

**COMMENTS OF CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
AND ORANGE AND ROCKLAND UTILITIES, INC. ON THE
2009 NEW YORK STATE ENERGY PLAN INTERIM REPORT**

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INTRODUCTION

Consolidated Edison Company of New York, Inc. (“Con Edison”) and Orange and Rockland Utilities, Inc. (“O&R”) (collectively, the “Companies”) hereby submit these comments in response to the 2009 New York State Energy Plan Interim Report (the “Interim Report”), issued on March 31, 2009.

By Executive Order, Governor David A. Paterson created the State Energy Planning Board in April 2008 to develop a State Energy Plan (the “Plan”) to analyze a broad range of matters related to the State’s energy systems, including, but not limited to, the reliability of delivery networks for electricity, natural gas and petroleum products and the interrelated effects of New York’s production and use of energy on the State’s economy, environment and transportation systems. As part of this effort, an Energy Coordinating Working Group was formed to draft the Interim Report, which sets forth certain preliminary findings that are intended to “convey a sense of direction for the Plan and to enable public comment on substantive issues under consideration.” (Interim Report at 1-1). The Interim Report accordingly does not recommend specific actions. Instead, it invites comments on the actions that could be incorporated into the Plan.

The Companies support the State’s effort to establish an integrated Plan¹ that will set goals for the State’s energy policy and provide recommendations to be implemented

¹ The Companies note in particular that this is the first State Energy Plan that will seek to model the interaction of the natural gas and electric systems. (Interim Report at 4-8).

over a 10-year planning horizon. The Companies have previously submitted white papers² and the positions proposed herein are consistent with those papers. We generally agree with the Interim Report's preliminary findings and provide here proposed additional findings and recommendations for specific actions that should be included in the Plan. With respect to findings, the Plan should recognize that:

1. A robust, reliable and modern grid is essential to advance the State's economic goals and to maintain New York City's role as an engine of prosperity for the State and its status as a world capital.
2. Competitive markets have helped to achieve State goals and the State should continue to seek to use competitive solutions where possible. Efforts to improve the markets so that they produce competitive market results should be continued. Competitive structures and principles should be employed where practicable in the State's initiatives.
3. Off-shore wind, solar and energy efficiency are significant potential sources of clean energy in the downstate region, and it may be more beneficial to locate renewables near the State's load center. Other sources of clean energy for the downstate region are oil to gas conversions and the Con Edison steam system.
4. Utilities, along with the New York Power Authority, currently play an important role in economic development and can assist in efforts to improve the local economy.

With respect to specific actions, the Plan should recommend that:

1. The Public Service Commission (the "PSC") support cost effective utility Smart Grid investments, and consider use of incentive ratemaking for such investments.
2. Utilities and/or utility affiliates be afforded an increased role in the supply of clean energy resources, including new clean efficient generation, and State policies clarified to allow for such a role to help the State reach its aggressive clean energy goals.
3. The Regional Greenhouse Gas Initiative ("RGGI") program should be expanded to cover all sectors, including transportation, recognizing that RGGI should be terminated if a federal cap and trade program is adopted.
4. The PSC allow unbundled electric transmission rates for retail customers to promote wholesale markets and align State and federal roles.

² <http://www.nysenergyplan.com/comments2009.html>.

5. Support investment by market participants in new natural gas infrastructure, and consider whether benefits of these investments justify contributions from others.
6. Improve process to use State clean energy funds (SBC, RPS, RGGI) in a coordinated and effective manner.

The State has set aggressive environmental goals, including supplying 45% of its energy needs from renewable resources or energy efficiency by 2015. The Interim Report additionally proposes that further reductions in emissions and greenhouse gases are needed. Achieving all of these goals will require the long term commitment of the State, consumers, and industry, including utilities, which can play an important role in making investments needed to achieve the State's goals. But the cost of achieving the State's goals is a crucial factor which needs to be at the forefront of policy decisions regarding the appropriate path to achieving them. This would be true under any circumstances, but it is critical to take costs into account in the current economic environment.

The Plan needs to support development of a strong and reliable energy grid for the future and it needs to take into account the State's economic needs for the present. A recent development is the substantial increased use of utilities to collect state and local taxes. Taxes disproportionately imposed on utility supplied energy unjustifiably raise its costs.³ Using utility bills in that manner could create a risk that customers will not be willing to pay for the infrastructure investments needed to maintain a reliable energy

³ And these additional costs cannot be justified by citing externalities associated with utility supplied energy, especially in the case of electricity, which is the only economic sector in this State that is subject to carbon regulation.

supply or to pay for necessary clean energy investments. Further, customers who are liable for income taxes may benefit from having such amounts charged directly to them as taxes rather than hidden as part of their utility bill.⁴ The Plan should recommend that State and local governments reconsider their policies on utility taxation.

