

ROBERT N. HOGLUND - REBUTTAL
ELECTRIC

1 Q. Please state your name.

2 A. My name is Robert Hoglund. I am employed by the
3 Consolidated Edison Company of New York, Inc. ("Con
4 Edison", "CECONY", or the "Company") as Senior Vice
5 President Finance and Chief Financial Officer.

6 Q. Are you the same Robert Hoglund who previously
7 submitted direct testimony in this case?

8 A. Yes, I am.

9 Q. What is the purpose of this rebuttal testimony?

10 A. My rebuttal testimony responds to (1) certain
11 statements contained in the direct testimony of Ronald
12 J. Liberty and Frank W. Radigan on behalf of the
13 County of Westchester ("Westchester"), (2) certain
14 statements contained in the direct testimony of Ms.
15 Prylo and Mr. Henry ("Finance Accounting Panel" or
16 "Panel") on behalf of the New York State Department of
17 Public Service Staff ("NYPSC Staff" or "Staff"), and
18 (3) certain statements concerning Directors' and
19 Officers' Insurance contained in the direct testimony
20 of the Staff Accounting Panel ("the Accounting
21 Panel"), Mr. Helmuth W. Schultz, III, of the Consumer
22 Protection Board ("CPB") and Mr. David F. Bomke of the
23 New York Energy Consumers Counsel ("NYECC") concerning

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1 Directors & Officers ("D&O") insurance.

2

3 (1) County of Westchester

4 Q. Do representatives for the County of Westchester
5 ("Westchester") provide testimony regarding equity
6 returns?

7 A. Yes. Ronald J. Liberty and Frank W. Radigan, on behalf
8 of Westchester, advocate a book equity return for the
9 Company of 8.7% for the rate year.

10 Q. Do Mr. Liberty and Mr. Radigan offer any basis for
11 their recommendation?

12 A. They do not. Their testimony not only provides no
13 basis for their recommendation, it does not
14 demonstrate awareness of the standards applicable for
15 setting returns on equity for US utilities. The
16 testimony shows no recognition of the Commission's
17 legal obligations as set forth in Bluefield Water
18 Works & Improvement Co. v. Public Service Commission
19 of West Virginia, 262 U.S. 679 (1923) and Federal
20 Power Commission v. Hope Natural Gas Company, 320 U.S.
21 591 (1944) to provide a fair and equitable return to
22 the providers of the Company's capital.

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1 Q. Does Westchester offer any analysis to support its
2 equity return recommendation?

3 A. It does not. In the most charitable reading of the
4 testimony, one could only say that the digression on
5 stock price and dividends could be construed as
6 analysis. For instance, on page 10, beginning at line
7 5 of their testimony, Westchester expounds on market
8 stock returns over the one- five- and ten-year periods
9 ending June 30, 2009. However, they fail to mention
10 that the Commission does not provide returns on market
11 value, and that the five-year returns on book equity
12 for Con Edison and the S&P 500 provided in my original
13 testimony as Exhibit RH-1 demonstrate that the
14 Company's returns are well below average.

15 The testimony also devotes pages to Con Edison's
16 dividend history in an effort to demonstrate how well
17 equity investors are treated. Those familiar with
18 Commission ratemaking know that the Commission has a
19 strong preference for the dividend discount model-
20 which it refers to as "DCF-as a basis for establishing
21 book returns on equity. Yet Westchester makes no
22 effort to perform this standard dividend analysis.

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1 Q. Does Westchester discuss the financial health of the
2 Company?

3 A. It does. It uses a series of slides from Company
4 presentations to investors that show relative market
5 returns for the S&P 500, S&P Utilities, and Con
6 Edison, and the growth of dividends paid by the
7 Company.

8 Q. Please comment on these slides.

9 A. The slide that shows the performance versus the
10 indices shows that we have done better over selected
11 periods than these indices. The fact that we have done
12 better than the S&P 500 over the years chosen is not
13 surprising, as the periods end on June 30, 2009, near
14 the trough of the worst collapse in the stock market
15 in years, a period in which one would expect that Con
16 Edison, almost entirely invested in regulated
17 utilities, would outperform the general market.
18 While we have outperformed the S&P 500 Utilities Index
19 (which includes companies, such as Dynegy, with vastly
20 different business profiles than ours) our market
21 return performance over 10 years is 3.67% annualized
22 vs 5.41% for the average of the Staff proxy group
23 utilities trading over that period.

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1 Q. According to Westchester, what does the Company say
2 about New York regulation?

3 A. It says (page 12):

4 The Company reports on the so-called "formulaic
5 approach" to setting equity returns. The
6 reference to a formulaic approach may indicate
7 that the Commission's reliance on a set formula
8 to determine equity returns is predictable and
9 the use of the formula would blindly prevail
10 during good times and bad.

11
12 Q. Please comment.

13
14 A. The Company was describing to investors how the pre-
15 adjusted rate of return calculation actually has
16 worked, as demonstrated in several rate cases. The
17 Company was certainly not praising the specific
18 methodology, as demonstrated by our disagreements with
19 it in those same rate cases.

20 In addition, as we have stated in these rate cases,
21 the Staff and the Commission have additionally
22 burdened the Company with all manner of adjustments to
23 capital structure and cost recovery.

24 As for it prevailing during "good times and bad",
25 while we disagree with many elements of the
26 Commission's methodology, we would not expect it to
27 substitute an approach based on anything other than

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1 rational analysis because of changes in the economic
2 climate.

3 Q. Please summarize your comments on Westchester's
4 submission on rate of return.

5 A. The proposed rate of return should be rejected as it
6 is based on no acceptable financial analysis.

7 **(2) Finance Panel**

8 Q. Please describe how this portion of your rebuttal
9 testimony is organized.

10 A. This portion of my rebuttal testimony is organized in
11 nine sections. First, I address the current state of
12 the financial markets and their effect on market
13 access and pricing. I then address the Finance Panel's
14 discussion of the capital structure and their
15 calculation of a hypothetical equity ratio. Third, I
16 discuss the Panel's proposed adjustment to the
17 Company's debt costs. Fourth, I discuss the Panel's
18 discounted cash flow methodology for determining
19 equity returns. Then, I discuss the Panel's capital
20 asset pricing model methodology for determining equity
21 returns. Sixth, I discuss the Panel's purported credit
22 quality adjustment to their equity return
23 determinations. Seventh, I discuss the Panel's

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1 proposed stayout premium for a three-year rate
2 agreement. Eighth, I comment on various credit quality
3 and rating agency issues. I conclude with a discussion
4 of the overall impacts of the Panel's testimony in
5 today's environment.

6
7 CURRENT FINANCIAL MARKET ENVIRONMENT

8 Q. Please describe the current state of the financial
9 markets.

10 A. The markets have improved since from their lows of
11 late 2008 and early 2009. However, the pervasive
12 indifference to risk that characterized investor
13 behavior leading up to the crisis has not returned,
14 nor is it likely to in the near future. As an example,
15 in the US corporate fixed-income market the spread
16 between BBB and A-rated utility bonds was
17 approximately 66 basis points as of September 8, 2009,
18 almost twice the long-term historic average of 34
19 basis points.

20 Q. On page 111, lines 4-8 the Panel quotes Moody's July
21 2009 Six-Month Update of the Electric Utility Industry
22 provided in Exhibit___ (FP-17) "most utilities had

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1 little trouble accessing capital across the entire
2 capital structure." Please comment.

3
4 A. The Panel's quote-paring misses the essential point of
5 the thought expressed by the rating agency. The
6 paragraph continues:

7
8 Yet we are often reminded that the past is not a
9 reliable indicator of future performance. While
10 challenged market access strikes us as unlikely,
11 its effects could be substantial, not unlike the
12 "tail risk" often discussed in hedging
13 strategies, and possibly resulting in multiple
14 notch rating changes over a very short period of
15 time.

16
17 In fact, in the same article (on page 8) Moody's is
18 less sanguine about the future than the Panel
19 testimony would indicate:

20
21 A second big risk stems from the sector's heavy
22 reliance on unfettered access to the capital
23 markets as a component of its liquidity. The
24 capital markets have accepted this reliance over
25 many decades, and many utility issuers have been
26 all but untouched by the recent and ongoing
27 turmoil in the financial markets. Even so, the
28 reliance on third-party financing remains a
29 critical risk factor—especially as numerous bank
30 credit facilities expire over 2011-2012. The
31 increasing burden on our overall liquidity
32 analysis may eventually stop us from assuming the
33 sector has unfettered access to the capital
34 markets. The dramatic changes in credit
35 availability and the financial institutions
36 require some caution. We believe utilities will
37 see their available borrowing capacity decrease,

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1 possibly by as much as 25%-30%; that tenors will
2 shorten, with two-year facilities more widespread
3 than five-year; and that pricing will be
4 substantially higher than today.
5

6 We believe the turmoil impacting the financial
7 institutions will remove about 30% of the utility
8 industry's current available credit which will
9 drop overall liquidity capacity to roughly \$77
10 billion from about \$110 billion—a drop of about
11 \$30 billion. That is a lot of credit capacity
12 coming out of the system.
13

14 Q. Does this Moody's report reiterate its view of
15 the centrality of the regulator to its credit
16 determinations for the industry?

