues:			
Transmission of Energy	11,456		
Transmission Service Charges	18,600		
Maintenance of Interconnection Facilities	2,183		
Excess Distribution Facilities	2,559		
Late Payment Charges	25,561	a	($ 45)
Meter Reading Services	2,821		
The Learning Center Services	769		
Fuel Management	134		
Transmission Congestion Credits	120,000		
Sithe Agreement	2,263		
Purchase of Receivable Discount	7,710		
ESCOs / Marketer Charges	4,608		
SO2 Allowance	3,300		
Intercompany Rents 74/59th Street	(6,500)		
Low Income Discount Program	(19,224)	b	(3,645)
Regulatory Deferrals:			
NYS Tax Law Changes	8,465		
DC Service Incentive	3,000		
S02 Credits	3,300		
Verizon Pole Maintenance Contract	14,500		
ADR Tax Amortization	16,357		
Interest on FIT Audit Adjustments - Net	7,404		
Gain on Sale of First Avenue Properties	43,890		
Interest on Sale of First Avenue Properties	2,752		
WTC Expenses	(14,000)		
Carrying Charges on T&D Expenditures	(19,498)		
Excess Deferred SIT	5,105		
Transmission Service Charges	2,591	c	4,657
Deferred Property Tax Refund	258		

	Per Recommended Decision	Adj. No. 2	Commission Adjustments
Return of Stony Point Tax Refund	1,400		
Misc. Property Tax Refunds	3,629		
Deferrals from Case 04-E-0572 RY3	(5,592)		
Interest on Deferrals from C. 04-E-0572 RY3	(186)		
Pension / OPEB Deferral	(6,428)	d	(8,365)
SIR Deferral	(17,218)		
Property Tax Deferral	0		
DSM	(587)		
Total Other Operating Revenues	$ 265,220		($ 7,398)

[*597]

	As Adjusted by Commission	Revenue Requirement Adjustment
Miscellaneous Service Revenues	$ 13,174	
Rent from Electric Property	15,601	
Interdepartmental Rents	11,063	
Other Electric Revenues:		
Transmission of Energy	11,456	
Transmission Service Charges	18,600	
Maintenance of Interconnection Facilities	2,183	
Excess Distribution Facilities	2,559	
Late Payment Charges	25,516	$ 1,832
Meter Reading Services	2,821	
The Learning Center Services	769	
Fuel Management	134	
Transmission Congestion Credits	120,000	
Sithe Agreement	2,263	
Purchase of Receivable Discount	7,710	
ESCOs / Marketer Charges	4,608	
SO2 Allowance	3,300	
Intercompany Rents 74/59th Street	(6,500)	
Low Income Discount Program	(22,869)	
Regulatory Deferrals:		
NYS Tax Law Changes	8,465	
DC Service Incentive	3,000	
S02 Credits	3,300	
Verizon Pole Maintenance Contract	14,500	
ADR Tax Amortization	16,357	
Interest on FIT Audit Adjustments - Net	7,404	
Gain on Sale of First Avenue Properties	43,890	
Interest on Sale of First Avenue Properties	2,752	
WTC Expenses	(14,000)	
Carrying Charges on T&D Expenditures	(19,498)	
Excess Deferred SIT	5,105	

	As Adjusted by Commission	Revenue Requirement Adjustment
Transmission Service Charges	7,248	
Deferred Property Tax Refund	258	
Return of Stony Point Tax Refund	1,400	
Misc. Property Tax Refunds	3,629	
Deferrals from Case 04-E-0572 RY3	(5,592)	
Interest on Deferrals from C. 04-E-0572 RY3	(186)	
Pension / OPEB Deferral	(14,793)	
SIR Deferral	(17,218)	
Property Tax Deferral	0	
DSM	(587)	
Total Other Operating Revenues	$ 257,822	$ 1,832

[*598]

	As Adjusted For Revenue Requirement
Miscellaneous Service Revenues	$ 13,174
Rent from Electric Property	15,601
Interdepartmental Rents	11,063
Other Electric Revenues:	
Transmission of Energy	11,456
Transmission Service Charges	18,600
Maintenance of Interconnection Facilities	2,183
Excess Distribution Facilities	2,559
Late Payment Charges	27,348
Meter Reading Services	2,821
The Learning Center Services	769
Fuel Management	134
Transmission Congestion Credits	120,000
Sithe Agreement	2,263
Purchase of Receivable Discount	7,710
ESCOs / Marketer Charges	4,608
SO2 Allowance	3,300
Intercompany Rents 74/59th Street	(6,500)
Low Income Discount Program	(22,869)
Regulatory Deferrals:	
NYS Tax Law Changes	8,465
DC Service Incentive	3,000
S02 Credits	3,300
Verizon Pole Maintenance Contract	14,500
ADR Tax Amortization	16,357
Interest on FIT Audit Adjustments - Net	7,404
Gain on Sale of First Avenue Properties	43,890
Interest on Sale of First Avenue Properties	2,752
WTC Expenses	(14,000)

	As Adjusted For Revenue Requirement
Carrying Charges on T&D Expenditures	(19,498
Excess Deferred SIT	5,105
Transmission Service Charges	7,248
Deferred Property Tax Refund	258
Return of Stony Point Tax Refund	1,400
Misc. Property Tax Refunds	3,629
Deferrals from Case 04-E-0572 RY3	(5,592
Interest on Deferrals from C. 04-E-0572 RY3	(186)
Pension / OPEB Deferral	(14,793)
SIR Deferral	(17,218)
Property Tax Deferral	0
DSM	(587)
Total Other Operating Revenues	$ 259,654

[*599]

	Per Recommended Decision	No. 3	Commission Adjustments
Admin & General Expenses Capitalized	($ 36,621)	a	$ 3,970
Inter-Utility Agreement - Ramapo-O&R	516		
Asbestos Removal	239		
Bank Collection Fees	266		
Betterment Program	1,930		
Boiler Cleaning	499		
Building Services / Facilities	21,988		
Central Engineering - Administrative	25		
Central Engineering - Distribution	837		
Collection Agency Fees	2,057		
Communications - Telephone	12,620		
Company Labor	550,946	b	(15,018)
AMR / AMI Saturation Savings	(778)		
Consultants	11,620	c	(1,192)
Contract Labor	19,112	d	(7,300)
Corrective Maintenance	4,029		
Contract Change	(3,080)		
Disposal of Obsolete M&S	6,072		
DSM	26,331		
Duplicate Misc. Charges	(23,455)		
EDP Equipment Rentals & Maintenance	4,184		
Electric and Gas Used	731		
Employee Pension / OPEBs	145,228	e	50,910
Employee Welfare Expense - Net	101,775	f	(836)
Environmental Expenses	17,283	g	(573)
ERRP - Major Maintenance	7,292		
Facilities Maintenance	4,048		
Financial Services	7,024		
Gas Turbines	3,039		
Information Resources	23,802		
Informational Advertising	12,931	h	(6,669)
Injuries and Damages Reserve	41,073		
Institutional Dues & Subscriptions	1,718	i	(57)

	Per Recommended Decision	No. 3	Commission Adjustments
Insurance Premiums	21,153	j	(1,497)
Interference	88,854	k	(17,036)
Corporate and Fiscal Expenses	3,638		
Mobile Diesel Generators	6,523		
Manhour Expense	48,629		
Marshall's Fees	1,099		
Materials and Supplies	27,441	l	1,438
Other Compensation	0		
Outreach & Education	5,338	m	(730)
Other (Fossil)	1,797		
Outside Legal Services	1,696		
Paving	1,928		
Plant Component Upgrade	428		
Postage	14,079		
Preventive Maintenance	1,665		
RCA - Amortization of Hudson-Farragut	477		
Real Estate Expenses	1,037		
Regulatory Commission Expenses	28,051	n	2,000
Rents	63,571	o	(6,828)
Rents (ERRP)	68,547		
Rents (Interdepartmental)	5,450		
Research and Development	18,660	p	35
SBC / RPS	126,421	q	24,169
Stray Voltage	23,414	r	(1,400)
Scheduled Overhauls	2,690		
Security	2,664		
Shared Services	(8,924)		
Storm Costs	5,600		
Transformer Installations	96		
Tree Trimming	16,551		
Trenching	9,475	s	(264)
Uncollectible	51,080	t	2,035
Water	714		
Water Chemicals	154		
Other O&M	65,542	u	(61,020)
Total O & M Expenses	$ 1,670,819		($ 35,863)

[*600]

	As Adjusted by Commission	Revenue Requirement Adjustment
Admin & General Expenses Capitalized	($ 32,651)	
Inter-Utility Agreement - Ramapo-O&R	516	
Asbestos Removal	239	
Bank Collection Fees	266	
Betterment Program	1,930	
Boiler Cleaning	499	
Building Services / Facilities	21,988	
Central Engineering - Administrative	25	
Central Engineering - Distribution	837	
Collection Agency Fees	2,057	