Clearly, State policies need to reflect the current economic climate and its potential longer term impact. The federal government and at least one neighboring state have authorized stimulus spending to improve economic activity. Likewise, many investments needed to achieve Plan goals would have the secondary effect of increasing capital investments within the State and could help support job creation and economic activity. The Plan should recognize the important role that utilities can play in allowing the State to increase economic activity through targeted investments in energy infrastructure and clean energy. Finally, in order for utilities to achieve that role, the Plan should recommend that utilities be given increased flexibility to achieve those goals. Current proceedings that would allow utilities to make increased investments in energy efficiency and Smart Grid need to move more quickly, because the State's economic and energy goals will be thwarted if the goal is to get the programs "just right" before any investments can be made.

⁴ While state income and local property taxes are deductible for federal income tax purposes for the State's residents, monies collected using utility bills as the mechanism for collection are not. Furthermore, amounts collected through utility bills from all customers are more of a burden on some customers than on others; income taxes are structured to impose lower burdens on low income taxpayers than on other taxpayers.

DISCUSSION

I. The Energy Plan Should Contain these Findings Proposed by the Companies.

1. Recognize the need for a robust, reliable and modern grid to further the State's economic goals and maintain New York City as an engine of prosperity for the State and its status as a world capital.

The Interim Report appropriately recognizes the need for the State to continue its efforts to develop a clean energy economy. The Plan should also discuss the important need to encourage investment in the State's energy infrastructure. Investment is needed today for today's reliability and for tomorrow's reliability and increased efficiency that will contribute to achievement of the State's environmental goals. The required investments are significant due to the capital intensive nature of the energy grid and the very significance of these investments are sufficient justification to adopt clear and unequivocal policies to support them. The Interim Report states (4-1) that the Plan should address "access to adequate capital, both public and private, to meet the State's clean energy agenda." But this access is just as necessary in order for the State to continue to maintain a robust, reliable infrastructure, and the Plan should recognize that need.

The State's energy utilities are a major element of the New York economy, as employer, as taxpayer and as capital investor. This is especially true for the infrastructure of New York City. As the PSC has recognized, "given New York City's position as the financial center of the nation, and the intertwining of the electric system with the ability of the City and its businesses and residents to function, it is indisputable that Con Edison provides a vital foundation to the economies of the City, the State, and the nation."⁵

⁵ Case 01-M-1958, *Order on Treatment of Electric Interference Costs*, at 6 (Jan. 30, 2004).

Unquestionably, the PSC should implement policies that facilitate Con Edison's ability to develop a 21st century infrastructure for New York City that will enable it to maintain and advance its status as a world capital.

Moreover, as a result of the current economic volatility, capital – both debt and common shares – will be more expensive going forward. Consequently, investors – in both debt and equity (shares) – will demand greater risk premiums for the risks they assume.

When the financial markets are in upheaval, debt and share investors seek reassurance from consistency in action and fair treatment by the companies in which they invest. In that context, it is all the more important that State rate-regulation adhere to its duty of allowing fair and adequate returns to the providers of capital to utilities. This obligation recognizes that investors support the financial ability of the utilities, which in turn must continue to provide safe and adequate service to customers no matter the condition of the markets. Fair treatment of potential lenders includes providing assurance of prompt and full repayment through strong credit measures and a reasonable capital structure. Fair and adequate returns for potential share investors are achieved not only through a reasonable allowed rate of return but also from a reasonable chance of earning that return. The latter includes recognition of and allowance for the real costs of doing business (both financial and operating) and a reasonable balancing of rewards and penalties for performance.

The Plan should accordingly contain such findings and recommend actions that help to achieve that goal, such as providing a fair utility regulatory environment and incentives for appropriate actions, including not only Smart Grid investments, *see*

Recommended Action No. II.1 below, but also deployment of energy efficiency and renewable resources. The Plan must recognize that such incentives, when coupled with similarly appropriate penalties, provide an appropriate balance for investors while encouraging results for customers for years to come. Setting policies that provide utilities with the required financial strength and resiliency is essential.

2. Find that competitive markets have helped to achieve State goals and that the State should continue to seek to use competitive solutions where possible. Efforts to improve the markets should be continued. Competitive structures and principles should be employed where practicable in regulated initiatives.

The State began to restructure the State's electric and natural gas industries in the 1990's. Since that time, the State has achieved considerable progress in moving toward efficient competitive markets that have avoided the upheaval that has occurred in other states. In 2004, the PSC adopted a "Vision Statement" that continued the State's general policy⁶ favoring competition:

The provision of safe, adequate, and reliable gas and electric service at just and reasonable prices is the primary goal. Competitive markets, where feasible, are the preferred means of promoting efficient energy services, and are well suited to deliver just and reasonable prices, while also providing customers with the benefit of greater choice, value and innovation. Regulatory involvement will be tailored to reflect the competitiveness of the market.