17 A. Yes. On page 5, it states:

18 Because the regulatory benefit is so critical
19 to our ratings, it tends to represent the most
20 important risk factor. While we continue to
21 consider regulatory risk a lower risk today,
22 we believe there are potential longer-term
23 regulatory risks that could emerge on two
24 fronts: Regulatory support for timely recovery
25 could erode; and

26 Regulators could reduce the authorized returns on
27 investments, based on the perception that utilities
28 have lower business risks than other industrial
29 sectors and will find it easier to compete for
30 capital.
31

32 Theoretically, regulators could attack the standard
33 cost of capital arguments that assert competitive
34 ROEs and other returns are necessary to attract
35 capital. Our concern is that regulators could
36 attempt to modify their views on the appropriate
37 returns, since the sector's leverage is already
38 benefited by regulation.
39

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1 Q. Does the Panel's testimony allay, or even recognize
2 the concerns raised by Moody's in the report cited by
3 the Panel?

4 A. It does not.

5 Q. What has been the effect on the various financial
6 markets from which US utilities raise capital?

7 A. While financial conditions have certainly improved
8 over the course of this year, some parts of the market
9 are better off than others. For instance, the attached
10 chart (Exhibit___(RH-8)) shows the spread of 10-year A-
11 rated and BBB-rated utilities vs. 10-year Treasuries.
12 The spread quantifies the premium required by debt
13 investors for the risk they perceive in utility debt
14 relative to the US government. As can be seen in the
15 Exhibit, the spread has decreased from the
16 extraordinary levels of the early part of 2009, but it
17 is still above previous levels.

18 Q. Are there other markets needed by US utilities where
19 the effect of the crisis persists?

20 A. Yes. The bank loan market has significantly
21 deteriorated, a condition which is likely to persist
22 for some time. Prior to the crisis utilities such as
23 Con Edison were able to arrange a 5-year revolving

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1 credit facility with minimal upfront fees (amortized
2 at a basis point or so a year) and annual facility
3 fees in single digit basis points.

4 Today, 5-year facilities are not available and 2-year
5 facilities have facility fees and upfront fees many
6 multiples of what they were. The penalty for having a
7 lower credit rating has also increased.

8 Q. Why are bank revolving-credit facilities important to
9 the Company's financing plan?

10 A. There are four purposes for bank credit facilities in
11 the funding of a utility company like Con Edison.
12 First, the facility directly or indirectly provides
13 the liquidity that allows the Company to raise long-
14 term financing when desirable, not when it has to.
15 This aspect of the facility saves customers money
16 because it eliminates the need to pre-fund spending
17 and reduces the likelihood of funding at the worst
18 times in the market. Second, the facilities allow the
19 Company to issue letters of credit, necessary for it
20 to manage the portfolio of electricity and natural gas
21 purchases made in the wholesale and financial markets
22 on behalf of customers. Third, the facility is the
23 source of liquidity that assures purchasers of our

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1 commercial paper that they will be repaid. This "back
2 up" function permits the Company to access a low-cost
3 source of funds for the day-to-day operation of the
4 business. Finally, the facilities assure the rating
5 agencies that the Company can meet its obligations
6 even if it loses access to the capital markets for a
7 period of time (and thus factors into the credit
8 ratings for the Company).

9

10

CAPITAL STRUCTURE

11

Q. How does the Finance Panel propose to calculate the
12 Company's capital structure for the rate year?

12

13

A. It follows Staff's now traditional approach to
14 capitalization wherein they adjust the Company's
15 regulatory capital structure for this rate proceeding
16 based on consistent-if incorrect and unsupported-
17 assumptions about how credit rating agencies assess
18 the Company's credit quality.

14

15

16

17

18

19

Q. Why does the Panel dispute the Company's presentation
20 of its projected capital structure?

20

21

A. The Panel objects to the Company's use of the actual
22 current capital structure of the Company plus our
23 projected financings needed to fund the Company's

22

23

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1 activities.

2 Q. Does this initial capital structure plus projected
3 financings represent the expected actual investment of
4 capital in the Company?

5 A. It does.

6 Q. How does the Panel analyze the capital structure for
7 the rate year?

8 A. The Panel begins with the actual book capitalization
9 of Con Edison as of March 30, 2009, and then proposes
10 to adjust that capitalization by reducing the equity
11 investment in the rate year by \$103 million and by
12 increasing debt by \$103 million.

13 Q. Do you agree with the Finance Panel's proposal?

14 A. I do not. For several reasons discussed further
15 below, the Panel does not establish a reasonable basis
16 for the Commission to establish rates and returns on
17 any basis other than CECONY's "stand-alone" capital
18 structure (i.e., the actual sources of invested funds
19 in CECONY) tested for reasonableness against the
20 capital structure of other utilities.

21 Q. Why do you believe that it is appropriate to use
22 CECONY's actual capital structure?

23 A. The Panel hypothesizes adverse impacts to group credit

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1 quality, but does not and cannot prove its assertion.

2 Q. Do rating agencies base their ratings on the parent
3 company's capital structure?

4 A. The majority of the agencies do not. Only one of the
5 three prominent agencies (Standard & Poors) even
6 considers the other parts of a corporate group when
7 evaluating the credit quality of a particular
8 subsidiary. The Panel presented no testimony to
9 demonstrate that Standard & Poors' ratings of Con
10 Edison were negatively impacted by CEI's non-regulated
11 subsidiaries. The other two rating agencies (Moody's
12 and Fitch) base their analyses and rating decisions on
13 stand-alone financial ratios (including measures of
14 capital structure strength).

15 Q. Is the Panel's hypothesis that the CEI non-regulated
16 subsidiaries significantly affect the financial
17 strength of the regulated entities supported by the
18 record of the rating agencies' decisions?

19 A. No. The evidence from the only rating agency that
20 incorporates group credit quality into its ratings
21 does not support the Panel's postulate. The Standard &
22 Poor's Business Profile rating applied to both Con
23 Edison and its parent, CEI is the same: "Excellent."

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1 As discussed further below, none of the rating
2 agencies have commented substantively on Con Edison's
3 non-regulated subsidiaries in their reports. So,
4 hypotheses about how the rating agencies would assess
5 the credit implications of these businesses are just
6 that, hypotheses.

7 Q. In the absence of evidence from the ratings agencies
8 themselves, how does the Panel justify its proposed
9 equity ratio for the non-regulated businesses?

10 A. On page 29, lines 3-9 they state:

11

12 we examined an August 28, 2008 report by S&P
13 titled "Credit Stats: 2007 Adjusted Key U.S.
14 Industrial And Utility Financial Ratios," which
15 is included as Exhibit___(FP-10). We found that
16 for the 2005 to 2007 period, the average A rated
17 non-utility company had a common equity ratio of
18 63.2%

19

20 Q. Please comment on this approach.

21

22 A. Fully at odds with its methodology for proposing book
23 equity returns based on tightly defined proxy groups,
24 Staff makes no attempt to differentiate the myriad of
25 companies in S&P's universe as to the nature of their
26 business or the risks they face. And, as with its
27 discussion of capitalization of the Company, Staff
28 fails to acknowledge that equity ratio is only a

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1 lesser one of the many factors in a rating agency's
2 determination of a company's debt rating.

3
4 Q. Does the Panel attempt to determine the business risk
5 of the non-regulated operations?

6
7 A. It makes no attempt to analyze the risk of the actual
8 businesses in which the non-regulated subsidiaries are
9 engaged.

10
11 Q. On page 23, lines 19-24, the Panel states (referring
12 to the S&P business risk profile ranking):

13
14 "Based upon the foregoing, we believe that, at
15 best, the collective business risk profile of the
16 parent's non-regulated activities could be viewed
17 as "Satisfactory" which would place it in the
18 third highest tier on the business risk side of
19 the matrix."

20
21 Does Standard and Poor's assess the risk
22 characteristics of Con Edison's diversified
23 activities?

24
25 A. They do not. As the Panel states on page 22 of its
26 direct testimony "S&P offers no direct assessment

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1 regarding the riskiness of CEI's non-regulated
2 investments."