	As Adjusted by Commission	Revenue Requirement Adjustment
Communications - Telephone	12,620	
Company Labor	535,928	
AMR / AMI Saturation Savings	(778)	
Consultants	10,428	
Contract Labor	11,812	
Corrective Maintenance	4,029	
Contract Change	(3,080)	
Disposal of Obsolete M&S	6,072	
DSM	26,331	
Duplicate Misc. Charges	(23,455)	
EDP Equipment Rentals & Maintenance	4,184	
Electric and Gas Used	731	
Employee Pension / OPEBs	196,138	
Employee Welfare Expense - Net	100,939	
Environmental Expenses	16,710	
ERRP - Major Maintenance	7,292	
Facilities Maintenance	4,048	
Financial Services	7,024	
Gas Turbines	3,039	
Information Resources	23,802	
Informational Advertising	6,262	
Injuries and Damages Reserve	41,073	
Institutional Dues & Subscriptions	1,661	
Insurance Premiums	19,656	
Interference	71,818	
Corporate and Fiscal Expenses	3,638	
Mobile Diesel Generators	6,523	
Manhour Expense	48,629	
Marshall's Fees	1,099	
Materials and Supplies	28,879	
Other Compensation	0	
Outreach & Education	4,608	
Other (Fossil)	1,797	
Outside Legal Services	1,696	
Paving	1,928	
Plant Component Upgrade	428	
Postage	14,079	
Preventive Maintenance	1,665	
RCA - Amortization of Hudson-Farragut	477	
Real Estate Expenses	1,037	
Regulatory Commission Expenses	30,051	
Rents	56,743	
Rents (ERRP)	68,547	
Rents (Interdepartmental)	5,450	
Research and Development	18,695	
SBC / RPS	150,590	
Stray Voltage	22,014	
Scheduled Overhauls	2,690	
Security	2,664	
Shared Services	(8,924)	
Storm Costs	5,600	
Transformer Installations	96	

	As Adjusted by Commission	Revenue Requirement Adjustment
Tree Trimming	16,551	
Trenching	9,211	
Uncollectible	53,115	3,507
Water	714	
Water Chemicals	154	
Other O&M	4,522	
Total O & M Expenses	$ 1,634,956	$ 3,507

[*601]

	As Adjusted For Revenue Requirement
Admin & General Expenses Capitalized	($ 32,651)
Inter-Utility Agreement - Ramapo-O&R	516
Asbestos Removal	239
Bank Collection Fees	266
Betterment Program	1,930
Boiler Cleaning	499
Building Services / Facilities	21,988
Central Engineering - Administrative	25
Central Engineering - Distribution	837
Collection Agency Fees	2,057
Communications - Telephone	12,620
Company Labor	535,928
AMR / AMI Saturation Savings	(778)
Consultants	10,428
Contract Labor	11,812
Corrective Maintenance	4,029
Contract Change	(3,080)
Disposal of Obsolete M&S	6,072
DSM	26,331
Duplicate Misc. Charges	(23,455)
EDP Equipment Rentals & Maintenance	4,184
Electric and Gas Used	731
Employee Pension / OPEBs	196,138
Employee Welfare Expense - Net	100,939
Environmental Expenses	16,710
ERRP - Major Maintenance	7,292
Facilities Maintenance	4,048
Financial Services	7,024
Gas Turbines	3,039
Information Resources	23,802
Informational Advertising	6,262
Injuries and Damages Reserve	41,073
Institutional Dues & Subscriptions	1,661
Insurance Premiums	19,656
Interference	71,818
Corporate and Fiscal Expenses	3,638
Mobile Diesel Generators	6,523
Manhour Expense	48,629
Marshall's Fees	1,099

	As Adjusted For Revenue Requirement
Materials and Supplies	28,879
Other Compensation	0
Outreach & Education	4,608
Other (Fossil)	1,797
Outside Legal Services	1,696
Paving	1,928
Plant Component Upgrade	428
Postage	14,079
Preventive Maintenance	1,665
RCA - Amortization of Hudson-Farragut	477
Real Estate Expenses	1,037
Regulatory Commission Expenses	30,051
Rents	56,743
Rents (ERRP)	68,547
Rents (Interdepartmental)	5,450
Research and Development	18,695
SBC / RPS	150,590
Stray Voltage	22,014
Scheduled Overhauls	2,690
Security	2,664
Shared Services	(8,924)
Storm Costs	5,600
Transformer Installations	96
Tree Trimming	16,551
Trenching	9,211
Uncollectible	56,622
Water	714
Water Chemicals	154
Other O&M	4,522
Total O & M Expenses	$ 1,638,463

[*602]

	Per Recommended Decision	Adj No. 3. u
Electric Parts, Repairs & Service	$ 11,157	
Other Equipment, Parts, Repair & Service	3,147	
Misc. Materials, Hardware, Parts & Supplies	5,952	
Vehicle Maint., Service & Other Transportation	2,385	
Substation Equipment, Parts, & Services	5,285	
Training & Development	1,933	
Audio & Visual	379	
Printing Services	680	
Programming Services	2,612	
Rental Equipment - Other	2,082	
Testing & Inspection	16,535	
Other	13,395	3.u 1-6
Total Other Electric O & M	$ 65,542	

	Commission Adjustments	As Adjusted by Commission
Electric Parts, Repairs & Service		$ 11,157
Other Equipment, Parts, Repair & Service		3,147
Misc. Materials, Hardware, Parts & Supplies		5,952
Vehicle Maint., Service & Other Transportation		2,385
Substation Equipment, Parts, & Services		5,285
Training & Development		1,933
Audio & Visual		379
Printing Services		680
Programming Services		2,612
Rental Equipment - Other		2,082
Testing & Inspection		16,535
Other	(61,020)	(47,625)
Total Other Electric O & M	($ 61,020)	$ 4,522

	As Adjusted Requirement Adjustment	For Revenue Requirement
Electric Parts, Repairs & Service		$ 11,157
Other Equipment, Parts, Repair & Service		3,147
Misc. Materials, Hardware, Parts & Supplies		5,952
Vehicle Maint., Service & Other Transportation		2,385
Substation Equipment, Parts, & Services		5,285
Training & Development		1,933
Audio & Visual		379
Printing Services		680
Programming Services		2,612
Rental Equipment - Other		2,082
Testing & Inspection		16,535
Other		(47,625)
Total Other Electric O & M	$ 0	$ 4,522

[*603]

	Per Recommended Decision	Adj. No. 5	Commission Adjustments
Property Taxes			
New York City	$ 931,136	a	($ 37,331)
Upstate & Westchester	90,225	b	(550)
Total Property Taxes	1,021,361		(37,881)
Revenue Taxes	198,044	c	(527)
Payroll Taxes	47,980	d	(1,362)
Subsidiary Capital Tax	5,229		
Receipts Tax	14,622		
All Other Taxes	2,626		
Total Taxes Other	$ 1,289,862		($ 39,770)

	Per Recommended Decision	Adj. No. 5	Commission Adjustments
Than Income Taxes			

	As Adjusted by Commission	Revenue Requirement Adjustment	As Adjusted For Revenue Requirement
Property Taxes			
New York City	$ 893,805		$ 893,805
Upstate & Westchester	89,675		89,675
Total Property Taxes	983,480	0	983,480
Revenue Taxes	197,517	13,661	211,178
Payroll Taxes	46,618		46,618
Subsidiary Capital Tax	5,229		5,229
Receipts Tax	14,622		14,622
All Other Taxes	2,626		2,626
Total Taxes Other Than Income Taxes	$ 1,250,092	$ 13,661	$ 1,263,75

	Per Recommended Decision	Adj. No. 6
Operating Income Before Income Taxes	$ 864,880	
Flow Through Items:		
Non-Taxable Income and Additional Deductions:		
Interest Expense	450,479	
Medicare Part D Subsidy	15,347	
Total Deductions	465,826	
Normalized Items:		
Additional Income and Unallowable Deductions		
Book Depreciation	591,346	
Contributions in Aid of Construction	672	
Capitalized Interest	17,662	
Pension and OPEB Expenses Per Books	182,212	
Total Additions	791,892	
Non-Taxable Income and Additional Deductions		
NYS Depreciation	536,354	
263A Capitalized Overheads	62,023	
Removal Costs	201,879	
Repair Allowance	47,326	
Amortization of Capitalized Interest	3,929	
Loss on MACRS Retirement	44,986	
Pension / OPEB Expense - Funding	189,037	
Westchester Property Tax Adjustment	1,416	
Credits from Case 07-E-0523	87,231	
Stony Point Property Tax Refund	5,029	

	Per Recommended Decision	Adj. No. 6
SO2 Credits	3,300	
Management Audit	0	
WTC Expenses	(14,000)	
Deferrals from Case 04-E-0572 RY3	(5,592)	
Interest on Deferrals from Case 04-E-0572 RY3	(186)	
T&D Deferral from Case 07-E-0523	(19,498)	
SIR Deferral - April 2008-March 2010	(17,218)	
Property Tax Increase Deferral - April 08-March 09	0	
Property Tax Deferral for earlier end to tax rebate	0	
DSM	(587)	
TSC Revenues	2,591	
Total Deductions	1,128,020	
Total Adjustments to Income	(801,954)	
NYS Taxable Income	62,926	
Current NYS Income Tax Payable @ 7.1%	4,468	
Deferred NYS Income Tax @ 7.1%	23,865	
Brownfield Credit	(1,482)	
Total New York State Income Tax	$ 26,851	

[*604]

	Commission Adjustments
Operating Income Before Income Taxes	$ 60,978
Flow Through Items:	
Non-Taxable Income and Additional Deductions:	
Interest Expense	(19,809)
Medicare Part D Subsidy	
Total Deductions	(19,809)
Normalized Items:	
Additional Income and Unallowable Deductions	
Book Depreciation	(5,519)
Contributions in Aid of Construction	
Capitalized Interest	
Pension and OPEB Expenses Per Books	28,719
Total Additions	23,200
Non-Taxable Income and Additional Deductions	
NYS Depreciation	(5,006)
263A Capitalized Overheads	
Removal Costs	
Repair Allowance	
Amortization of Capitalized Interest	
Loss on MACRS Retirement	
Pension / OPEB Expense - Funding	95,700

	Commission Adjustments
Westchester Property Tax Adjustment	
Credits from Case 07-E-0523	
Stony Point Property Tax Refund	
SO2 Credits	
Management Audit	
WTC Expenses	
Deferrals from Case 04-E-0572 RY3	
Interest on Deferrals from Case 04-E-0572 RY3	
T&D Deferral from Case 07-E-0523	
SIR Deferral - April 2008-March 2010	
Property Tax Increase Deferral - April 08-March 09	
Property Tax Deferral for earlier end to tax rebate	
DSM	
TSC Revenues	4,657
Total Deductions	95,351
Total Adjustments to Income	(52,342)
NYS Taxable Income	8,636
Current NYS Income Tax Payable @ 7.1%	613
Deferred NYS Income Tax @ 7.1%	5,123
Brownfield Credit	
Total New York State Income Tax	$ 5,736