The Companies support competitive markets and recommend that the Plan contain a statement continuing to support competitive markets, similar to the Vision Statement adopted in the 2004 Policy Statement. At the same time, certain policies implemented to further competitive markets in the early days of restructuring should be revisited in light of the State's aggressive clean energy goals. The Companies' policy recommendations

⁶ Case 00-M-0504, *Statement of Policy on Further Steps Toward Competition in Retail Energy Markets*, at 18 (Aug. 25, 2004).

designed to increase utility involvement in providing renewable energy supplies are discussed under Recommended Action II.2 below.

The PSC stated (at 20) that its Vision Statement was consistent with preserving “environmental values,” but beyond that there was no discussion of how aggressive environmental goals would be achieved. There is credible evidence that competitive markets have contributed to the improvement of the State’s environment. While not entirely attributable to State’s competitive markets, power plant efficiencies have improved by 21% since the onset of competitive wholesale markets, and consequently emissions from power plants have been reduced.⁷

Another area where competitive markets can play an important role to achieve environmental goals is the move toward more transparent pricing to customers. The 2004 Policy Statement began this movement by providing (at 32) that there would be no new hedging by utilities for large commercial and industrial customers. Since that time, the PSC has provided that the largest electric customers that have competitive options should be subject to mandatory day-ahead hourly pricing.⁸ Con Edison electric customers with demand greater than 1500 kW are currently billed using day-ahead hourly pricing for energy; Con Edison has received permission to use such hourly pricing beginning in November 2009 for customers with demands over 1000 kW and in May 2011 for customers with demands over 500 kW. O&R electric customers with demand greater than 1000 kW are also currently subject to day-ahead hourly pricing, and O&R has filed

⁷ See NYISO press release “Power Plant Efficiency Improved with Competition.” April 20, 2009. Accessed at http://www.nyiso.com/public/newsroom/press_releases/index.jsp on May 15, 2009.

⁸ See, e.g., Case 03-E-0641, *Order Denying Petitions for Rehearing and Clarification in Part and Adopting Mandatory Hourly Pricing Requirements* (Apr. 24, 2006).

plans to implement this energy pricing for all customers with demands greater than 500 kW. The Plan should note this progress and provide that it should continue.

With respect to competitive wholesale markets, Con Edison continues to support such markets. The Companies continue to be active in the NYISO stakeholder process, which provides market participants an opportunity to review and provide input on the policies and rules that the NYISO uses to operate the bulk power system and to administer the wholesale electricity markets. We support policies that promote a high level of electric system reliability and fair and efficient wholesale electricity markets and market rules to protect consumers when competition is limited. We have supported in particular NYISO rules and rule changes to promote competitive NYISO markets and to protect consumers from potential market abuse, including the establishment of energy market bid caps and actions to prevent market power abuse in the New York City capacity market.

The Companies have supported and will continue to support needed reforms, including those that would make the NYISO more efficient and transparent, including the implementation of the recommendations in the recent Federal Energy Regulatory Commission ("FERC") audit report. For example, deploying Smart Grid technologies to increase system situational awareness as well as rules to better integrate intermittent resources such as wind, solar, energy efficiency and demand response are all laudable goals that require the commitment of the NYISO, regulators, and market participants, including the Companies. Accordingly, we support conducting a comprehensive detailed analysis of overall impact to consumers to help determine whether changes to market structure should be further pursued.

3. Recognize that off-shore wind, solar and energy efficiency are significant potential sources of clean energy in the downstate region, and it may be more beneficial to locate renewables supply near the customer demand in the State. Other sources of clean energy for the downstate region are oil to gas conversions and the Con Edison steam system.

The Interim Report appropriately recognizes that off-shore wind can play a significant role in helping the State to achieve its clean energy goals: “Significant potential remains for the development of large-scale wind generation, both on-land and off-shore in the coastal waters of New York. As a power generation resource, wind provides intermittent energy to the system, and the wind turbines must be located at sites of greatest potential for electricity generation.” (Interim Report at 4-5). The evidence to date suggests that off-shore sites may provide substantial reliable electricity supplies that are more coincident with the downstate system peak demand than generation sourced from on-shore wind. The Interim Report appropriately recognizes (Interim Report at 4-5) that transmission may be needed not only for on-shore transmission, but also for off-shore resources.