3 When asked (Information Request Set 3- Question 94
4 (b)) "Is there any basis in S&P's written evaluation of
5 Con Edison for the conclusions in lines 19-24? If so,
6 please identify." The Panel replied "Hence, as described
7 on page 23 of the Panel's testimony, the basis for
8 Staff's conclusion is not a Con Edison-specific
9 evaluation."

10

11 Q. On page 24, lines 12-20, the Panel states:

12

13 "the most likely credit rating that these
14 collective businesses could obtain on their own
15 would be BB+. Moreover, given the more
16 aggressive use of leverage CEI actually employs
17 for these operations (i.e., the 41.6% common
18 equity layer currently supporting these riskier
19 investments), it is quite conceivable that the
20 non-utility operations might not receive a rating
21 higher than BB-."

22

23 Do any of the rating agencies produce debt ratings for
24 the non-regulated subsidiaries?

25 A. They do not.

26

27 Q. To your knowledge, do the Panel members have
28 experience rating corporate debt?

29 A. No, they do not.

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1 Q. On page 24, lines 21-24, and page 25, lines 1-2, the
2 Panel discusses the ratings of merchant power
3 companies.

4
5 Q. Are the BB ratings you infer typical of the
6 actual ratings of independent unregulated
7 power companies?

8 A. More or less. Most competitive merchant companies
9 carry ratings in either the double B or single B
10 ratings categories.

11
12 Do these merchant company ratings have any bearing on
13 the Con Edison's non-regulated subsidiaries?

14 A. They do not. Con Edison's non-regulated subsidiaries
15 are not in the merchant electricity business.

16 Q. On page 24, lines 4-5, the Panel asserts: "We believe
17 the non-regulated investments are a drag on Con
18 Edison's credit ratings." Is there any evidence that
19 S&P (or Moody's or Fitch) has considered Con Edison's
20 non-regulated activities a factor in lowering their
21 ratings?

22
23 A. There is no such evidence, and Staff has offered none.
24 In reply to our Question 97 "Please provide citations
25 from the recent write-ups of rating agency downgrades
26 as to the role of the non-regulated activities in the

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1 respective agencies decisions to lower the rating of
2 CEI and the rating of the Company", the Panel replied:

3 As discussed on page 25 of its direct testimony,
4 the Panel explains that, at 3% of the
5 consolidated capitalization, the current scale of
6 the parent's non-utility investments is quite
7 modest. As a result, the impact of their
8 operating risk on the overall credit profile of
9 CEI was not a determining factor in any of the
10 recent rating agency downgrades.

11
12 Q. What principle does the Panel suggest management
13 follow in capitalizing the Company?

14 A. It makes two statements which contradict each other.
15 On page 36, lines 3-5, the Panel states:

16

17 The salient point here is that the relatively
18 weak cash flows and their negative influence on
19 the Company's debt ratings, while genuine, should
20 not be the central concern of the Company's
21 permanent financing policies. Instead, we believe
22 that focus should be on minimizing its overall
23 cost of capital through the appropriate use of
24 leverage.

25

26 Conversely, on lines 5-11 of the same page the Panel
27 states:

28

29 While authorizing a higher equity ratio and an
30 ROE that is higher than the return required by
31 its investors might help the Company to improve
32 its current credit ratings, neither of these
33 actions appear to us to be consistent with the
34 goal of optimizing its cost of capital

35

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1 Q. Are capital structures that "minimize the overall cost
2 of capital" the same as capital structures that
3 "optimize its overall cost of capital"?

4 A. They are not, no more than minimal cost electric
5 distribution systems are the same as optimal electric
6 distribution systems.

7
8 The Panel's theory assumes an unchanging world and a
9 single sole objective - cost minimization - in
10 determining an appropriate capital structure. By
11 analogy, the Panel would expect the Company's Energy
12 Management Department purchase electricity and natural
13 gas at the cheapest quote without regard to the need
14 for the commodity at that point in time, the
15 reliability of its production, the certainty of its
16 deliverability or the potential for prices or
17 collateral requirements to change between contract and
18 delivery. Minimal cost estimated at a single point in
19 time, even if the analysis were based on correct
20 assumptions, cannot be presumed to produce an optimal
21 outcome. The risk of losing access to capital or
22 paying an exorbitant price for capital in times of
23 crisis outweighs the desire to shave off a bit of cost

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1 by, for instance, lowering the proportion of equity in
2 the capital structure.

3 Q. Is the proportion of equity in the capital structure
4 the sole determinant of credit quality and cost?

5 A. No, as the Staff concedes (pp. 44-45), weak cash flows
6 (certainly not aided by substantial cash deferrals,
7 high leverage, low book equity returns, cost
8 disallowances and financial asymmetries such as
9 penalties for operations) will continue to hamper the
10 Company's ability to maintain its ratings even with a
11 reasonable capital structure.

12 However, allowing a return on a reasonable capital
13 structure, the actual capital that is put to work for
14 the benefit of customers, will improve the Company's
15 credit ratios and help it maintain access on
16 reasonable terms to the capital needed to maintain and
17 enhance its service to customers.

18 Q. How does the Company's requested equity ratio compare
19 to that of other utilities?

20 A. Not favorably. The Panel's own Exhibit __ (FP-4) (p. 1)
21 lists the average capital structure of its own proxy
22 group companies as 49.2%, in excess of either the
23 percentage they propose for Con Edison, or, in fact,

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1 the percentage requested by Con Edison.

2 Q. What does Moody's say about the need to strengthen
3 utility capital structures?

4 A. In their July 2009 "Six-Month Update of the Electric
5 utility Industry" they state:

6
7 Since few, if any, industry participants disagree
8 with the risks identified in this report, we are
9 somewhat baffled that utility management teams
10 seem reluctant to proactively strengthen their
11 balance sheets in the face of such challenges. In
12 essence, we are talking about protecting the
13 ultimate franchise of the utility's service
14 territory and their ability to assure a safe and
15 reliable essential service.

16
17 The Company has consistently strengthened its balance
18 sheet, issuing equity when other utility companies
19 wouldn't, and dedicated it to utility service.

20

21 COST OF DEBT

22 Q. The Panel has suggested adjustments to the Company's
23 proposed debt cost. Do you agree with these
24 adjustments?

25 A. I do not. The Finance Panel's adjustments fail to
26 fully reflect prospective market conditions.

27 Q. What factors contribute to Con Edison's debt costs?

28 Q. Issuance cost for debt consists of three elements: (1)
29 the Treasury rate for the same maturity as the debt

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1 being issued, (2) the spread (or premium) demanded in
2 the secondary market for existing Con Edison debt
3 relative to the comparable Treasury security, and (3)
4 the new issue concession (also expressed as a spread)
5 needed to entice buyers to purchase new Con Edison
6 debt.

7 Q. Do you agree with the way Staff has calculated these
8 factors?

9 A. I broadly agree with how Staff has calculated factors
10 (2) and (3). They have based their recommendation on
11 "guidance from knowledgeable underwriters with respect
12 to required spreads to Treasuries." I do disagree
13 with their method for verifying the underwriter's
14 guidance. On lines 15-18 they say they made a
15 "comparison of the Citibank spread estimate with the
16 current yield requirements of seasoned utility debt
17 obligations with credit ratings comparable to Con
18 Edison".

19 As explained above, new debt issues require a
20 concession relative to the yields on existing,
21 "seasoned" debt issues, so any check on the
22 underwriter's guidance must take that concession into
23 account, as well as the fact that Con Edison's

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1 existing debt may trade differently than issues from
2 other utilities with similar ratings. New issue
3 concessions have been as high as 100 basis points
4 earlier this year, so this is not an insignificant
5 factor.

6 Q. Do you object to the Staff's proposal that the
7 projected long-term debt cost be updated at the time
8 of the Commission's decision?

9 A. I do not.

10 Q. Do you agree with Staff's contention that the current
11 Treasury rate instead of a forecast rate is the
12 correct basis upon which to construct a Con Edison
13 rate?

14 A. No. While the use of a current rate conveniently
15 produces a low rate today, it does not reflect the
16 rates that are likely to prevail during the rate year.
17 My testimony proposed a consensus forecast of Treasury
18 rates, such as that produced by Blue Chip Financial,
19 as a more reasonable approach that shows more
20 stability than today's current rates.

21 The Panel's approach is fully at odds with the Panel's
22 willingness to find certainty in the forecasting
23 ability of Value Line and the Blue Chip consensus

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1 forecast for long-term growth rates for the economy.
2 Given the volatile nature of the debt markets, we
3 recommend that the Commission use the most current
4 interest rate information (including Treasury rate
5 forecasts) available for the expected debt issuances
6 when new electric rates are set, which the Company
7 stands ready to furnish.

8 Q. Has the Staff made a recommendation for the treatment
9 of variable rate (variable rate demand notes and
10 auction rate notes) tax-exempt debt?