[*605]

	As Adjusted by Commission
Operating Income Before Income Taxes	$ 925,858
Flow Through Items:	
Non-Taxable Income and Additional Deductions:	
Interest Expense	430,670
Medicare Part D Subsidy	15,347
Total Deductions	446,017
Normalized Items:	
Additional Income and Unallowable Deductions	
Book Depreciation	585,827
Contributions in Aid of Construction	672
Capitalized Interest	17,662
Pension and OPEB Expenses Per Books	210,931
Total Additions	815,092
Non-Taxable Income and Additional Deductions	
NYS Depreciation	531,348
263A Capitalized Overheads	62,023
Removal Costs	201,879
Repair Allowance	47,326

	As Adjusted by Commission
Amortization of Capitalized Interest	3,929
Loss on MACRS Retirement	44,986
Pension / OPEB Expense - Funding	284,737
Westchester Property Tax Adjustment	1,416
Credits from Case 07-E-0523	87,231
Stony Point Property Tax Refund	5,029
SO2 Credits	3,300
Management Audit	0
WTC Expenses	(14,000)
Deferrals from Case 04-E-0572 RY3	(5,592)
Interest on Deferrals from Case 04-E-0572 RY3	(186)
T&D Deferral from Case 07-E-0523	(19,498)
SIR Deferral - April 2008-March 2010	(17,218)
Property Tax Increase Deferral - April 08-March 09	
Property Tax Deferral for earlier end to tax rebate	0
DSM	(587)
TSC Revenues	7,248
Total Deductions	1,223,371
Total Adjustments to Income	(854,296)
NYS Taxable Income	71,562
Current NYS Income Tax Payable @ 7.1%	5,081
Deferred NYS Income Tax @ 7.1%	28,988
Brownfield Credit	(1,482)
Total New York State Income Tax	$ 32,587

[*606]

	Revenue Requirement Adjustment
Operating Income Before Income Taxes	$ 508,069
Flow Through Items:	
Non-Taxable Income and Additional Deductions:	
Interest Expense	
Medicare Part D Subsidy	
Total Deductions	0
Normalized Items:	
Additional Income and Unallowable Deductions	
Book Depreciation	
Contributions in Aid of Construction	
Capitalized Interest	
Pension and OPEB Expenses Per Books	
Total Additions	0
Non-Taxable Income and Additional Deductions	
NYS Depreciation	

	Revenue Requirement Adjustment
263A Capitalized Overheads	
Removal Costs	
Repair Allowance	
Amortization of Capitalized Interest	
Loss on MACRS Retirement	
Pension / OPEB Expense - Funding	
Westchester Property Tax Adjustment	
Credits from Case 07-E-0523	
Stony Point Property Tax Refund	
SO2 Credits	
Management Audit	
WTC Expenses	
Deferrals from Case 04-E-0572 RY3	
Interest on Deferrals from Case 04-E-0572 RY3	
T&D Deferral from Case 07-E-0523	
SIR Deferral - April 2008-March 2010	
Property Tax Increase Deferral - April 08-March 09	0
Property Tax Deferral for earlier end to tax rebate	
DSM	
TSC Revenues	
Total Deductions	0
Total Adjustments to Income	0
NYS Taxable Income	508,069
Current NYS Income Tax Payable @ 7.1%	36,073
Deferred NYS Income Tax @ 7.1%	0
Brownfield Credit	
Total New York State Income Tax	$ 36,073

[*607]

	As Adjusted For Revenue Requirement
Operating Income Before Income Taxes	$ 1,433,928
Flow Through Items:	
Non-Taxable Income and Additional Deductions:	
Interest Expense	430,670
Medicare Part D Subsidy	15,347
Total Deductions	446,017
Normalized Items:	
Additional Income and Unallowable Deductions	
Book Depreciation	585,827
Contributions in Aid of Construction	672
Capitalized Interest	17,662
Pension and OPEB Expenses Per Books	210,931
Total Additions	815,092

	As Adjusted For Revenue Requirement
Non-Taxable Income and Additional Deductions	
NYS Depreciation	531,348
263A Capitalized Overheads	62,023
Removal Costs	201,879
Repair Allowance	47,326
Amortization of Capitalized Interest	3,929
Loss on MACRS Retirement	44,986
Pension / OPEB Expense - Funding	284,737
Westchester Property Tax Adjustment	1,416
Credits from Case 07-E-0523	87,231
Stony Point Property Tax Refund	5,029
SO2 Credits	3,300
Management Audit	0
WTC Expenses	(14,000)
Deferrals from Case 04-E-0572 RY3	(5,592
Interest on Deferrals from Case 04-E-0572 RY3	(186)
T&D Deferral from Case 07-E-0523	(19,498)
SIR Deferral - April 2008-March 2010	(17,218)
Property Tax Increase Deferral - April 08-March 09	
Property Tax Deferral for earlier end to tax rebate	0
DSM	(587)
TSC Revenues	7,248
Total Deductions	1,223,371
Total Adjustments to Income	(854,296
NYS Taxable Income	579,632
Current NYS Income Tax Payable @ 7.1%	41,154
Deferred NYS Income Tax @ 7.1%	28,988
Brownfield Credit	(1,482
Total New York State Income Tax	$ 68,659

[*608]

	Per Recommended Decision	Adj. No. 7
Operating Income Before Income Taxes	$ 864,880	
New York State Income Tax	26,851	
Operating Income Before Federal Income Tax	838,029	
Flow Through Items:		
Add: Additional Income and Unallowable Deductions		
Book Depreciation	591,346	
Hudson-Farragut Amortization - Per Books	477	
Capitalized Interest	17,662	
Total Additions	609,485	
Deduct: Non-Taxable Income and Additional Deductions		

	Per Recommended Decision	Adj. No. 7
Interest Expense	450,479	
Statutory Depreciation - at Current Book Rates	343,049	
Statutory Depreciation - Change at Proposed Book Rates	0	
Statutory Depreciation - Change with Reserve Deficiency	0	
Removal Costs	201,879	
Medicare Part D Subsidy - Post-Employment Benefits	15,347	
Amortization of Capitalized Interest	2,073	
Westchester Property Tax Adjustment	1,416	
Dividends Paid on $ 5 Cumulative Preferred Stock	3,327	
Total Deductions	1,017,570	
Normalized Items:		
Add: Additional Income and Unallowable Deductions		
Contributions in Aid of Construction	672	
Pension / OPEB Expenses - Rate Year	182,212	
Deferred NYS Income Tax	23,865	
Total Additions	206,749	
Deduct: Non-Taxable Income and Additional Deductions		
Statutory Depreciation - at Current Book Rates	248,795	
Statutory Depreciation - Change at Proposed Book Rates	0	
Statutory Depreciation - Change with Reserve Deficiency	0	
263A Capitalized Overheads	62,023	
Repair Allowance	47,326	
Amortization of Capitalized Interest	1,856	
Loss on MACRS Retirement	40,173	
Pension / OPEB Expense - Funding	189,037	
Correction of ADR Tax Amortization	0	
Interest on Federal Income Tax Audit Adjustments - Net	0	
Credits from Case 07-E-0523	87,231	
Stony Point Property Tax Refund	5,029	
SO2 Credits	3,300	
Management Audit	0	
WTC Expenses	(14,000)	
Deferrals from Case 04-E-0572 RY3	(5,592)	
Interest on Deferrals from Case 04-E-0572 RY3	(186)	
T&D Deferral from Case 07-E-0523	(19,498)	
SIR Deferral - April 2008-March 2010	(17,218)	
Property Tax Increase Deferral - April 2008-March 2010	0	
Property Tax Deferral for earlier end to tax rebate	0	
DSM	(587)	
TSC Revenues	2,591	
Total Deductions	630,280	
Total Adjustments to Income	(831,615)	
Federal Taxable Income	6,414	
Current Federal Income Tax @ 35%	2,245	
Deferred Federal Income Tax @ 35%	148,236	
Amortization of Previously Deferred Federal Income Tax		

	Per Recommended Decision	Adj. No. 7
Depreciation - ADR/ACRS/MACRS - at Current Book Rates	(45,055)	
Depreciation - ADR/ACRS/MACRS - at Proposed Book Rates	0	
Depreciation - ADR/ACRS/MACRS - Reserve Deficiency	0	
Loss on MACRS Retirements	(5,558)	
Repair Allowance	(9,844)	
Capitalized Overheads	(10,296)	
Depreciation on Capitalized Maintenance/Computer Software	1,223	
Investment Tax Credit	(4,752)	
Total Federal Income Tax	$ 76,198	

[*609]

	Commission Adjustments
Operating Income Before Income Taxes	$ 60,978
New York State Income Tax	5,736
Operating Income Before Federal Income Tax	55,242
Flow Through Items:	
Add: Additional Income and Unallowable Deductions	
Book Depreciation	(5,519)
Hudson-Farragut Amortization - Per Books	
Capitalized Interest	
Total Additions	(5,519)
Deduct: Non-Taxable Income and Additional Deductions	
Interest Expense	(19,809)
Statutory Depreciation - at Current Book Rates	(3,202)
Statutory Depreciation - Change at Proposed Book Rates	
Statutory Depreciation - Change with Reserve Deficiency	
Removal Costs	
Medicare Part D Subsidy - Post-Employment Benefits	
Amortization of Capitalized Interest	
Westchester Property Tax Adjustment	
Dividends Paid on $ 5 Cumulative Preferred Stock	
Total Deductions	(23,011)
Normalized Items:	
Add: Additional Income and Unallowable Deductions	
Contributions in Aid of Construction	
Pension / OPEB Expenses - Rate Year	28,719
Deferred NYS Income Tax	5,123
Total Additions	33,842
Deduct: Non-Taxable Income and Additional Deductions	
Statutory Depreciation - at Current Book Rates	(2,322)
Statutory Depreciation - Change at Proposed Book Rates	
Statutory Depreciation - Change with Reserve Deficiency	
263A Capitalized Overheads	
Repair Allowance	
Amortization of Capitalized Interest	