The Plan should also recognize that other clean energy options are available to the downstate area. These include increased use of photovoltaics, energy efficiency, oil-to-gas conversions, and, as important, the Con Edison steam system in New York City.⁹ Air conditioning that uses Con Edison steam deserves special recognition. Steam air conditioning provides environmental benefits because it helps to reduce the output of the most inefficient gas turbines that are used to serve electric customers’ peak load.

⁹ Case 03-S-1672, *Order on Con Edison Steam Business Development Plan*, at 2 (Dec. 5, 2005) (“Steam is an important and essential source of energy for heating and cooling for approximately 1,800 customers in New York City”). Among other measures, tax equity for steam should be considered in order to encourage increased system usage. *See Con Edison Steam Business Development Plan*, at 116-17 (Aug. 26, 2005).

Emissions from buildings, from burning fossil fuels in space heating and water heating applications, is much less regulated than emissions from power plants or vehicles, and less technology has been invested in reducing these emissions.¹⁰ The Plan should support local efforts to minimize the use of high emission, high particulate fuels like heavier fuel oil grades commonly used in large residential and commercial boilers (e.g., #4 and #6 fuel oil). In some instances, this can be done by providing incentives to convert buildings from fuel oil to the Con Edison steam system. To make the environmental benefits of this conversion even more compelling, the Con Edison steam system has announced additional plans to convert plants to natural gas. In addition, substantial potential for environmental benefits (including reduced NO_x and SO_x emissions, reduced CO₂, and reduced particulate emissions) can be achieved by converting buildings from the direct use of fuel oil to natural gas, and should be pursued.¹¹ Based on an analysis of data from New York City's Department of Environmental Protection, Con Edison has identified over 7,700 large buildings in Con Edison's natural gas service territory that currently burn #4 or #6 fuel oil. Converting a large number of these buildings to natural gas should be pursued, and additional natural gas infrastructure to support this demand should be constructed (*see* the Recommended Action in Section II.5 below).

Promotion of all of these local sources of supply would lead to reductions in air emissions for the downstate area. The Plan should take into account that the downstate

¹⁰ The State should also finally resolve the air emission regulations governing distributed generation facilities, and seek to put those facilities on a playing field level with central station generation to the extent feasible.

¹¹ Con Edison also supports the recent New York City proposal to have property owners audit their buildings and implement energy efficiency measures with a payback of 5 years or less. See "Mayor Bloomberg and Speaker Quinn Announce Major Package of Legislation to Create Greener, Greater Buildings Plan for New York City," New York City Office of the Mayor Press Release, April 22, 2009.

load pockets would benefit more from local supplies, which also may be less costly for customers in the long run.¹² As noted in the Interim Report (at 4-15), Con Edison will soon be making a filing to determine the degree to which demand response programs could improve local air quality and lower costs to consumers.¹³ It is important that policy initiatives be based on what is best for the local region, and the Plan should find that the local utility, working together with its stakeholders, would best know how to deploy resources to achieve a particular region's clean energy goals.

4. Recognize that utilities, along with the New York Power Authority, can play an important role in economic development.

The Interim Report preliminarily finds that the “New York Power Authority ... is a valuable State asset which may provide even greater value through a restructuring of the Authority’s economic development programs.” (Interim Report at 4-12.) The Companies support the State’s efforts to examine NYPA economic development programs to determine whether they are being implemented in the most beneficial manner. The Plan should also recognize the important role that local utilities can play in economic development. The State should accordingly permit utilities to continue implementing programs that will promote economic growth in their service territories and

¹² A recent New York City study concluded that “there is no low-hanging fruit from a transmission perspective” and that the City should focus on developing energy efficiency, off-shore wind, and efficient, new in-City generation.
https://www.nyiso.com/public/2009symposium/presentations/Jim_Gallagher_NYCMasterTransmissionPlan.pdf.

¹³ Case 09-E-0115, *Proceeding on Motion of the Commission to Consider Demand Response Initiatives*, (Feb. 17, 2009). The PSC also noted in that Order, at 3, that a “significant percentage of the load in Zone J is served by NYPA. NYPA rates are generally lower and less time-sensitive than the Company’s rates. Although NYPA offers demand response programs, some demand response opportunities that would be cost-effective from a system standpoint may be unavailable because of the NYPA pricing structure to its end-use customers. This proceeding should examine the extent to which a cooperative approach with NYPA may enable the Company or NYPA to take advantage of more cost-effective demand response measures.”

ensure that the decoupling mechanisms currently in place do not provide utilities with a contrary economic incentive.¹⁴ Also, while NYPA has in the past facilitated development in transmission and generation, so too have the utilities, and the Plan should recognize the important role of utilities in such development, in particular to carry out public policy objectives.