11 A. Yes. They have recommended that the true-up of the
12 debt costs for these issues that was established in
13 the previous electric rate case be continued.

14 Q. If the Commission were to adopt a true-up, what should
15 be included in the true-up?

16 A. The difference between the rates actually prevailing
17 during the rate year and the interest costs set for
18 the tax-exempt debt in this case. The true-up would
19 also be applied to credit support costs such as
20 letters of credit or insurance. In addition, each of
21 the existing issues has associated unamortized
22 issuance costs (representing underwriting fees,
23 insurance premiums, and other costs from the time of

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1 issuance). If CECONY decides that calling these
2 issues will reduce total costs or because of
3 government, legal or regulatory requirements to do so,
4 the issuance costs should be amortized over the
5 shorter of the remaining life of the refunded issues
6 or the life of the new issues. The actual cost of the
7 replacement debt issues (including issuance costs and
8 any credit support) and the new interest rate should
9 be trued-up as well.

10
11 DISCOUNTED CASH FLOW METHODOLOGY

- 12 Q. Does the Panel's discounted cash flow methodology for
13 estimating equity returns produce fair returns on the
14 book equity invested in the Company during the rate
15 year?
- 16 A. It does not. Since Dr. Morin's rebuttal identifies
17 several of the problems with the Panel's application
18 of the discounted cash flow ("DCF") methodology, I
19 will confine my comments to the flaws in the Panel's
20 analysis. That first flaw is the direct application of
21 market values in direct contravention to the
22 Commission's insistence that returns be provided based
23 on book values and measures (see p. 123, 07-E-0523).

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1 As the Commissions rulings recognize the concepts of
2 book value and market value are completely different,
3 yet the Panel does not recognize or account for the
4 difference. Absent some correction of market-based
5 conclusions into book terms, the analysis provides no
6 basis on which to establish returns.

7 The second flaw in the Panel's overall analysis is its
8 over-reliance on its particular version of DCF.

9 Q. In defending its reliance on its DCF method on page
10 45, lines 14-18, the Panel quotes the Commission Order
11 in Case 06-E-1433:

12 the method offers the significant benefit of
13 reliance on readily available, objective data to
14 measure an indicator of real importance to
15 investors.

16 Does the Panel's methodology rely on observable,
17 objective data?

18 A. The DCF methodologies for estimating returns on equity
19 are heavily dependent on factors such as dividend
20 growth estimates, for both the near-term and the
21 distant future which are neither observable nor
22 objective. The Panel's estimates are based on a single
23 source, Value Line. This firm is one among many

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1 providers of financial estimates, and the Panel has
2 not provided any evidence that Value Line's estimates
3 are better researched, more historically accurate, or
4 more closely followed by institutional investors than
5 any other source.

6 The long-term dividend growth estimates are based on a
7 method which requires an estimate of rate of return,
8 which is then used to calculate a rate of return,
9 without regard for whether the input rate of return is
10 consistent with the calculated rate of return which
11 results.

12 There is no reason to believe that the DCF method,
13 and, in particular, the Panel's version of this
14 method, is inherently superior to other methodologies
15 for estimating fair returns to book equity capital.

16
17

18 **CAPITAL ASSET PRICING MODEL METHODOLOGY**

19 Q. Please comment on the Panel's capital asset pricing
20 methodology.

21 A. Again I will note that Dr. Morin has identified
22 certain problems with the methodology as implemented
23 by the Panel, and therefore I will confine my

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1 observations to two flaws. First, as with the DCF
2 methodology, the inputs to the capital asset pricing
3 model ("CAPM") are entirely derived from the market.
4 There is no aspect of this analysis that recognizes or
5 accounts for the book value upon which the Commission
6 sets returns. Every variable (i.e., risk premium,
7 beta, and the risk-free rate) is derived from market
8 prices. And the resultant required rate of return from
9 the model employing these variables is a **market** return
10 on the **market** value of equity.

11 Second, the market is currently demanding significant
12 premiums for risk, at the same time that the Panel is
13 proposing a low level of return, compounded by several
14 adjustments to cost recovery (as I will describe
15 below) which make it difficult to earn that return.

16 Q. Please describe the current state of, and trends in,
17 the equity market's premium for risk.

18 A. The very fact that Staff's current-period market risk
19 premium ("MRP") is considerably higher than historical
20 averages demonstrates the need to adequately
21 compensate for equity risk. Reinforcing this
22 conclusion is the chart labeled "S&P 500 Risk Premium"
23 on page 41 of Staff Exhibit __ (FP-13), from the

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1 Panel's preferred MRP source Merrill Lynch's
2 "Quantitative Profiles" issue of July, 2009. The
3 Merrill Lynch data indicates that the risk premium has
4 been generally increasing since 1991.
5 It is hard to imagine how Staff reconciles the Merrill
6 Lynch results with the generally declining trend in
7 authorized returns on book equity in New York,
8 coupled, as described below, with efforts to reduce
9 chances for utilities such as the Company of earning
10 this low return.

11

12

UPDATE OF COST OF EQUITY

13 Q. Do you agree with Staff's proposal to update the cost
14 of equity in this proceeding?

15 A. Yes, absent a settlement the Company supports the
16 updating of the cost of equity calculation. In the
17 absence of extraordinary circumstances, the update
18 should be based on data available as of December 31.

19

20

PROXY GROUP AND CREDIT QUALITY ADJUSTMENT

21 Q. What does the Panel say about the risk profile of
22 their own proxy group?

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1 A. The Panel uses a proxy group consisting of utility
2 holding companies which are the stock-issuing entities.
3 The Panel states that the average Moody's rating for
4 the proxy group is about 1.6 notches lower than Con
5 Edison's - somewhere between Baa1 and Baa2, and its
6 average S&P rating is about 1.3 notches lower, falling
7 between the BBB+ and BBB rating categories.

8 Q. What is CEI's rating?

9 A. CEI's rating, using the data from Staff Exhibit_(FP-4)
10 is A-/Baa1. The S&P A- rating is somewhat misleading,
11 as it is not the rating that CEI would issue debt at,
12 but rather a consolidated "issuer" rating. Debt
13 actually issued by CEI and rated by S&P would be rated
14 BBB+.

15 Q. The Panel "adjusts" the result of their ROE analysis
16 downwards because the proxy group has a different
17 rating than Con Edison. Do you agree with this
18 process?

19 A. I do not. The Panel puts forth no evidence of any
20 relationship, let alone a causal relationship, between
21 credit quality and required or observed equity returns
22 even in the utility industry, with all the circularity
23 problems that proposition would entail.

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1 In their rebuttals, Dr. Morin and Dr. Lindenberg
2 refute the adjustment. In particular, Dr. Lindenberg
3 demonstrates, using the Panel's own calculations of
4 its own preferred equity return estimation methodology
5 (DCF), that its own estimates produce a higher rate of
6 return for utilities with higher debt ratings. Thus,
7 the conclusion that the DCF estimate for the Company
8 should be "adjusted" downward because the Company has
9 a slightly better credit rating not only lacks a
10 theoretical basis; it is not borne out by the Panel's
11 own data.

12 Q. On page 43-44, the Panel states:

13 We then adjusted this result to reflect the
14 difference in business and financial risks
15 currently facing Con Edison versus those of the
16 proxy group on average

17
18 How does the business risk of Con Edison compare to
19 the proxy group?

20 A. The business risk of Con Edison is essentially the
21 same as that of the peer group and thus offers no
22 basis for an adjustment. The Panel, on their Exhibit
23 (FP__4) lists the S&P Business Risk for each member of
24 the proxy group. Con Edison's Business Risk is rated 1
25 as are twenty-four out of thirty-one (77%) of the

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1 members of the Panel's proxy group. Thus, Con Edison's
2 business risk is considered by S&P to be the same as
3 more than three-quarters of the Panel's proxy group.

4 Q. How do the average DCF returns on market equity
5 compare for the Panel's proxy group companies that are
6 rated Business Risk level 1 versus those of the
7 Panel's proxy group companies with higher Business
8 Risk?

9 A. Using the Panel's own estimation methodology, the
10 average of the DCF required market returns for the
11 Business Risk 1 companies is higher than for the
12 companies with a Business Risk profiles greater than 1
13 (10.62% vs. 10.28%). Again, consistent with Dr.
14 Lindenberg's analysis, based on the Panel's own proxy
15 group, its own preferred method (DCF) and its own
16 specific methodology, there is no justification for a
17 "credit quality" adjustment to equity returns.

18 Q. Is there other empirical for the lack of relationship
19 between bond ratings and required return?

20 A. Yes. I have a prepared Exhibit __ (RH-9) Which shows a
21 scatter diagram illustrating the relationship between
22 the ratings (using the Panel's numerical system) of
23 each company in the Panel's proxy group and that

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1 company's required market equity return as calculated
2 by the Panel's own DCF methodology. A higher score
3 indicates lower ratings.