	Commission Adjustments
Loss on MACRS Retirement	
Pension / OPEB Expense - Funding	95,700
Correction of ADR Tax Amortization	
Interest on Federal Income Tax Audit Adjustments - Net	
Credits from Case 07-E-0523	
Stony Point Property Tax Refund	
SO2 Credits	
Management Audit	
WTC Expenses	
Deferrals from Case 04-E-0572 RY3	
Interest on Deferrals from Case 04-E-0572 RY3	
T&D Deferral from Case 07-E-0523	
SIR Deferral - April 2008-March 2010	
Property Tax Increase Deferral - April 2008-March 2010	
Property Tax Deferral for earlier end to tax rebate	
DSM	
TSC Revenues	4,657
Total Deductions	98,035
Total Adjustments to Income	(46,701)
Federal Taxable Income	8,541
Current Federal Income Tax @ 35%	2,989
Deferred Federal Income Tax @ 35%	22,468
Amortization of Previously Deferred Federal Income Tax	
Depreciation - ADR/ACRS/MACRS - at Current Book Rates	
Depreciation - ADR/ACRS/MACRS - at Proposed Book Rates	
Depreciation - ADR/ACRS/MACRS - Reserve Deficiency	
Loss on MACRS Retirements	
Repair Allowance	
Capitalized Overheads	
Depreciation on Capitalized Maintenance/Computer Software	
Investment Tax Credit	
Total Federal Income Tax	$ 25,457

[*610]

	As Adjusted by Commission
Operating Income Before Income Taxes	$ 925,858
New York State Income Tax	32,587
Operating Income Before Federal Income Tax	893,272
Flow Through Items:	
Add: Additional Income and Unallowable Deductions	
Book Depreciation	585,827
Hudson-Farragut Amortization - Per Books	477
Capitalized Interest	17,662
Total Additions	603,966

	As Adjusted by Commission
Deduct: Non-Taxable Income and Additional Deductions	
Interest Expense	430,670
Statutory Depreciation - at Current Book Rates	339,847
Statutory Depreciation - Change at Proposed Book Rates	0
Statutory Depreciation - Change with Reserve Deficiency	0
Removal Costs	201,879
Medicare Part D Subsidy - Post-Employment Benefits	15,347
Amortization of Capitalized Interest	2,073
Westchester Property Tax Adjustment	1,416
Dividends Paid on $ 5 Cumulative Preferred Stock	3,327
Total Deductions	994,559
Normalized Items:	
Add: Additional Income and Unallowable Deductions	
Contributions in Aid of Construction	672
Pension / OPEB Expenses - Rate Year	210,931
Deferred NYS Income Tax	28,988
Total Additions	240,591
Deduct: Non-Taxable Income and Additional Deductions	
Statutory Depreciation - at Current Book Rates	246,473
Statutory Depreciation - Change at Proposed Book Rates	0
Statutory Depreciation - Change with Reserve Deficiency	0
263A Capitalized Overheads	62,023
Repair Allowance	47,326
Amortization of Capitalized Interest	1,856
Loss on MACRS Retirement	40,173
Pension / OPEB Expense - Funding	284,737
Correction of ADR Tax Amortization	0
Interest on Federal Income Tax Audit Adjustments - Net	0
Credits from Case 07-E-0523	87,231
Stony Point Property Tax Refund	5,029
SO2 Credits	3,300
Management Audit	0
WTC Expenses	(14,000)
Deferrals from Case 04-E-0572 RY3	(5,592)
Interest on Deferrals from Case 04-E-0572 RY3	(186)
T&D Deferral from Case 07-E-0523	(19,498)
SIR Deferral - April 2008-March 2010	(17,218)
Property Tax Increase Deferral - April 2008-March 2010	0
Property Tax Deferral for earlier end to tax rebate	0
DSM	(587)
TSC Revenues	7,248
Total Deductions	728,315
Total Adjustments to Income	(878,317)
Federal Taxable Income	14,955
Current Federal Income Tax @ 35%	5,234
Deferred Federal Income Tax @ 35%	170,703

	As Adjusted by Commission
Amortization of Previously Deferred Federal Income Tax	
Depreciation - ADR/ACRS/MACRS - at Current Book Rates	(45,055)
Depreciation - ADR/ACRS/MACRS - at Proposed Book Rates	0
Depreciation - ADR/ACRS/MACRS - Reserve Deficiency	0
Loss on MACRS Retirements	(5,558)
Repair Allowance	(9,844)
Capitalized Overheads	(10,296)
Depreciation on Capitalized Maintenance/Computer Software	1,223
Investment Tax Credit	(4,752)
Total Federal Income Tax	$ 101,655

[*611]

	Revenue Requirement Adjustment
Operating Income Before Income Taxes	$ 508,069
New York State Income Tax	36,073
Operating Income Before Federal Income Tax	471,996
Flow Through Items:	
Add: Additional Income and Unallowable Deductions	
Book Depreciation	
Hudson-Farragut Amortization - Per Books	
Capitalized Interest	
Total Additions	0
Deduct: Non-Taxable Income and Additional Deductions	
Interest Expense	
Statutory Depreciation - at Current Book Rates	
Statutory Depreciation - Change at Proposed Book Rates	
Statutory Depreciation - Change with Reserve Deficiency	
Removal Costs	
Medicare Part D Subsidy - Post-Employment Benefits	
Amortization of Capitalized Interest	
Westchester Property Tax Adjustment	
Dividends Paid on $ 5 Cumulative Preferred Stock	
Total Deductions	0
Normalized Items:	
Add: Additional Income and Unallowable Deductions	
Contributions in Aid of Construction	
Pension / OPEB Expenses - Rate Year	
Deferred NYS Income Tax	
Total Additions	0
Deduct: Non-Taxable Income and Additional Deductions	
Statutory Depreciation - at Current Book Rates	
Statutory Depreciation - Change at Proposed Book Rates	
Statutory Depreciation - Change with Reserve Deficiency	
263A Capitalized Overheads	

	Revenue Requirement Adjustment
Repair Allowance	
Amortization of Capitalized Interest	
Loss on MACRS Retirement	
Pension / OPEB Expense - Funding	
Correction of ADR Tax Amortization	
Interest on Federal Income Tax Audit Adjustments - Net	
Credits from Case 07-E-0523	
Stony Point Property Tax Refund	
SO2 Credits	
Management Audit	
WTC Expenses	
Deferrals from Case 04-E-0572 RY3	
Interest on Deferrals from Case 04-E-0572 RY3	
T&D Deferral from Case 07-E-0523	
SIR Deferral - April 2008-March 2010	
Property Tax Increase Deferral - April 2008-March 2010	
Property Tax Deferral for earlier end to tax rebate	
DSM	
TSC Revenues	
Total Deductions	0
Total Adjustments to Income	0
Federal Taxable Income	471,996
Current Federal Income Tax @ 35%	165,199
Deferred Federal Income Tax @ 35%	0
Amortization of Previously Deferred Federal Income Tax	
Depreciation - ADR/ACRS/MACRS - at Current Book Rates	
Depreciation - ADR/ACRS/MACRS - at Proposed Book Rates	
Depreciation - ADR/ACRS/MACRS - Reserve Deficiency	
Loss on MACRS Retirements	
Repair Allowance	
Capitalized Overheads	
Depreciation on Capitalized Maintenance/Computer Software	
Investment Tax Credit	
Total Federal Income Tax	$ 165,199

[*612]

	As Adjusted For Revenue Requirement
Operating Income Before Income Taxes	$ 1,433,928
New York State Income Tax	68,659
Operating Income Before Federal Income Tax	1,365,269
Flow Through Items:	
Add: Additional Income and Unallowable Deductions	
Book Depreciation	585,827
Hudson-Farragut Amortization - Per Books	477

	As Adjusted For Revenue Requirement
Capitalized Interest	17,662
Total Additions	603,966
Deduct: Non-Taxable Income and Additional Deductions	
Interest Expense	430,670
Statutory Depreciation - at Current Book Rates	339,847
Statutory Depreciation - Change at Proposed Book Rates	0
Statutory Depreciation - Change with Reserve Deficiency	0
Removal Costs	201,879
Medicare Part D Subsidy - Post-Employment Benefits	15,347
Amortization of Capitalized Interest	2,073
Westchester Property Tax Adjustment	1,416
Dividends Paid on $ 5 Cumulative Preferred Stock	3,327
Total Deductions	994,559
Normalized Items:	
Add: Additional Income and Unallowable Deductions	
Contributions in Aid of Construction	672
Pension / OPEB Expenses - Rate Year	210,931
Deferred NYS Income Tax	28,988
Total Additions	240,591
Deduct: Non-Taxable Income and Additional Deductions	
Statutory Depreciation - at Current Book Rates	246,473
Statutory Depreciation - Change at Proposed Book Rates	0
Statutory Depreciation - Change with Reserve Deficiency	0
263A Capitalized Overheads	62,023
Repair Allowance	47,326
Amortization of Capitalized Interest	1,856
Loss on MACRS Retirement	40,173
Pension / OPEB Expense - Funding	284,737
Correction of ADR Tax Amortization	0
Interest on Federal Income Tax Audit Adjustments - Net	0
Credits from Case 07-E-0523	87,231
Stony Point Property Tax Refund	5,029
SO2 Credits	3,300
Management Audit	0
WTC Expenses	(14,000)
Deferrals from Case 04-E-0572 RY3	(5,592
Interest on Deferrals from Case 04-E-0572 RY3	(186)
T&D Deferral from Case 07-E-0523	(19,498)
SIR Deferral - April 2008-March 2010	(17,218)
Property Tax Increase Deferral - April 2008-March 2010	0
Property Tax Deferral for earlier end to tax rebate	0
DSM	(587)
TSC Revenues	7,248
Total Deductions	728,315
	0
Total Adjustments to Income	(878,317
Federal Taxable Income	486,952