II. The Plan Should Recommend the Actions Proposed by the Companies.

- 1. Recommend that the PSC support cost effective utility Smart Grid investments, including the potential use of incentive ratemaking for such investments.**

As the Interim Report states (at 4-11-12),

There are many working definitions of a Smart Grid and a wide variety of technologies that will be employed in a Smart Grid initiative. In a report prepared for the DOE, the Smart Grid is described as one which would make the grid into “a more intelligent, resilient, reliable, self-balancing and interactive network that enables enhanced economic growth, environmental stewardship, operational efficiencies, energy security and consumer choice.” Or, more simply, “the Smart Grid is defined as a broad range of solutions that optimize the energy value chain.”

The Interim Report further notes (at 4-12) that several utility pilot projects are under review, including an O&R project to upgrade certain substations and distribution circuits to perform as “intelligent” networks with advanced sensors, on-line decision-making software and improved communications. Given the desire to implement Smart Grid

¹⁴ The Plan should accordingly recommend that the PSC reconsider its determination rejecting a revenue per customer decoupling mechanism, and recognize, as stated in the recommended decision in Con Edison’s 2008 electric rate case, that there is an intangible benefit in having utility interests aligned with the economic interests of its service territory. See Case 07-E-0523, *Order Establishing Rates for Electric Service*, at 17 (Mar. 25, 2008).

projects, the Interim Report appropriately states (*id.*) that “the Plan is likely to recommend actions that will accelerate the pace of this transformation.”¹⁵

The Companies propose that the recommended actions that will “accelerate the pace” of the implementation of Smart Grid should include providing utilities with the economic incentive to implement such improvements that significantly enhance the value of a utility’s infrastructure. At the federal level, for example, it was decided to adopt a policy for transmission incentives in order to promote construction of more transmission facilities.¹⁶ Similarly, the Plan should recommend that the PSC commence a generic proceeding to determine the kinds of incentives that should be granted to utilities for making Smart Grid investments.¹⁷

2. Afford an increased role for utilities and utility affiliates in the supply of clean energy resources, including new clean efficient generation, and clarify state policies to allow for such a role to help the State reach its aggressive clean energy goals.

At the outset of industry restructuring, it was decided to restrict the utilities from engaging in certain activities because of the potential harm that could result to the nascent competitive markets that the State was seeking to nurture. For example, in deciding to allocate to the New York State Energy Research and Development Authority (“NYSERDA”) virtually all of the State’s energy efficiency funds collected through utility surcharges, the PSC stated that it was “sensitive to the concerns of many parties

¹⁵ The Companies jointly submitted to the PSC a petition seeking approval of and supplementary funding through rate recovery for Smart Grid projects in anticipation of requesting federal funding for up to half of the costs of these projects under the American Recovery and Reinvestment Act.

¹⁶ Order No. 679, 116 FERC ¶ 61,057, *Promoting Transmission Investment through Pricing Reform* (Jul. 20, 2006).

¹⁷ The PSC should also consider commencing a generic proceeding on the incentives and penalties in general, and whether utilities are subject to an appropriate risk/reward balance.

that the utilities may be tempted to use SBC funds anti-competitively.”¹⁸ Accordingly, notwithstanding the utilities’ “considerable expertise in administering a variety of public programs,” the PSC decided to have NYSEDA become the chief administrator for virtually all energy efficiency programs.¹⁹ The PSC also adopted a restrictive policy on ownership of generation. In particular, it adopted a policy statement that applies to generation affiliates of regulated companies.²⁰ The PSC did not and has not adopted a formal policy on vertical market power with respect to generation owned by regulated electric utilities.²¹

Since that time, the State has adopted aggressive environmental goals, as embodied in Governor Paterson’s “45 by 15” goal. Achievement of these aggressive public policy goals will be difficult, and it has been recognized that it will be impossible to achieve them without increased utility involvement. The PSC has already begun to encourage increased utility participation in the achievement of energy efficiency. In the Energy Efficiency Portfolio Standard Proceeding, the PSC established a longer-term framework for achievement of energy efficiency that includes a more substantial role for utilities.²²

The PSC noted the advantages of utility administration:

They offer a diversity of approaches that may lead to a wider offering of programs than would occur under a centralized administrator. They can be held directly accountable to the Commission through a system of performance-related incentives and disincentives. Because energy efficiency is often the most cost-effective means of addressing demand,

¹⁸ Opinion No. 98-3, *Opinion and Order Concerning System Benefits Charge Issues*, at 12 (Jan. 30, 1998).

¹⁹ It should be noted, however, that it was generally expected at that time that that the public policy initiatives to be funded should only be those needed to transition to a competitive market.

²⁰ Case 96-E-0900 et al., *Statement of Policy Regarding Vertical Market Power* (Jul. 17, 1998).