4 As can be seen on the chart, a higher rating is
5 associated with a higher expected return from the
6 Staff's own model, which means that while the Company
7 has argued that there is no empirical relationship
8 between credit quality and future equity returns, the
9 Panel's own analysis would support a possible premium
10 for higher debt ratings.

11 Q. The Panel has repeatedly claimed that Con Edison has a
12 less-risky regulatory environment than other
13 utilities. Has the Panel's rate case submittal
14 included items that increase risk for Con Edison?

15 A. Yes. The Panel's case adheres to the Commission's
16 recent practice of almost entirely eliminating any
17 possibility of higher earnings via incentives, while
18 expanding the significant penalties to which the
19 Company may be subjected. The Panel proposes
20 significant reductions in operating expenses (e.g.,
21 staffing and municipal support costs), which will make
22 achieving the Panel's proposed rate of return much
23 more difficult to achieve. And finally, the Panel

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1 chooses to follow and expand the example of the last
2 case with "austerity adjustments" not based on an
3 analysis of the Company's business, but rather on a
4 desire to reduce rates regardless of the cost to
5 investors and to the financial integrity of the
6 Company.

7 In addition to the Panel's proposals in the
8 instant proceeding, the Commission has been actively
9 increasing the Company's business risk by transferring
10 increases in costs that are beyond the Company's
11 control onto shareholders. A recent example of this
12 practice was the denial of recovery on \$14 million of
13 property tax increases on the grounds that they did
14 not meet the materiality threshold. The tax increase
15 was part of a larger increase of \$75 million. We had
16 made a request to defer a material incremental
17 increase and updated that request to reflect
18 additional unanticipated action by New York City that
19 further increased that same tax bill. The Commission
20 chose to parse the two and treat them as separate
21 requests, which they were not and for which we plan to
22 seek rehearing. Investors view these ad hoc decisions
23 together with recent New York rate orders as evidence

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1 of heightened business risk in the jurisdiction. Both
2 Barclays equity research and Regulatory Research
3 Associates reflect these actions in their low ratings
4 of New York utility regulation.

5 All these Commission actions and rate case
6 positions add to investors' assessment of the business
7 risk of the Company.

8 The approach taken by the Panel has been to
9 misstate the real downside risk to CECONY, to
10 understate the level of fair allowed returns, and to
11 declare the Company less risky. Not only do equity
12 investors – who bear the brunt of this ill-treatment –
13 disagree, but as quoted above, so does Moody's on
14 behalf of creditors when it says that this is one of
15 the key risks that it sees for the utility industry.

16

17

STAYOUT PREMIUM

18 Q. Has the Panel proposed a stayout premium for a 3-year
19 vs. a 1-year rate case?

20 A. It has proposed a stayout premium of 12 basis points,
21 based on a 5-year historical average of the difference
22 between 1-year and 3-year Treasury rates, divided by
23 2.

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1 Q. Do you agree with this premium?

2 A. I do not. As in all analyses supporting a rate of
3 return, the premium must be based on the decision of a
4 rational investor, taken at a point in time. At
5 present, the difference in yield between a 3-year and
6 a 1-year US Treasury security is approximately 120
7 basis points. No rational equity investor would accept
8 an incremental return on Con Edison equity of only 12
9 basis points for an incremental period when a debt
10 investor could get ten times as much from the safest
11 investment available. The Panel's methodology ignores
12 both the risk differences and current conditions in
13 developing its proposed result.

14 The Panel's inconsistency of using a 5-year historical
15 spread in this instance while using three months of
16 price data to calculate DCF rates of return cannot be
17 justified.

18

19

20

FIXED-INCOME CREDIT QUALITY ISSUES

21 Q. In the Company's 2007 electric rate case (Case
22 07-E-0523) did the Staff Finance Panel make
23 assertions concerning the ability of the Company

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1 to maintain its credit ratings in the face of
2 that Panel's recommendations?

3 A. Yes, they did. On page 66, line 20, of their
4 testimony they asserted that the credit metrics
5 would continue to support an A rating. In fact,
6 on page 66, line 10, they speculated that the
7 addition of a regulatory decoupling mechanism
8 ("RDM") might even lead to an upgrade.

9 Q. Were they correct in their assertion?

10 A. They were not. Standard and Poor's dropped the
11 entire CEI group by one notch and Fitch by two
12 notches. Moody's placed the entire CEI group on
13 Negative Outlook. So while CEI and the
14 competitive businesses have never reduced the
15 utilities' credit quality, the Commission's rate
16 decisions for CECONY have demonstrably hurt CEI
17 and the competitive businesses' credit quality.

18 Q. Did the Staff' Finance Panel make assertions
19 concerning the ability of the Company to maintain
20 its then-current credit ratings in the 2008
21 electric case?

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1 A. Yes, they stated (p. 45):

2 We believe that our capital structure
3 recommendations should be adequate to
4 maintain ratings for its senior unsecured
5 debt obligations within their respective "A"
6 categories.

7

8 Q. Were they correct in their assertion?

9 A. No. In June 2009, on the heels of the
10 Commission's rate order for CECONY's electric
11 service, Moody's dropped the ratings of the
12 Company and its affiliates by two notches.

13 Q. Have the Panel similarly expressed their
14 confidence that ratings will not change in this
15 case?

16 A. Yes. On page 110, lines 10-17 they state:

17 Finally, we also believe that the ratings
18 agencies have taken note of the cost pressures
19 posed by the Company's large capital program as
20 well as the current weakened state of the
21 economy. Specifically, we trust that Con Edison's
22 current S&P and Moody's stable ratings outlooks
23 reflect the realistic constraints posed by these
24 factors.

25

26 And on page 36, lines 11-16, they state:

27

28 In any event, we believe that our capital
29 structure recommendation should be adequate for

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1 the Company to maintain the current credit
2 ratings accorded to its senior unsecured debt
3 obligations.
4

5 Q. Do you have any reason to believe that their
6 ability to predict credit ratings has improved?

7 A. I wish them well in their prediction this time.
8 That said, the Panel's belief that allowed
9 returns on book equity and the proportion of
10 equity in the Company's capital structure as the
11 central determinants, does not fully consider the
12 importance debt rating agencies will place on
13 cash flow coverages and actual earned returns and
14 results from operations. The fact that Staff is
15 proposing significant reductions in operating and
16 capital expenses, operations penalties, and
17 incomplete true-ups for uncontrollable costs will
18 reduce the Company's cash flows and income. These
19 effects will again put the Company's credit
20 ratings at risk.

21 Q. Please discuss how Moody's now views the New York
22 regulatory environment.

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1 A. On pages 2 and 3 of Credit Opinion - Consolidated
2 Edison Company of New York, Inc." (June 30, 2009) the
3 agency states:

4

5 Moody's believes that CECONY's regulatory
6 environment has become more challenging in recent
7 years. Our view reflects the steady decline in
8 allowed ROEs as evidenced by the decline in the
9 allowed ROE in CECONY's electric business from
10 the 11.1% that existed through most of the 1990s
11 and the early part of this decade to the 9.1%
12 authorized for the 2009 rate year. While CECONY's
13 allowed electric ROE has increased to 10% for the
14 2010 rate year, the lower level relative to
15 periods prior to the 2006 rate year, will have a
16 negative impact on CECONY's cash flow generating
17 abilities all else being equal.

18

19 Moody's views the PSC's ongoing audit of
20 approximately \$1.6 billion of CECONY's
21 electricity capital spending during the 2006-2008
22 rate years as evidence of a potentially more
23 challenging regulatory environment. Moody's notes
24 that while the PSC has approved the collection of
25 approximately \$237 million of revenue for the
26 rate year ended March 31, 2009 and \$254 million
27 for the current rate year in connection with
28 these expenditures, those revenues are subject to
29 refund in the event that the PSC concludes that
30 all or a portion of the capital spending was
31 imprudent. If any portion of these revenues is
32 ultimately clawed back, CECONY's financial
33 profile would be adversely impacted and, more
34 importantly, Moody's would view this as further
35 evidence of less constructive relations with the
36 company's key regulator. Should this occur,
37 Moody's expects that negative rating actions for
38 CECONY, CEI and O&R could follow.

39

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1 Q. Please explain why it is important for Con Edison
2 to maintain its current debt ratings.

3 A. First, the Company has a significant continuing
4 construction program which must be met in large
5 part by debt financing. As I have discussed
6 above, the cost differences between for companies
7 with different credit ratings remain wide. More
8 important, the risk remains that access to credit
9 markets will be restricted for lower quality
10 credits.