	As Adjusted For Revenue Requirement
Current Federal Income Tax @ 35%	170,433
Deferred Federal Income Tax @ 35%	170,703
	0
Amortization of Previously Deferred Federal Income Tax	0
Depreciation - ADR/ACRS/MACRS - at Current Book Rates	(45,055)
Depreciation - ADR/ACRS/MACRS - at Proposed Book Rates	0
Depreciation - ADR/ACRS/MACRS - Reserve Deficiency	0
Loss on MACRS Retirements	(5,558
Repair Allowance	(9,844
Capitalized Overheads	(10,296)
Depreciation on Capitalized Maintenance/Computer Software	1,223
Investment Tax Credit	(4,752
Total Federal Income Tax	$ 266,855

[*613]

	Per Recommended Decision	Adj. No. 8
Utility Plant:		
Book Cost of Plant	$ 18,747,766	a
Accumulated Reserve for Depreciation	(3,805,654)	b
Net Plant	14,942,112	
Non-Interest Bearing CWIP	558,093	
Preferred Stock Expense	2,414	
Unamortized Debt Discount Premium and Expense	137,066	
Deferred Fuel - Net of Tax	32,500	
Unamortized Balance - Hudson Farragut	1,323	
Customer Advances for Construction	(269)	
MTA Surtax - Net of Tax	3,063	
Working Capital	595,536	c
Excess Rate Base Over Capitalization Adjustment	191,387	
Early Retirement Termination Benefit (1999) - Net of Tax	7,795	
DC Service Incentive - Net of Tax	(2,907)	
System Benefits Charge/Retail Portfolio Standard - Net of Tax	4,011	
Amounts Billed in Advance of Construction - Net of Tax	(5,709)	
BIR Discounts - Recovery - Net of Tax	0	
ERRP Major Maintenance	(1,325)	
Rate Case Reconciliations - Net of Federal Income Taxes		
Recovery of Deferrals from C 04-E-0572 RY3	8,721	
Recovery of Various Deferrals from C. 07-E-0523	100,079	
Recovery of Pension Deferrals from C. 07-E-0523	0	
Recovery of SIR Deferrals from C. 07-E-0523	98,772	
Recovery of 2008/2009 Property Tax Increase	0	
Refund of Credit from C. 07-E-0523	(79,012)	
Refund of Stony Point Property Tax Refund	(1,518)	

	Per Recommended Decision	Adj. No. 8
Refund of SO2 Credits	(996)	
Unbilled Revenues	54,950	
Verizon Pole Maintenance - Reimbursement	(4,378)	
Deferred TSC Revenues	(3,911)	d.1
Deferred DSM Costs	886	
Deferred Scheduled Overhaul Costs	1,258	d.2
Deferred Facilities Maintenance Costs	743	d.3
Accumulated Deferred Income Taxes		
ADR / ACRS / MACRS Deductions	(1,743,400)	e.1
Change of Accounting Section 263A	(316,186)	
Vested Vacation	11,529	
Prepaid Insurance Expenses	(3,817)	
Unbilled Revenues	110,440	
Contributions in Aid of Construction	12,295	
Capitalized Interest	4,592	
Repair & Maintenance Allowance - 2002-2006	4,507	
IRS Audit		
Fin 48 - Disallowed SSCM	(57,475)	
MTA	(12,359)	
Amortization of Computer Software	(43,047)	
Customer Deposits	20,278	
Call Premium	(19,552)	
Deferred SIT	(203,787)	e.2
Total Rate Base	$ 14,404,702	

[*614]

	Commission Adjustments	As Adjusted by Commission
Utility Plant:		
Book Cost of Plant	($ 106,678)	$ 18,641,088
Accumulated Reserve for Depreciation	2,050	(3,803,604)
Net Plant	(104,628)	14,837,484
Non-Interest Bearing CWIP		558,093
Preferred Stock Expense		2,414
Unamortized Debt Discount Premium and Expense		137,066
Deferred Fuel - Net of Tax		32,500
Unamortized Balance - Hudson Farragut		1,323
Customer Advances for Construction		(269)
MTA Surtax - Net of Tax		3,063
Working Capital	(22,970)	572,566
Excess Rate Base Over Capitalization Adjustment		191,387
Early Retirement Termination Benefit (1999) - Net of Tax		7,795
DC Service Incentive - Net of Tax		(2,907)
System Benefits Charge/Retail Portfolio Standard - Net of Tax		4,011
Amounts Billed in Advance of Construction - Net of Tax		(5,709)

	Commission Adjustments	As Adjusted by Commission
BIR Discounts - Recovery - Net of Tax		0
ERRP Major Maintenance		(1,325)
Rate Case Reconciliations - Net of Federal Income Taxes		
Recovery of Deferrals from C 04-E-0572 RY3		8,721
Recovery of Various Deferrals from C. 07-E-0523		100,079
Recovery of Pension Deferrals from C. 07-E-0523		0
Recovery of SIR Deferrals from C. 07-E-0523		98,772
Recovery of 2008/2009 Property Tax Increase		0
Refund of Credit from C. 07-E-0523		(79,012)
Refund of Stony Point Property Tax Refund		(1,518)
Refund of SO2 Credits		(996)
Unbilled Revenues		54,950
Verizon Pole Maintenance - Reimbursement		(4,378)
Deferred TSC Revenues	(7,030)	(10,941)
Deferred DSM Costs		886
Deferred Scheduled Overhaul Costs	(1,258)	0
Deferred Facilities Maintenance Costs	(743)	0
Accumulated Deferred Income Taxes		
ADR / ACRS / MACRS Deductions	(165,627)	(1,909,027)
Change of Accounting Section 263A		(316,186)
Vested Vacation		11,529
Prepaid Insurance Expenses		(3,817)
Unbilled Revenues		110,440
Contributions in Aid of Construction		12,295
Capitalized Interest		4,592
Repair & Maintenance Allowance - 2002-2006		4,507
IRS Audit		
Fin 48 - Disallowed SSCM		(57,475)
MTA		(12,359)
Amortization of Computer Software		(43,047)
Customer Deposits		20,278
Call Premium		(19,552)
Deferred SIT	(5,123)	(208,910)
Total Rate Base	($ 307,379)	$ 14,097,323

[*615]

	Revenue Requirement Adjustment	As Adjusted For Revenue Requirement
Utility Plant:		
Book Cost of Plant		$ 18,641,088
Accumulated Reserve for Depreciation		(3,803,604)
Net Plant		14,837,484
Non-Interest Bearing CWIP		558,093
Preferred Stock Expense		2,414
Unamortized Debt Discount Premium and Expense		137,066
Deferred Fuel - Net of Tax		32,500

	Revenue Requirement Adjustment	As Adjusted For Revenue Requirement
Unamortized Balance - Hudson Farragut		1,323
Customer Advances for Construction		(269)
MTA Surtax - Net of Tax		3,063
Working Capital		572,566
Excess Rate Base Over Capitalization Adjustment		191,387
Early Retirement Termination Benefit (1999) - Net of Tax		7,795
DC Service Incentive - Net of Tax		(2,907
System Benefits Charge/Retail Portfolio Standard - Net of Tax		4,011
Amounts Billed in Advance of Construction - Net of Tax		(5,709
BIR Discounts - Recovery - Net of Tax		0
ERRP Major Maintenance		(1,325
Rate Case Reconciliations - Net of Federal Income Taxes		
Recovery of Deferrals from C 04-E-0572 RY3		8,721
Recovery of Various Deferrals from C. 07-E-0523		100,079
Recovery of Pension Deferrals from C. 07-E-0523		0
Recovery of SIR Deferrals from C. 07-E-0523		98,772
Recovery of 2008/2009 Property Tax Increase		0
Refund of Credit from C. 07-E-0523		(79,012)
Refund of Stony Point Property Tax Refund		(1,518
Refund of SO2 Credits		(996)
Unbilled Revenues		54,950
Verizon Pole Maintenance - Reimbursement		(4,378
Deferred TSC Revenues		(10,941)
Deferred DSM Costs		886
Deferred Scheduled Overhaul Costs		0
Deferred Facilities Maintenance Costs		0
Accumulated Deferred Income Taxes		
ADR / ACRS / MACRS Deductions		(1,909,027)
Change of Accounting Section 263A		(316,186)
Vested Vacation		11,529
Prepaid Insurance Expenses		(3,817
Unbilled Revenues		110,440
Contributions in Aid of Construction		12,295
Capitalized Interest		4,592
Repair & Maintenance Allowance - 2002-2006 IRS Audit		4,507
Fin 48 - Disallowed SSCM		(57,475)
MTA		(12,359)
Amortization of Computer Software		(43,047)
Customer Deposits		20,278
Call Premium		(19,552)
Deferred SIT		(208,910)
Total Rate Base	$ 0	$ 14,097,323

[*616]