²¹ When it considered Con Edison’s East River Repowering Project in 2001, the Siting Board found that vertical market power would not be a concern. Case 99-F-1314, *Opinion and Order Granting Certificate of Environmental Compatibility and Public Need*, at 8-9 (Aug. 30, 2001).

²² Case 07-M-0548, *Order Establishing Energy Efficiency Portfolio Standard and Approving Programs* (Jun. 23, 2008).

utilities should be encouraged to look to efficiency measures as their first option in addressing system needs.

Utilities also have an important role in ensuring that public policy program funds, including energy efficiency, are distributed fairly and equitably throughout the State. While the Interim Report notes (at 4-3) NYSERDA's accomplishments under the System Benefits Charge ("SBC") program to date, the Report should have noted in particular NYSERDA's difficulties in penetrating the downstate market.²³

While the PSC has recognized that utilities can play an important role in administering energy efficiency programs, the same policies have not yet been applied to the development of renewable energy resources. Moreover, while the State's Renewable Portfolio Standard ("RPS") program has fostered the construction of more than 1,000 MW of new wind facilities, this has occurred exclusively in the upstate region. Accordingly, regional equity is even a greater concern with the RPS than with energy efficiency.

Allowing the State's utilities to build and own renewable generation will increase the likelihood that renewable power goals are achieved fairly and equitably throughout the State. It would also enable fledgling renewable facilities to be developed in all areas of the State, and would likely encourage different types of resources such as solar or off-shore wind, especially in the downstate region, which is not ideally suited to on-shore wind generation. These newer more experimental types of renewable resources could bring additional value to the State's portfolio of renewables, because solar and off-shore wind tend to peak much closer to the system peak than on-shore wind. Utilities can

²³ See New York Times, December 28, 2008, *Obscure Fee Pays for Efficient-Energy Projects* ("An analysis of how the money has been used over the past decade shows that a disproportionate amount goes upstate"). (<http://www.nytimes.com/2008/12/29/nyregion/29sbc.html?scp=6&sq=NYSERDA&st=cse>).

facilitate competitive commercialization of these technologies, bring jobs to the State, and facilitate the State's role as a leader in the deployment and development of new clean energy technologies. The utilities' role in public policy could be re-assessed every three to five years to determine whether certain technologies are being adequately provided by competitive markets, and if newer technologies would benefit from further utility support.

At a minimum, the State should endorse separate solicitations for the upstate and downstate regions, including utility proposals, which would enable the downstate region to participate to a greater extent in the RPS program as well as making it more likely that all areas of the State enjoy the reduced emissions that occur as a result of more renewable energy. The RPS "Main Tier" program could be revised to set separate goals for renewable energy generated in the upstate and downstate regions, and could additionally reflect the higher value of solar or off-shore wind by granting additional renewable energy credits for RPS bidders who propose projects using those technologies.

Accordingly, the Plan should recommend that the PSC reconsider the role of utility generation in achieving the State's renewable power goals and that it commence a generic proceeding to establish a policy on utility-owned generation. Recently, the PSC has begun discussing the continued applicability of these kinds of policies for a particular utility in light of the desire to achieve the State's environmental goals.²⁴ The Companies recommend adoption of a generic policy to guide all utilities on how to proceed to help in achieving the State's renewable power goals.

²⁴ Case 07-M-0906, Joint Petition of Iberdrola, S.A., *et al.*, for Approval of the Acquisition of Energy East Corporation by Iberdrola, S.A. *Abbreviated Order Authorizing Acquisition Subject to Conditions* (Sept. 9, 2008).

Utilities are currently authorized to build generation to maintain system reliability goals (*i.e.*, backstop generation solutions required by the NYISO reliability planning process). The reliability of the electric power system is a joint responsibility of the NYISO and all of the State's transmission-owning utilities. The latter have committed to providing backstop reliability solutions in the event the NYISO detects violations of reliability criteria in its ten-year Comprehensive System Planning Process (if no market-based reliability solution is proposed).

Beyond these roles, the State Energy Plan should also re-evaluate the role of utility affiliates, and how utility affiliates should be allowed to participate in the development of needed resources. Utility affiliates can provide additional capital in endeavors where they have an investment interest. This would help to avoid the need to call for "out-of-market solutions," *e.g.*, a regulated backstop reliability solution. It would be timely for the PSC to clarify its policy on when such investments can be made now that the State is almost ten years into competition and the competitive market is much more mature than it was at the time the Vertical Market Power policy statement was adopted.

3. The RGGI program should be expanded to cover all sectors, including transportation, recognizing that RGGI may be terminated if a federal cap and trade program is adopted.