11 In addition, a part of Con Edison's financing
12 program is made up of short-term borrowing
13 through its commercial paper program. Such
14 borrowing is highly sensitive to credit quality
15 and credit market conditions.

16 Q. Have there been any other impacts from the drop
17 in Con Edison's debt ratings besides increases in
18 financing costs?

19 A. Yes. Under current NYSERDA rules, Con Edison
20 cannot issue or remarket tax-exempt debt unless
21 either the Company or a credit support provider

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1 is rated a least A, by S&P, A2 by Moody's, or A
2 by Fitch, or the debt is supported by a letter of
3 credit or insurance that has one of these
4 ratings. Con Edison does not qualify due to its
5 current ratings. In turn, the traditional bond
6 insurers have, as described in testimony
7 submitted in the last two electric cases,
8 suffered drastic ratings reductions or are unable
9 to insure Con Edison debt. Letters of credit are
10 very difficult to arrange at reasonable prices,
11 and make tax-exempts uneconomic.

12 Q. Beyond the question of rates of return, has the
13 Staff case made any effort to support positive
14 cash flow for the Company?

15 A. Aside from sympathy, the Panel is not supporting any
16 improvement:

17

18 The salient point here is that the
19 relatively weak cash flows and their
20 negative influence on the Company's debt
21 ratings, while genuine, should not be the
22 central concern of the Company's permanent
23 financing policies. As we have already
24 stated, we believe that the focus should be
25 on minimizing its overall cost of capital.

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1 Approaching the issues of capital structure and
2 rate of return in this manner does not optimize
3 the result for customers. Nor, in the long run,
4 does it minimize cost.

5 Q. How has the regulatory environment in New York been
6 perceived by equity analysts?

7 A. It has led to a ranking of New York State
8 regulation as 43rd out of 48 (Barclay's Capital
9 "Utilities - Capital Management", July 16, 2009).

10

11

SUMMARY

12 Q. Please summarize your testimony concerning the Finance
13 Panel's comments on allowed returns and risk.

14 A. In my testimony I have shown that the Panel's
15 testimony is conceptually flawed in a way that
16 significantly understates what a fair return on
17 historic tangible book equity is in the current
18 economy. Further, I have demonstrated the extent to
19 which the Panel's testimony is contorted to avoid a
20 proper analysis of the subject upon which the
21 Commission must rule. With respect to the adjustments
22 proposed by the Panel, I noted that their own data do

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1 not support the purported credit-quality adjustment.
2 In addition, recent rating agency actions and rankings
3 provided to equity investors demonstrate that Con
4 Edison is no longer considered to be in a situation of
5 reasonable regulatory risk. The low return proposed by
6 the Panel and other factors embedded in its proposed
7 rates further increase that risk. The Panel's
8 position seems designed to offer returns that are near
9 the lower bound for the industry while continuing to
10 significantly reduce the Company's chance of earning
11 that return.

12 CONCLUSION

- 13 Q. Do you believe that the Finance Panel has proposed a
14 rate of return and capital structure that adequately
15 supports the investments the Company must make to meet
16 its service obligations to customers while giving a
17 fair return to investors?
- 18 A. No. Staff has proposed an ROE not supported by a
19 proper analysis. As has been mentioned above, the
20 rating agencies have already expressed their concerns
21 with New York regulation through downgrades of our
22 credit, and equity investors consider New York a
23 below-average jurisdiction in which to invest.

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1 A significant part of the capital we will seek to
2 meet customer needs will be in the form of equity. As
3 has been discussed above, debt ratings are not in any
4 sense an indicator of risk to equity investors, nor
5 are they indicative of the cost to raise equity and
6 thus are not guides to setting allowed returns. The
7 clearest measure of the cost-effectiveness of equity
8 issuance for an entity whose return is set based on
9 its historic book equity investment is the market/book
10 ratio at which it sells stock. I have prepared an
11 Exhibit which compares market value as a multiple of
12 book value for Con Edison to those for other firms in
13 the Finance Panel's proxy group (Exhibit __ (RH-10)), a
14 select group similarly subject to the impact of rate-
15 of-return regulation.

16 As can be seen from this Exhibit, even within a
17 group that is subject to significant circularity, Con
18 Edison has a market/book multiple in the bottom 36% of
19 the utilities in the Finance Panel's proxy group. A
20 low market/book multiple means that issuing equity,
21 which CECONY must do to fund its business and maintain
22 its credit standing, is relatively more expensive.
23 This comparison is made only against the proxy group

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1 which the Finance Panel selected. Consistent with my
2 earlier comments on circularity, this means that we
3 are only comparing our result to those of companies
4 subject to similar regulatory risk, not to companies
5 of similar business risk in other industries. By way
6 of contrast, the average market to book multiple for
7 firms in the S&P 500 is 3.62 versus 1.16 for CEI. CEI
8 is ranked 432 out of the 488 (bottom 11%) companies
9 with meaningful market-to book ratios in the S&P 500,
10 and this result is after the meltdown of the financial
11 industry (Exhibit __ (RH-11)). A large proportion of the
12 relatively few companies with lower market to book
13 ratios than CEI are in the financial services
14 industries.

15 Q. Please comment on recent events and how they have
16 reinforced the need for a strong financial condition
17 at CECONY.

18 A. The recent turmoil in the financial markets, which I
19 have discussed at length above, demonstrates just how
20 much capital costs and access can change in a short
21 period of time. In the past twelve months, long-term
22 bond spreads widened by as much as 400 basis points
23 for high-quality credits and by many hundreds more for

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1 lower-quality credits. Even for high-quality credits,
2 spreads have yet to return to longer-term norms. At
3 the short end of the maturity spectrum, access to
4 commercial paper markets became difficult or sometimes
5 impossible for all but prime borrowers, and we are now
6 below that level, with an A-2/P-2 (S&P /Moody's)
7 rating for commercial paper. The last several months
8 have demonstrated how valuable maintaining a strong
9 credit rating and investor confidence can be.

10 Staff has suggested a rate of return on book
11 equity lower than that of virtually all the rest of
12 the utility industry, based on incomplete analyses and
13 adjustments not supported by fact or theory. In
14 addition, they have continued the use of penalties
15 which could further reduce the return and increase the
16 risk of the Company while not offering offsetting
17 opportunities to earn when we perform well. By
18 imposing significant reductions in support for needed
19 operations and maintenance the Panel has made
20 achieving even the low proposed allowed return
21 difficult. As the Panel stated (p. 7) in its
22 testimony, the Commission's responsibility in setting
23 capital returns is to provide a fair rate of return

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1 that assures the Company of access to the capital
2 markets on reasonable terms while granting equity
3 investors an opportunity to earn a return that is
4 commensurate with the risk of their investment. The
5 Panel's testimony, which proposes unreasonable and
6 unjustified adjustments to the low result of their
7 flawed models and significantly reduces the
8 opportunity to earn even that low "adjusted" return,
9 fails to meet this standard.

10
11 **(3) DIRECTORS' AND OFFICERS' INSURANCE**

12 Q. Please address the types of activities covered by D&O
13 insurance.

14 A. D&O insurance protects the Company and its directors
15 and officers from claims arising from decisions and
16 actions by the directors and officers. Of particular
17 note is the fact that, under New York State law and
18 the Company's bylaws, the Company can only indemnify
19 an officer or director for an act committed in "good
20 faith." Therefore, the Company would not, as a matter
21 of law and adherence to its own bylaws, indemnify an
22 officer or director for an act not committed in good
23 faith. No claim can even be made to an insurance

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1 company by the Company for reimbursement for
2 indemnification of an act not committed in good faith.

3 Q. Are there other activities which are excluded from D&O
4 coverage?

5 A. Yes. The Company's Policy contains pages of
6 exclusions covering, for example, claims regarding
7 illegally gained personal profit; deliberate acts of
8 fraud, dishonesty, criminality or maliciousness; and
9 fines, penalties, damages, disgorgement or
10 restitution.

11 Q. Is the purchase of D&O insurance a legitimate business
12 expense of the Company?

13 A. Yes. D&O insurance protects the Company, and by
14 extension, its ability to provide utility service to
15 its customers, by shifting the risk of litigation
16 brought against its officers and directors for good
17 faith decisions to a third-party carrier. Just as
18 critically, the Company purchases this insurance in
19 order to attract and retain qualified individuals to
20 manage the Company. There can be no question that
21 ratepayers benefit from a well-managed company. The
22 universality of corporate indemnification of directors
23 and officers, and of D&O insurance to redistribute the

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1 risk of such indemnity to better bearers of the risk,
2 makes such insurance a threshold requirement to the
3 Company's ability to attract and retain qualified
4 directors and officers.