	Per Recommended Decision
Materials & Supplies	
Liquid Fuel Inventory	$ 7,259
Materials & Supplies, Excluding Fuel	88,670
Total Materials & Supplies	95,929
Prepayments	
Insurance	10,240
Rents	15,519
Property Taxes	221,031
PSC Assessment	7,792
Interference	3,756
EPRI	264
Other	11,222
Total Prepayments	269,824
Cash Working Capital	
Total Operations & Maintenance Expenses	4,818,576
Less:	
Purchased Power Expenses	2,838,515
Gas Portion of Fuel	304,853
Recoverable Fuel Costs	22,799
Interdepartmental Rents	5,450
Uncollectible Accounts	51,080
Pensions / OPEBs	145,228
Subtotal	3,367,925
Cash Working Capital Subject to 1/8th Allowance	1,450,651
Cash Working Capital @ 1/8th	181,331
Add: Cash Working Capital @ 1/12th on Recoverable Fuel Cost	1,900
Total Cash Working Capital	183,231
Sub-total Working Capital	548,984
Add: Working Capital Related to Purchased Power @ 1.64%	46,552
Total Working Capital Allowance	$ 595,536

	Adj. No. 8
Materials & Supplies	
Liquid Fuel Inventory	
Materials & Supplies, Excluding Fuel	
Total Materials & Supplies	

	Adj. No. 8
Prepayments	
Insurance	c.1
Rents	
Property Taxes	c.2
PSC Assessment	
Interference	
EPRI	
Other	
Total Prepayments	
Cash Working Capital	
Total Operations & Maintenance Expenses	Sch 3
Less:	
Purchased Power Expenses	
Gas Portion of Fuel	
Recoverable Fuel Costs	
Interdepartmental Rents	
Uncollectible Accounts	3.t
Pensions / OPEBs	3.e
Subtotal	
Cash Working Capital Subject to 1/8th Allowance	
Cash Working Capital @ 1/8th	c.3
Add: Cash Working Capital @ 1/12th on Recoverable Fuel Cost	
Total Cash Working Capital	
Sub-total Working Capital	
Add: Working Capital Related to Purchased Power @ 1.64%	
Total Working Capital Allowance	

[*617]

	Commission Adjustments
Materials & Supplies	
Liquid Fuel Inventory	
Materials & Supplies, Excluding Fuel	
Total Materials & Supplies	
Prepayments	
Insurance	($ 1,395)
Rents	
Property Taxes	(10,474)
PSC Assessment	
Interference	

	Commission Adjustments
EPRI	
Other	
Total Prepayments	(11,869)
Cash Working Capital	
Total Operations & Maintenance Expenses	(35,863)
Less:	
Purchased Power Expenses	
Gas Portion of Fuel	
Recoverable Fuel Costs	
Interdepartmental Rents	
Uncollectible Accounts	2,035
Pensions / OPEBs	50,910
Subtotal	52,945
Cash Working Capital Subject to 1/8th Allowance	(88,808)
Cash Working Capital @ 1/8th	(11,101)
Add: Cash Working Capital @ 1/12th on Recoverable Fuel Cost	0
Total Cash Working Capital	(11,101)
Sub-total Working Capital	(22,970)
Add: Working Capital Related to Purchased Power @ 1.64%	0
Total Working Capital Allowance	($ 22,970)

	As Adjusted by Commission
Materials & Supplies	
Liquid Fuel Inventory	$ 7,259
Materials & Supplies, Excluding Fuel	88,670
Total Materials & Supplies	95,929
Prepayments	
Insurance	8,845
Rents	15,519
Property Taxes	210,557
PSC Assessment	7,792
Interference	3,756
EPRI	264
Other	11,222
Total Prepayments	257,955
Cash Working Capital	
Total Operations & Maintenance Expenses	4,782,713
Less:	

	As Adjusted by Commission
Purchased Power Expenses	2,838,515
Gas Portion of Fuel	304,853
Recoverable Fuel Costs	22,799
Interdepartmental Rents	5,450
Uncollectible Accounts	53,115
Pensions / OPEBs	196,138
Subtotal	3,420,870
Cash Working Capital Subject to 1/8th Allowance	1,361,843
Cash Working Capital @ 1/8th	170,230
Add: Cash Working Capital @ 1/12th on Recoverable Fuel Cost	1,900
Total Cash Working Capital	172,130
Sub-total Working Capital	526,014
Add: Working Capital Related to Purchased Power @ 1.64%	46,552
Total Working Capital Allowance	$ 572,566

[*618]

Schedule 9

Consolidated Edison Company of New York, Inc.

Explanation of Commission Adjustments

For the Rate Year Ending March 31, 2010

($ 000's)

Adj. No.	Explanation	Amount
1	Sales Revenues	
	a. To properly reflect the impact of the Company's update of rate year sales revenues.	($ 12,700)
	b. To reflect the impact of the Company's sales update on rate year BPP/MFC/Metering revenues.	(75)
	Total Adjustments to Sales Revenues	($ 12,775)
2	Other Operating Revenues	
	a. Late Payment Charges	
	Tracking the Commission's adjustments to sales revenues.	($ 45)
	b. Low Income Discount Program	
	To reflect the Commission's increased funding for the low income discount program.	(3,645)
	c. Deferred Transmission Service Charges (TSC)	

Adj. No.	Explanation		Amount
	Revenues		
	To reflect the increase in the refunding of deferred TSC revenues in the rate year.		4,657
	d. Pension / OPEB Deferral		
	To reflect the increase in the recovery of deferred pension / OPEB expense in the rate year.		(8,365)
	Total Adjustments to Other Operating Revenues		($ 7,398)
3	Operation & Maintenance Expenses (O&M):		
	a. Administrative & General Expenses - Capitalized		
	To update the A&G transfer credit for the Commission's rate year forecast of capital expenditures.		$ 3,970
	b. Company Labor		
	1. To reflect the Commission's adjustments to program change requests.	($ 5,631)	
	2. To reflect the Commission's adjustment to the rate year labor escalation rate.	(9,387)	
	Total Adjustments to Company Labor		(15,018)
	c. Consultants		
	1. To reflect the Commission's adjustment to energy efficiency program related costs.	(1,075)	
	2. To reflect the Commission's adjustment for incremental emergency management costs.	(117)	
	Total Adjustments to Consultants		(1,192)
	d. Contract Labor		
	To reflect the Commission's adjustments to the 5-year underground inspection program.		(7,300)
	e. Employee Pension / OPEBs		
	To reflect the Company's latest forecast of rate year pension and OPEB costs.		50,910
	f. Employee Welfare		
	To reflect the Commission's rate year forecast of employee welfare expense.		(836)
	g. Environmental Expenses		
	To reflect the Commission's historic hiring practices adjustment.		(573)
	h. Informational Advertising		
	To reflect the Commission's rate year forecast of informational advertising.		(6,669)

[*619]

Adj. No.	Explanation		Amount
3	i. Institutional Dues & Subscriptions		
	To reflect the Commission's adjustment to energy efficiency program related costs.		($ 57)
	j. Insurance Premiums		
	1. To reflect the Commission's forecast of rate year D&O insurance.	($ 802)	
	2. To reflect the Commission's forecast of rate year insurance based on the GDP.	(695)	
	Total Adjustments to Insurance Premiums		(1,497)
	k. Interference		
	To reflect the Commission's rate year forecast of municipal infrastructure support expense.		(17,036)
	l. Materials & Supplies		
	1. To reflect the Commission's adjustment to the 5-year underground inspection program.	1,500	
	2. To reflect the Commission's adjustment for incremental emergency management costs.	(8)	
	3. To reflect the Commission's historic hiring practices adjustment.	(62)	
	Total Adjustments to Materials & Supplies		1,438
	m. Outreach & Education		
	To reflect the Commission's rate allowance for Outreach & Education costs.		(730)
	n. Regulatory Commission Expenses		
	To reverse the rate case disallowance associated with general equipment.		2,000
	o. Rents		
	To remove rent associated with the relocation of the West 28th St. Service Center.		(6,828)
	p. Research & Development		
	1. To reflect the Commission's capitalization of R&D costs.	435	
	2. To reflect the Commission's adjustment to energy efficiency program related costs.	(400)	
			35
	q. SBC/RPS		
	To correct the Company's error in $/the level of SBC reimbursements.		24,169
	r. Stray Voltage		
	To reflect the Commission's rate year forecast of stray voltage expenditures.		(1,400)
	s. Trenching		
	To reflect the Commission's		(264)

Adj. No.	Explanation		Amount
	historic hiring practices adjustment.		
	t. Uncollectible Accounts		
	To update the rate year forecast based on the latest 12-months write-off rate.		2,035
	u. Other O&M		
	1. To reflect the Commission's historic hiring practices adjustment.	(253)	
	2. To reflect the Commission's adjustment Structural Integrity / Station Betterment costs.	(394)	
	3. To reflect the Commission's decision for incremental non-labor Emergency Management expenses.	(330)	
	4. To reflect the Commission's rate year forecast of vehicle fuel expense.	(654)	
	5. To reflect the Commission's adjustment to the Public Affairs program.	(36)	
	6. To reflect the Commission's austerity adjustment.	(60,000)	
	Total Adjustments to Other O&M		(61,020)
	Total Adjustments to Operating and Maintenance Expenses		($ 35,863)
4	Depreciation Expense		
	To reflect the Commission's rate year forecast of depreciation expense.		($ 5,519)

[*620]

Adj. No.	Explanation		Amount
5	Taxes Other Than Income Taxes		
	Property Taxes		
	a. NYC		
	To update the forecast of NYC rate year property tax expense.	($ 37,331)	
	b. Westchester		
	To update the forecast of Westchester rate year property tax expense.	(550)	
	Total Adjustments to Property Taxes		($ 37,881
	c. Revenue Taxes		
	Tracking the rate year revenue adjustments.		(527)
	d. Payroll Taxes		
	Tracking the adjustments to rate year labor expense.		(1,362
	Total Adjustments to Taxes Other Than Income Taxes		($ 39,770