As a result of RGGI, the electric generation sector in the Northeast (including New York), became the first sector in the American economy to explicitly pay for CO₂ emissions. RGGI is applicable only to the electric generation sector; other more significant sources of CO₂ currently have no cost attached to their CO₂ emissions. As recognized in the Interim Report (4-6), a substantial portion of the State's CO₂ emissions – 76% – comes from the transportation and building sectors; accordingly, meaningfully

reduced carbon emissions can be best achieved by attaching consistent price signals regarding the cost of CO₂ to all fuels and the participation of all sectors of the economy. Moreover, environmental harm could result from such unequal regulation. For example, in an application where there is a choice between an electric-powered compressor and a diesel-powered compressor, assigning a cost of CO₂ solely for electricity and not for diesel fuel will encourage fuel switching and, potentially, more CO₂, SO_x, NO_x, and fine particulate emissions than if electric power were chosen.

The Plan should recommend that the entire economy participate in programs that assign an explicit cost to emitting CO₂. This can be done as in RGGI, or by adding a carbon fee to all fuels that is indexed to the price being assigned to carbon in the RGGI auctions. The potential impact of increased fees at a time of economic weakness can be mitigated by adjusting State taxes downward (such as payroll taxes). Nevertheless, this will probably not be necessary if the federal government adopts nationwide greenhouse gas reduction regulation that preempts any State program. The Companies believe that the RGGI program should be terminated if a federal program is adopted, especially in accordance with the terms of the letter that was recently sent to Congress by the governors of the ten Northeastern states that are participating in RGGI. The governors stated that they would not object to the termination of RGGI if their States were provided with equivalent revenues for clean energy initiatives from a federal cap-and-trade program.²⁵ In any event, regardless of the outcome of the federal cap-and-trade legislative efforts, there should not be redundant carbon regulation.

²⁵ Patrick, Deval et al. Letter to Henry A. Waxman and Edward J. Markey regarding the American Clean Energy and Security Act of 2009 and RGGI. April 21, 2009. Original accessible at http://usclimatenetwork.org/resourcedatabase/RGGI%20Governors%20ACES%20%23383048.pdf/at_download/file.

4. The PSC should allow unbundled electric transmission rates for retail customers to promote wholesale markets and align State and federal roles.

The State should allow the *effective* unbundling of electric transmission and distribution rates. Transmission enhancements have numerous potential benefits to the public, including facilitating the integration of more renewable energy, supporting reliability, improving markets (particularly in conjunction with digital enhancements of the transmission system) and potentially providing energy and generation capacity benefits for customers. But utilities may be discouraged from investing in transmission if the end result of receiving a FERC-approved return on transmission investments is that the PSC reduces overall delivery rates, including transmission, to levels deemed appropriate by the PSC. Transmission is typically a small portion of a customer's delivered cost of energy and, considering the benefits of additional transmission modest increases in transmission costs, are in the public interest, if approved by the Federal Energy Regulatory Commission.²⁶ Furthermore, there are several federal legislative efforts to encourage additional transmission investments across the country.

Establishing separate retail distribution and transmission rates subject to independent reviews by the PSC and FERC would align ratemaking within the scope of each agency's statutory jurisdiction, and separating transmission function charges from the PSC rate process would dispel the impression that the PSC approves transmission charge increases that are actually beyond its control. At the same time, it would signal to the federal government that the State supports national transmission policies.

²⁶ The controversies surrounding the cost allocation of new transmission resources and the concept of one utility charging another utility's customers for transmission assets has been a barrier to the development of additional transmission. The State can encourage transmission expansion by supporting State-wide cost allocation accompanied by a joint ownership model for high voltage transmission when such transmission benefits customers.

The Plan should also recognize that the STAR²⁷ effort, an examination by the State's transmission owners of the State electric transmission system over a ten-year period starting in the year 2018, could lead to planned transmission investments made by individual NYTOs over the next 20 years. Upgrades would be considered in a coordinated manner in response to reliability, economic considerations, and public policy and regulatory initiatives. These initiatives would include, but not be limited to, the required integration of renewable energy and integration of cost-effective new technologies that support increased situational awareness through Smart Grid applications. Moreover, STAR will look at advancing planned transmission to be in service prior to 2018 if this would be helpful to integrate renewable power.

5. Support utility investment in and contracting for new natural gas infrastructure, and consider whether electric benefits justify contributions from electric customers.

Natural gas is an important fuel in New York State's energy portfolio, providing 27% of the primary energy consumed by New Yorkers, fueling 35% of the State's electric generation capacity, and heating more than half of all residences. There are over 4.7 million natural gas customers in New York, consuming more than 1,100 billion cubic feet (BCF) of natural gas annually. The role of natural gas in the energy markets is expected to grow significantly in the future, due to its combination of affordable pricing, desirable emissions characteristics for uses such as heating and transportation, and its secure and abundant domestic supply. Indeed, half of all the future electric capacity in the NYISO interconnection queue will burn natural gas. Local natural gas production is

²⁷ The STAR effort is the Strategic Transmission and Reliability plan being carried out by Con Edison, Orange & Rockland, Central Hudson, New York State Electric & Gas, Rochester Gas and Electric, and National Grid.

also expected to grow, due to recent technological advances in the extraction of natural gas from shale deposits, which are abundant in and around New York State.