5 Q. Are there other reasons supporting the purchase of D&O
6 insurance?

7 A. Yes. Shifting this risk protects the financial
8 stability of the Company and, again by extension, its
9 ability to provide utility service to its customers.
10 The investment community would view the Company,
11 absent D&O insurance, as having greater risk, which
12 would increase the Company's cost of capital. That
13 cost, in turn, would be reflected in higher utility
14 rates. In the short run, even though D&O insurance
15 may protect the Company in terms of litigation risk,
16 in the long run, the purchase of the appropriate
17 coverage level of D&O insurance keeps utility rates at
18 a level lower than they otherwise would be. Customers
19 should not receive a free ride on the cost of the
20 premiums that produce this result.

21 Q. As a general matter, does the Commission recognize D&O
22 as a reasonable business expense?

23 A. While the Commission adjusted recovery of this

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1 expense, which the Company has challenged, as
2 discussed below, the Commission accepts that D&O
3 insurance is a reasonable business expense.

4 Q. Does CPB's Mr. Schultz consider D&O insurance a
5 necessary business expense?

6 A. Yes, he does. Though Mr. Schultz questions who should
7 pay, which issue I shall discuss below, he recognizes
8 on page 31 of his testimony that businesses "are
9 required to have some level of protection."

10 Q. Did the Commission in Con Edison's last case permit
11 full recovery of D&O insurance expenses?

12 A. No. The Commission authorized recovery of half of the
13 cost of what it found to be the reasonable coverage
14 level. The Company has petitioned for rehearing on
15 this issue, as has Central Hudson the derivative
16 decision. For the reasons stated in our respective
17 appeals, as well as comments in my initial testimony
18 beginning at page 66, line 19, we believe the
19 decisions are in error and that reliance on them is
20 misplaced.

21 Q. Do these parties oppose full recovery by the Company
22 of its D&O insurance expenses?

23 A. Although the Accounting Panel states that it prefers a

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1 75-25 split between shareholders and ratepayers, it
2 supports a 50-50 split consistent with the
3 Commission's decision. Mr. Schultz also supports a
4 50-50 split, in view of the Commission's decision.
5 Mr. Bomke testified only to coverage and retention
6 limits, which I shall address below.

7 Q. Can the benefits of this insurance be separated
8 between shareholders' and ratepayers' interests?

9 A. No. In arguing for partial recovery, the parties
10 apparently rely on a beneficiary test as the
11 ratemaking basis for recovery of this cost. I have
12 understood the test for a utility's recovery of costs
13 to be whether the cost is a legitimate, business
14 expense of the utility on the theory that the costs to
15 operate the utility are necessary to provide safe and
16 reliable service to ratepayers. This ratemaking
17 principle is well settled. For example, in the West
18 Ohio case, the U. S. Supreme Court admonished the Ohio
19 commission to "give heed to all legitimate expenses
20 that will be charged upon income during the term of
21 regulation. . . ." The Court also rejected the
22 distinction between shareholders' and ratepayers'
23 interest in a public utility as false: "When a

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1 business disintegrates, there is damage to the
2 stockholders, but damage also to the customers in the
3 cost or quality of service." As I explained above,
4 D&O insurance provides benefits to customers that are
5 not adequately addressed by a split of cost
6 responsibility between capital providers and
7 customers. Finally, I would add that, except for its
8 most recent consideration of D&O insurance, the Public
9 Service Commission has consistently found D&O
10 insurance to be a legitimate and reasonable business
11 to be fully recovered and had rejected allocations
12 based on the argument that shareholders elect
13 directors and officers. To my knowledge, the
14 Commission did not point to any circumstance or event
15 for deviating from its historical practice.

16 Q. Turning to each party's testimony, beginning at the
17 top of page 69, the Accounting Panel describes how it
18 would propose to treat findings of negligence. Does
19 this conflation of the Company's policy coverage with
20 findings of negligence reflect a correct understanding
21 of the nature of the coverage?

22 A. No, it does not. Beginning just two lines after the
23 start of its discussion, the Accounting Panel

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1 hypothesizes a remote likelihood, then proceeds to
2 stigmatize the entire policy with its single
3 hypothetical. The Accounting Panel leads the reader
4 to believe that any payment under the policy would
5 necessarily involve an act of negligence, effectively
6 equating coverage with negligence. As I previously
7 stated, "good faith" is a threshold requirement for
8 coverage under the policy.

9 Q. On page 70, line 3, the Accounting Panel states its
10 belief that the "vast majority" of officer negligence
11 awards should not be paid, despite the fact that in a
12 few sentences prior it states that "events that
13 trigger insurance coverage are by definition in the
14 future and unknown." Do you have any comments on this
15 statement?

16 A. Yes. The Accounting Panel does not provide a basis
17 for its assertion that customers should "not pay in
18 the vast majority of those situations. . ." and
19 ignores the fact that the Commission recognizes that
20 indemnification of officers and directors is a
21 legitimate business practice. The Commission does not
22 otherwise hold the Company to an impossible standard
23 of perfection in the delivery of utility service.

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1 Insurance represents the decision to transfer the risk
2 of an event to a party (the insurer) who can better
3 diversify the exposure than can the Company on behalf
4 of its customers (who otherwise most likely will pay
5 for the indemnification).

6 Q. Does the Accounting Panel address the Commission's
7 recognition that insurance is a legitimate expense?

8 A. No. The Accounting Panel is silent on that point.

9 Q. Beginning on line 3 of page 71, the Accounting Panel
10 asserts that one-half of their estimate of an
11 appropriate level of coverage would be an acceptable
12 level of costs for shareholders to bear. Do you have
13 any comments on this?

14 A. Yes. As noted above, we are challenging the PSC's
15 decision that supports the Accounting Panel's
16 conclusion.

17 Q. Has Staff taken other positions at other times on the
18 appropriate split?

19 A. Yes. Staff's recommendations have varied in the
20 course of this case and the last. In the Company's
21 previous electric case, Staff argued that the
22 shareholders should absorb 90% of the cost. Here,
23 Staff states that it prefers a 75-25 split. These

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1 disparate positions over the course of just one year
2 reflect the arbitrary nature of the new "benefits"
3 test and, in the absence of any policy support, why
4 there should be 100% recovery of this expense. I also
5 note that in imposing its 50-50 split in the last
6 case, the Commission itself candidly conceded: "We
7 find no particularly good way to distinguish and
8 quantify the benefits of D&O
9 insurance to ratepayers from the benefits to
10 shareholders. . . ." (page 91).

11 Q. Does Mr. Schultz provide any basis for splitting the
12 cost of this expense, which he concedes is necessary?

13 A. One, which provides no basis for splitting cost
14 responsibility for D&O insurance. On page 31 of his
15 testimony, Mr. Schultz conjectures: "Essentially, this
16 insurance protects shareholders and the directors and
17 officers they appointed." Unfortunately, Mr.
18 Schultz's statement is wrong. Generally, D&O insurance
19 reimburses the Company, not shareholders, directors or
20 officers for the indemnification it provides to its
21 officers and directors as permitted under New York
22 State law and as a matter of universal practice by New
23 York corporations. D&O insurance never reimburses

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1 shareholders, and it only reimburses directors and
2 officers in instances where the Company has failed to
3 meet its obligations under the indemnity.

4 Q. Mr. Schultz goes on to observe that "[i]n the
5 regulated environment in which the Company operates,
6 ratepayers do not possess decision-making authority.
7 If a claim was made and a liability determined, the
8 most significant payment would be paid to
9 shareholders, with ratepayers receiving nothing." Do
10 you have any comments on this statement?

11 A. There is no basis for the assertions made by Mr.
12 Schultz. As noted above, the insurance payment would
13 be made to the corporation, to reimburse the
14 corporation for its covered expenses. Moreover,
15 customers, or "ratepayers" in Mr. Schultz's
16 terminology, benefit from the Company's D&O insurance
17 coverage because they pay an amount certain to an
18 insurer to relieve them of the risk of an unaffordable
19 amount should an insurable event occur. The notion
20 that because customers have no decision-making
21 authority with respect to the selection of directors
22 and officers or the decision to indemnify directors
23 and officers, or to insure against the cost of such

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1 indemnification, that they should not pay for the
2 insurance is not the basis upon which cost recovery is
3 judged. Customers do not make decisions about any of
4 the goods or services the Company purchases because
5 they do not manage the Company. Nor does this fact
6 distinguish the Company from any other utility, or for
7 that matter any other corporation, in the country. In
8 other words, Mr. Schultz has it backwards. The
9 question is not whether a particular, necessary
10 expense is of benefit to customers. If a cost is a
11 legitimate, business expense, it necessarily benefits
12 customers and the Company should recover all of
13 whatever the Commission determines to be the cost of
14 the appropriate level of coverage.