Adj. No.	Explanation		Amount
8	Rate Base		
	a. Book Cost of Plant		
	To reflect the Commission's adjustments and updates to plant in service.		($ 106,678
	b. Accumulated Reserve for Depreciation		
	To reflect the Commission's adjustments and updates to accumulated reserve for depreciation.		2,050
	c. Working Capital		
	1. Prepaid Insurance		
	Tracking the adjustments to insurance expense.	($ 1,395)	
	2. Prepaid Property Tax		
	Tracking the adjustments to property tax expense.	(10,474)	
	3. Cash Working Capital		
	Tracking the adjustments to O&M expense.	(11,101)	
	Total Adjustments to Working Capital		(22,970
	d. Regulatory Deferrals:		
	1. Deferred TSC Revenues		
	To update the level of unamortized deferred TSC revenues in the rate year.	(7,030)	
	2. Deferred Scheduled Overhaul Costs		
	To reflect the Commission's treatment for deferred overhaul costs.	(1,258)	
	3. Deferred Facilities Maintenance Costs		
	To reflect the Commission's treatment for deferred Local Law 11 costs.	(743)	
	Total Adjustments to Regulatory Deferrals		(9,031
	e. Accumulated Deferred Income Taxes		
	1. ADR / ACRS / MACRS Deductions		
	Tracking the change to book-tax depreciation differences.	406	
	To reflect deferred income taxes associated with recent tax depreciation law changes.	(166,033)	
	Total ADR / ACRS / MACRS Deductions	(165,627)	
	2. Deferred SIT		
	Tracking the Commission's SIT calculation.	(5,123)	
	Total Adjustments to Accumulated Deferred Income Taxes		(170,750

Adj. No.	Explanation	Amount
	Total Adjustments to Rate Base	($ 307,379

[*621]

APPENDIX III

WAGE PROGRESSION INCREASES EXAMPLE

The Company testified that its union employee count rose 10% over the course of more than three and a half years, or less than 3% per year. Thus, on average, for every 100 union employees that leave the Company, no more than 103 are hired.

a. Assume conservatively that 98 of the 100 employees leaving the Company are below top of grade, and thus still eligible for wage progression increases, and that only two are at the top of grade, whether retirees or other.

b. Assume conservatively that 98 of the new employees are hired below maximum salary level and thus eligible for progression increases. The progression increases for those 98 new employees will merely replace the progression increases for the 98 of 100 below-top-of-grade positions vacated.

c. Assume the five remaining new employees are at entry level (bottom of grade). Those five would be eligible for a cumulative total of 10 progression increases over the course of a year (e.g., the Rate Year).

d. Assume conservatively that it takes only three years, or six progression increases, for a union employee to move from the bottom of the pay scale to the maximum [*622] rate. Thus, a person at top of grade has a salary level six progressions higher than an employee at the bottom of grade. Then every employee at the top of grade who leaves the Company frees up an amount equivalent to six progression increases for new employees at bottom of grade eligible for progressions. The two employees leaving at top of grade will offset 12 progression increases for eligible employees at bottom of grade. The progression increases for the five new employees at bottom of grade would replace only 10 of those

e. Under this very conservative set of assumptions, the Company would save two progression increases for every 100 retirees or other employees leaving. Under any less conservative set of assumptions about the number of employees at top of grade out of every 100 leaving (i.e., >2%), number of new employees hired at entry level (i.e., >5%), or number of years to progress from bottom to top of grade (i.e., >3) the Company will save even more.

APPENDIX IV

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

AVERAGE COST OF LONG TERM DEBT

TWELVE MONTHS ENDING MAR. 31, 2010

(Thousands of Dollars)

Debentures			Due	Debt Outstanding 3/31/2010	Cost Rate	Average Balance 3/31/2010
1998	Series	B	02/01/28	105,000	7.100%	105,000
1998	Series	D	10/01/28	75,000	6.900%	75,000
1999	Series	B	12/01/09	0	7.150%	133,333
2000	Series	A	05/01/10	325,000	8.125%	325,000
2000	Series	B	09/01/10	300,000	7.500%	300,000
2002	Series	A	07/01/12	300,000	5.625%	300,000

Debentures			**Due**	**Debt Outstanding 3/31/2010**	**Cost Rate**	**Average Balance 3/31/2010**
2002	Series	B	02/01/13	500,000	4.875%	500,000
2003	Series	A	04/01/33	175,000	5.875%	175,000
2003	Series	B	06/15/13	200,000	3.850%	200,000
2003	Series	C	06/15/33	200,000	5.100%	200,000
2004	Series	A	02/01/14	200,000	4.700%	200,000
2004	Series	B	02/01/34	200,000	5.700%	200,000
2004	Series	C	06/15/09	0	4.700%	57,292
2005	Series	A	03/01/35	350,000	5.300%	350,000
2005	Series	B	07/01/35	125,000	5.250%	125,000
2005	Series	C	12/15/15	350,000	5.375%	350,000
2006	Series	A	03/15/36	400,000	5.850%	400,000
2006	Series	B	06/15/36	400,000	6.205%	400,000
2006	Series	C	09/15/16	400,000	5.500%	400,000
2006	Series	D	12/01/16	250,000	5.300%	250,000
2006	Series	E	12/01/36	250,000	5.700%	250,000
2007	Series	A	08/15/37	525,000	6.300%	525,000
2008	Series	A	04/01/18	600,000	5.850%	600,000
2008	Series	B	04/01/38	600,000	6.750%	600,000
2008	Series	C	12/01/18	600,000	7.125%	600,000
2009	Series	A	04/01/14	275,000	5.570%	275,000
2009	Series	B	04/01/19	475,000	6.670%	475,000
2009	Series	C	12/01/39	730,000	6.970%	243,333
				$ 8,910,000		$ 8,613,958

[*623]

Debentures	**Average Cost**	**Effective Cost Rate**
1998	7,455	0.077%
1998	5,175	0.054%
1999	9,533	0.099%
2000	26,406	0.273%
2000	22,500	0.233%
2002	16,875	0.174%
2002	24,375	0.252%
2003	10,281	0.106%
2003	7,700	0.080%
2003	10,200	0.105%
2004	9,400	0.097%
2004	11,400	0.118%
2004	2,693	0.028%
2005	18,550	0.192%
2005	6,563	0.068%
2005	18,813	0.195%
2006	23,400	0.242%
2006	24,820	0.257%
2006	22,000	0.227%
2006	13,250	0.137%
2006	14,250	0.147%
2007	33,075	0.342%
2008	35,100	0.363%

Debentures	Average Cost	Effective Cost Rate
2008	40,500	0.419%
2008	42,750	0.442%
2009	15,318	0.158%
2009	31,683	0.328%
2009	16,960	0.175%
	$ 521,024	5.387%

Debentures			Due	Debt Outstanding 3/31/2010
Tax Exempt Debt				
1999	Series	A	05/01/34	292,700
2001	Series	A	06/01/36	224,600
2001	Series	B	10/01/36	98,000
2004	Series	A	01/01/39	98,325
2004	Series	B1	05/01/32	127,225
2004	Series	B2	10/01/35	19,750
2004	Series	C	11/01/39	70,125
2005	Series	A	05/01/39	126,300
				$ 1,057,025
Subtotal:				
Plus: Amortization of Debt Expense:				
Ending Balance of Unamortize Premium				
TOTAL:	$ 9,967,025			

Note: Shaded Issuances and Expenses subject to reconciliation

Debentures	Cost Rate	Average Balance 3/31/2010	Average Cost	Effective Cost Rate
Tax Exempt Debt				
1999	1.6100%	292,700	4,712	0.049%
2001	4.7000%	224,600	10,556	0.109%
2001	1.6100%	98,000	1,578	0.016%
2004	1.6100%	98,325	1,583	0.016%
2004	1.6100%	127,225	2,048	0.021%
2004	1.6100%	19,750	318	0.003%
2004	2.6500%	70,125	1,858	0.019%
2005	0.9200%	126,300	1,162	0.012%
		$ 1,057,025	$ 23,816	0.246%

Debentures	Cost Rate	Average Balance 3/31/2010	Average Cost	Effective Cost Rate
Subtotal:		$ 9,670,983	$ 544,840	
Plus: Amortization of Debt Expense:			$ 16,491	
Ending Balance of Unamortize Premium		$ 30,664		
TOTAL:		$ 9,701,647	$ 561,331	5.786%

Note: Shaded Issuances and Expenses subject to reconciliation

[*624]

APPENDIX V

PUBLIC COMMENT CATEGORIES

A. Opposes any rate increase generally.

B. Opposes any rate increase in light of the weak economy.

C. Opposes any rate increase because of the impacts on customers generally, and especially on the elderly, those on fixed incomes and the poor.

D. The Commission should decide the rate case taking into account the customers' ability to pay.

E. Any rate increase should be conditioned on the elimination of all Company "fat" (example: legal department) and all costs resulting from inefficiency.

F. The Commission should decide the case balancing the need to restrain rate increases with the need for reliable service.

G. The Company has been encouraging customers to use less electricity and now it is citing reduced customer usage as a reason for needing a rate increase. This is unfair.

H. The PSC has not been doing a good job.

I. The Company's profits are already adequate.

J. I pay more for delivery than for commodity.

K. Any rate increase should be conditioned on the elimination of 400 double and damaged poles in the neighborhood of the White Plains North Broadway Citizens Association.

L. Any rate increase should be [*625] conditioned on an improvement in service quality in New Rochelle or generally.

M. Given that oil prices have come down, the Company's rates should decrease rather than increase.

N. EPA supports the proposed shore tariff to help clean the air and improve the health of New Yorkers, especially for low-income and minority persons. A rate setting work group should be quickly convened so that shore power can become a reality by the time the Commission decides the rate case.

O. The proposed rate increase should be granted so that the Company will have money to invest in infrastructure and earn a decent rate of return.