The Plan should consider how new gas transmission capacity (either on a local distribution company's gas transmission network or on the interstate gas pipeline system) can be funded when that new gas transmission capacity also benefits electric customers in a region. The benefits examined would include impacts on electric power costs, electric capacity costs, transmission congestion costs, net of hedging mechanisms, and the elimination or reduction of electric market costs, including uplift charges, made possible by new natural gas infrastructure. The impact of local reliability rules related to natural gas contingencies on the electric system, such as the Minimum Oil Burn rules in the Con Edison service territory, will also likely be reduced with the addition of more local natural gas infrastructure.

Growth in customer requirements for natural gas transmission and distribution service, and the associated need to support delivery system reliability requires continued review of existing infrastructure. It is likely that additional downstate delivery points (in Manhattan and in Brooklyn) will be needed in the near future, and the Plan should support this organic expansion of the State's gas infrastructure.

As discussed above (in Section I.3), converting buildings to natural gas would also provide substantial reductions in emissions, but could not be accomplished without an increase in the capacity of the local natural gas distribution and transmission system. In addition, the increased use of buses fueled by compressed natural gas should be encouraged and would also increase demands on the local delivery system. The Plan should consider how rate treatment of converting large numbers of buildings to natural

gas can be implemented so that these new customers pay the embedded system average cost and not the higher marginal cost for increases in distribution capacity, because moving these customers to natural gas contributes to achieving a public policy goal.

6. Improve process to use State clean energy funds (SBC, RPS, RGGI) in a coordinated and effective manner

To the extent the Plan encourages investments in clean energy, the Plan should take measures to consolidate these investments because doing so will allow customers to benefit from these investments in a more cost-effective manner. New York has access to substantial funds collected directly from electric customers, via the RGGI auctions, and the programs funded by RPS surcharge and the SBC, virtually all of which are currently managed by NYSERDA.

The State should streamline its energy initiatives by creating a single program, with an integrated goal of achieving a sustainable clean energy system (and eliminating the separate SBC, RPS and RGGI funded programs currently administered by NYSERDA, which may have the secondary effect of reducing administrative costs). By creating a single goal – “achieving a sustainable clean energy system” – but leaving room as to how this will be achieved, the State is more likely to deliver benefits at lower costs. An example of this is the provision in the RGGI Operating Plan that all incremental RGGI funds received from allowance prices in excess of \$5/ton will be spent to achieve the State’s RPS goal.

Moreover, currently, the State has excess funds collected but not spent as a result of the RPS and SBC programs. For SBC and RPS, records indicate that \$291,630,098

and \$49,311,379, respectively, has been collected from customers but not spent on program activities.²⁸ In total, these figures indicate that \$340 million of customer money collected to achieve environmental or reliability benefits has not been spent.

The Plan should recommend moving quickly to consolidate and invest these funds in programs that achieve the goals of the RGGI, RPS and SBC programs (energy efficiency, demand reduction, pollutant and CO₂ reduction) or substantially reduce or suspend collection of the RPS and SBC funds to provide economic relief to electric customers. Disbursing the money in these funds more quickly will result in increased economic activity. New York City estimates that for every \$1 million spent on an infrastructure project, approximately 8 direct and indirect jobs are created.²⁹ By speeding the investment of funds, the State has the potential to create more than 3,400 additional jobs at a time when unemployment rates are rapidly rising.

The State's utilities should be key partners in defining and designing a program to move to a sustainable clean energy system and they would be a key channel for investing these funds wisely and quickly. Utility programs that are already up and running and which effectively reach all regions should be rapidly increased.

²⁸ NYSERDA Annual Investment Report – March 31, 2008.

²⁹ City of New York which relies on the New York City Bureau of Economic Analysis, RIMS II Multipliers for New York City, 2006.

CONCLUSION

The Companies appreciate the opportunity to provide these comments on the Interim Report and welcome the opportunity to continue working with the working groups to develop a plan that will meet New York State's laudable energy goal of moving toward a sustainable clean energy economy that will further economic growth.

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/s/ Stuart Nachmias
Stuart Nachmias
Vice President, Energy Policy and
Regulatory Affairs
Consolidated Edison Company of
New York, Inc.
4 Irving Place
New York, New York 10003
(212) 460-2580