P. Any rate increase should be conditioned on stopping Company advertising that is unnecessary for a monopoly.

Q. Miscellaneous: (1) Any rate increase should be conditioned on requiring the Company to install metal instead of wooden poles, as this is what is done in other states. (2) Concerned about frequent adjustments in budget billing amounts. (3) Rates should be rolled back. (4) Electric bills should be included in rent. (5) The Company's gas rates should be decreased.

SUMMARY AND CATEGORIES OF PUBLIC COMMENTS

(As of 4/2/09 5:50 p.m.)

Customer Comment Number	Category A	B	C	D	E	F	G	H	I
1	x	x	x						
2	x			x					
3	x		x		x				
4						x			
5					x	x			
6	x								
7	x	x							
8	x								
9	x						x		
10	x						x		
11	x							x	
12	x	x							
13	x		x					x	
14	x								x
15									
16	x	x							
17		x							
18	x	x						x	
19									
20									
21	x	x						x	x
22	x								
23	x	x	x				x		
24					x				
25	x	x							x
26	x				x		x		
27	x								
28	x	x							x
29	x	x					x		
30	x	x					x		
31*									
32	x	x					x		
33	x	x		x					
34	x	x		x	x				
35	x				x				

[*626]

Customer Comment Number	J	K	L	M	N	O	P	Category Q
1								
2								
3								

Customer Comment Number	J	K	L	M	N	O	P	Category Q
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14	x							
15		x						
16			x					
17				x				
18								
19					x			
20						x		
21								
22							x	
23								
24								
25								
26								
27								
28				x				
29								x
30								x
31*								
32								x
33								
34								
35								

SUMMARY AND CATEGORIES OF PUBLIC COMMENTS (As of 4/2/09 5:50 p.m.)

Customer Comment Number	Category A	B	C	D	E	F	G	H	I
36				x					
37								x	
38	x			x					
39	x				x				
40									
41	x	x			x				
42	x	x							
43	x								
44	x								
45	x	x							
46	x		x						
47	x	x			x			x	
48	x	x					x		
49	x	x			x				
50	x								

Customer Comment Number	Category A	B	C	D	E	F	G	H	I
51								x	
52	x		x		x				x
53	x		x						x
54	x	x							
55			x						
56			x					x	
57					x				
58	x			x				x	
59			x						
60		x							
61					x				
62		x							
63	x				x		x		
64		x		x					
65	x	x		x	x				
66	x								
67	x			x					
68									
69		x							
70	x				x				
71		x		x	x		x		
72	x				x				
73	x							x	

Customer Comment Number	J	K	L	M	N	O	P	Category Q
36			x					
37								
38								
39			x					
40								x
41								
42								
43								
44								
45								
46								
47								
48								
49								
50								
51								
52			x					
53			x					
54								
55								
56								
57								
58								
59								x
60								

Customer Comment Number	J	K	L	M	N	O	P	Category Q
61				x				
62	x			x				
63								
64								
65								
66			x					
67								
68								x
69				x				
70								
71								
72								
73								

[*627]

Customer Comment Number	Category A	B	C	D	E	F	G	H	I
74	x	x			x				
75	x	x					x		
76			x						
77	x	x							
78	x	x							
79	x	x			x				
80	x								
81	x	x						x	
82	x	x							
83	x	x							
84									
85	x						x		
86	x								
87			X						
88				x					
89	x								
90		x							
91			x						
92	x								
93									
94									
95	x		x						x
96									
97									
98									
99									
100									

Customer Comment Number	J	K	L	M	N	O	P	Category Q
74								
75								
76				x				
77								

Customer Comment Number	J	K	L	M	N	O	P	Category Q
78								
79								
80								
81								X
82								
83								
84								X
85								
86								
87								
88								X
89								
90								
91								
92								
93								X
94				x				
95								
96								
97								
98								
99								
100								

Summary of Consolidated Edison's Electric Reliability Performance Mechanism

Effective January 1, 2009

Various exclusions apply to these standards. Some are related to weather, third party actions, extraordinary circumstances, and catastrophic events.

	Requirement for Revenue Adjustment	Revenue Adjustment Exposure (millions)	
Threshold Standards			
Network Outage Duration	Con Ed Performance > 4.90		$ 5.0
CAIDI (radial)<598>	Con Ed Performance > 1.85		$ 5.0
Network Outages per 1000 customers	Con Ed Performance > 2.50		$ 4.0
Summer Open Automatics (network)	Con Ed Performance >510		$ 1.0
SAIFI (radial)<599>	Con Ed Performance > 0.530		$ 5.0
Major Outages			
Network	The interruption of service to 10 percent or more of the		$ 10.0/event

	Requirement for Revenue Adjustment	Revenue Adjustment Exposure (millions)
	customers in any network for a period of three hours or more.	
Radial	One event that results in the sustained interruption of service to 70,000 customers for a period of three hours or more.	$ 10.0/event
Maximum Exposure		$ 30.0

[*628]

	Requirement for Revenue Adjustment	Revenue Adjustment Exposure (millions)
Remote Monitoring System Reporting Network		$ 10.0/network
	Failure by the Company to achieve 90 percent reporting rate for the Remote Monitoring System in each network during the last month of each quarter.	
Maximum Exposure		$ 50.0
Restoration		
Radial	Restoration of service that does not meet the following target.	$ 0.0 (trial basis)

Overhead Events Emergency Level	Restoration Targets
1-Upgraded	1 Day
2-Serious	2 Days
3A-Serious	3 Days
3B-Full Scale (Tropical storm)	4 Days
3B-Full Scale (Hurricane Category 1-2)	7 Days
3B-Full Scale (Hurricane	</= 3 weeks

Overhead Events
Emergency Level **Restoration**
Category 3-5)

	Requirement for Revenue Adjustment	Revenue Adjustment Exposure (millions)
Program Standards		
Pole Repair	For all similar poles that come into existence on or after 1/1/09, repairs not made within 30 days from the date the Company became aware of the ″Damaged Pole″ or ″Double Damaged Pole″ for at least 90% of these new ″Damaged Poles″ and ″Double Damaged Poles″. Also if all repairs are not completed within six months of the dates the poles are damaged.	$ 3.0
Shunt Removal	For all shunts that come into existence on or after 1/1/09, permanent repairs not made for at least 90% of these new cases within 90 days during the winter months, which are defined for purposes of this metric as January, February, March, April, November, and December, and at least 90% of these cases within 60 days during the remaining six months, May through October. Also if all repairs are not completed within six months of the dates the shunts are installed.	Winter $ 1.5 Summer $ 1.5

[*629]

	Requirement for Revenue Adjustment	Revenue Adjustment Exposure (millions)
No Current Street Lights and Traffic Signals	For all no currents that come into existence on or after 1/1/09, permanent repairs not made for at least 90% of these new cases within	Winter $ 1.5 Summer $ 1.5

	Requirement for Revenue Adjustment	Revenue Adjustment Exposure (millions)
	90 days during the winter months, which are defined for purposes of this metric as January, February, March, April, November, and December, and at least 80% of these new cases within 45 days during the remaining six months, May through October. Also if all repairs are not completed within six months of the dates the no currents came into existence.	
Over-Duty Circuit Breakers		
Per Breaker	If Con Edison does not replace at least 60 over-duty circuit breakers during the rate year.	$ 0.1
Maximum Exposure		$ 3.0
Total Revenue Adjustment Exposure: $ 112		

<598> CAIDI -- Customer Average Interruption Duration Index. The average interruption duration time (customers-hours interrupted) for those customers that experience an interruption during the year.

<599> SAIFI -- System Average Interruption Frequency [*630] Index. It is the average number of times that a customer is interrupted per 1,000 customers served during the year.

Dissent By: HARRISHARRIS

Dissent:

Maureen F. Harris, Commissioner, dissenting

I dissent. The Commission has approved a $ 721.4 million increase in Consolidated Edison's revenues, of which $ 437 million, 60% of the total increase, results from property tax increases and the increases mandated by the recent amendments to Section 18-a of the Public Service Law. This Commission's principal responsibility is to provide the companies it regulates with the revenues necessary to provide safe and reliable service at just and reasonable rates. Here, however, the Commission's approval of a rate increase, comprising principally$ 437 million of government imposed taxes and fees, is neither just nor reasonable during a time of unprecedented economic turmoil.

Our statutory responsibility is to ensure the Company collects only the revenues needed to offset legitimate expenses. This responsibility imposes upon us a duty to determine a proper allocation of expenses between ratepayers and the Company's shareholders. In light of these extraordinary harsh economic realities facing New Yorkers, as noted in the order, [*631] it is unjust and unreasonable to pass 100 percent of these taxes and charges on to the ratepayers. While there may be a presumption that these tax and fee increases should be borne by the ratepayer, presumption does not equate to acquiescence.

Further consideration should have been given to allocating a portion of the increased taxes and 18-a assessments to the Company's shareholders. Imposing some portion of the increased taxes and assessments on the Company's shareholders would provide an economic incentive for the Company to advocate vociferously against such increases.

The unprecedented difficult economic climate and magnitude of the proposed rate increase created unique and difficult circumstances. These unique times warranted a closer look at any and all presumptions of costs passed on to the ratepayer. It is my opinion that the Commission runs the risk of becoming little more than a tax collector for political entities if we do not in these unique circumstances take a closer look at these presumptions. Some will say what I suggest is not proper or appropriate. But when the ratepayer has no option other than to pay these significant taxes and assessments levied upon them, that **[*632]** have nothing to do with the provision of safe and reliable service, and the utilities have no incentive to oppose these taxes since the Commission merely flows these costs on to the ratepayer, it is my obligation to object. I take little comfort that those ratepayer interests are adequately protected by the democratic process. Accordingly, and in order to draw attention to this issue, I choose to exercise my prerogative to respectfully dissent.