15 Q. Do you have any comments regarding Mr. Schultz's
16 analogizing D&O insurance to charitable contributions
17 and to lobbying expense, which he says are legitimate
18 business expenses but which are borne by shareholders?

19 A. Yes. I agree that charitable contributions and
20 lobbying expenses are also legitimate business
21 expenses, though I would not concede that those
22 expenses should not be included in rates. Exercising
23 a role in the passage of laws may protect our

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1 customers against policies that adversely impact their
2 interests. One example is the Article X law, aimed at
3 facilitating regulatory approvals of new generation
4 facilities that established regulatory processes
5 determine are necessary to meet customer needs.
6 Another relates to property tax laws, as discussed by
7 the Company's Property Tax Panel. Be that as it may,
8 the Company will likely continue in the utility
9 business if it does not lobby; that is not the case if
10 the Company does not protect itself via D&O insurance
11 and thereby retain the ability to attract qualified
12 individuals to manage and direct the Company. I would
13 also note my understanding that charitable
14 contributions were in fact viewed as necessary and a
15 recoverable expense until courts concluded such
16 recovery interfered with First Amendment rights, so I
17 do not see that being the case with respect to D&O
18 insurance obtained by the Company.

19 Q. Turning to the issue of what constitutes the proper
20 amount of D&O coverage, beginning on line 2 of page 67
21 through line 19 of page 68, the Accounting Panel
22 refers to Exhibit __ (RH-7) and asserts that, based on
23 this exhibit, Con Edison's D&O coverage limit is

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1 excessive. Do you agree with this assertion?

2 A. I do not. As I stated in my initial testimony,
3 determination of an appropriate level of insurance
4 coverage should consider the particular facts and
5 circumstances of the insured with some consideration
6 given to the coverage decisions made by other
7 businesses bearing a general similarity to that of the
8 insured. In many instances the Commission recognizes
9 that the Company's provision of service in the New
10 York City metropolitan area presents unique
11 operations, safety and general business challenges.
12 These challenges are factors in the Company's decision
13 as to appropriate coverage limits. The data in our
14 survey reflects a broader range of practice, or zone
15 of reasonableness, than the Accounting Panel's simple
16 average recognizes. For instance, the most common
17 level of coverage in the survey was \$300 million, the
18 same as the Company's coverage. The Accounting Panel
19 relies upon the Commission's decision in the Company's
20 last electric rate order to reach its reductive
21 conclusion. The Accounting Panel presents no
22 independent analysis as to why this average should
23 reflect the appropriate amount of coverage for the

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1 Company. The false precision of the calculation
2 reflects a lack of understanding of the substantive
3 concerns arising from the Company's provision of
4 energy service in the most densely populated area in
5 the United States. Additional business considerations
6 the Company considers in assessing its insurance
7 coverage needs include the facts that a higher portion
8 of its assets are proximate to the general public,
9 that its capital needs are large and ongoing, that its
10 customers and Commission hold it to unequalled
11 standards, that it serves the nation's financial
12 center and that it has a significant base of customers
13 in high-rise buildings for whom reliable electricity
14 service is especially critical for daily life.

15 Q. On lines 10-12 of page 68, Staff makes the following
16 statement. "...customers should not be expected to
17 pay beyond the average coverage limit of its peers."
18 Is this a reasonable statement?

19 A. No. In essence the Accounting Panel asserts that the
20 operating circumstances, location and the numerous
21 other differences among companies have no bearing on
22 the appropriate level of D&O coverage. If this same
23 reductive use of a benchmarking survey were applied to

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1 other operating expenses, the ratemaking process would
2 not be based on the factors affecting each utility.
3 This position is the equivalent of requiring customers
4 to pay the average construction cost to replace a
5 transformer, based on some sort of utility average
6 rather than the actual cost for that work in New York
7 City's underground system. Use of a national average
8 would not capture the real costs to the Company, just
9 as using an average here fails to capture the
10 Company's reasonable costs for D&O insurance. The
11 Accounting Panel provides no basis whatsoever for its
12 pressing for an average cost derived from other
13 companies for this expense. The amount of D&O
14 coverage cannot be reduced to a numerical formula.
15 Attempting to do so represents too simplistic a view
16 of a more complicated undertaking than the mean,
17 median or mode for any comparator group.

18 Q. Are elements of the Company's rates generally set
19 based on average costs of other utilities?

20 A. No. They are not. Moreover, when peer groups are
21 used in evaluating the appropriate rate factor for the
22 Company, both the Staff, the Commission and CPB
23 propose adjustments to reflect what they perceive to

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1 be differences between Con Edison and the companies
2 that comprise the peer group, return on equity being
3 the prime example. In recent cases the Company has
4 demonstrated, and the Commission, Staff and CPB have
5 rejected, evidence that the average ROEs of their peer
6 groups are as much as 200 basis points above the ROE
7 they recommend for the Company. Similarly, in this
8 case, as I discuss in my testimony at pages 21-22,
9 although Staff lists the average capital structure of
10 its own proxy group of companies as 49.2%, the average
11 is in excess of either percentage they propose for the
12 Company, and of what the Company itself proposes.
13 Here, instead, the parties propose that the Company's
14 recovery of actual expenses be based solely upon an
15 average of other utilities the circumstances of which
16 could not possibly be identical to Con Edison. The
17 parties should not have it both ways.

18 Q. Does CPB recognize that survey results should not be
19 relied upon exclusively to determine the appropriate
20 level of D&O coverage for the Company?

21 A. Yes. Beginning on line 12 of page 32, Mr. Schultz
22 states, "The study presented by Mr. Hoglund in my
23 opinion is of little value. Information on the

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1 companies is limited and, without sufficient detail,
2 there is no reason any reliance should be placed on
3 the information provided." In fact, I agree with Mr.
4 Schultz's implied suggestion that the Company's survey
5 is not a "study." However, this does not mean that no
6 reliance be placed on these survey results in
7 determining the appropriate coverage level for the
8 Company.

9 Q. Please explain.

10 A. While Mr. Schultz characterizes the survey as lacking
11 in detail, the survey identifies participants as large
12 utilities with market capitalizations (*i.e.*, publicly-
13 traded common equities). These companies are
14 headquartered in the United States and predominately
15 provide electricity to customers. Since the number of
16 companies that match these characteristics are well
17 less than forty, the information provided is adequate
18 for the purposes for which it was used by the Company.
19 That use was solely as a measure of the reasonableness
20 of the amount of coverage chosen by the Company in the
21 context of the particularities of its business.
22 Accordingly, to the extent Mr. Schultz prefers not to
23 reductively apply the mean of a survey's results, be

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1 it the Company's survey or any other survey, then I
2 agree with him.

3 Q. Would you comment on Mr. Schultz's statement (p.32)
4 that the Company's answer to a data request by NYECC
5 resulted in his questioning "whether any evidence
6 provided as justification should be relied on by the
7 Commission"?

8 A. Yes. Mr. Schultz refers to my answer to NYECC-15s
9 [Exhibit ___(RH-12)] (attached), which explained in
10 detail the Company's reasons for not relying upon the
11 Towers Perrin study as a benchmark to test our
12 coverage limits in the last case such that it was not
13 useful in this case. Contrary to Mr. Schultz's
14 suggestion, that answer is consistent with the
15 Company's position in the last case.

16 Q. Please explain what you mean.

17 A. In the last case, I testified that the Towers Perrin
18 survey showed the universality of D&O insurance among
19 companies. The universality of D&O insurance among
20 U.S. corporations is not an issue in this case, the
21 Commission having left undisturbed that finding by the
22 administrative law judges. Also in the last case, I
23 answered a question from Mr. Schultz concerning the

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1 Company's coverage limits and cost of litigation to
2 the effect that the Towers Perrin report made
3 observations about company size, industry type,
4 frequency and multiplicity of claims. In deciding the
5 last case, the Commission agreed with the Company that
6 distinguishing factors for companies in general
7 surveys limit application of such surveys to the
8 Company. In setting the Company's coverage limit,
9 wrongly as we argue elsewhere, the Commission relied
10 solely on the Company's survey. There was no
11 discussion or apparent dispute regarding the points
12 regarding litigation I mentioned in discovery, thus
13 there was no reason to raise and dismiss that concern
14 in this case. Here, the Company presents its case for
15 D&O insurance, with no reliance on the Towers Perrin
16 Report. Thus, nothing in the attached response
17 substantiates Mr. Schultz's claim that no Company
18 evidence is reliable.

19
20 Q. Has Towers Perrin issued a D&O Insurance survey since
21 the last case?

22 A. Towers Perrin issued its 2008 survey on September 9,
23 2009. The survey continues to support the

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1 Commission's finding of the universality of D&O
2 insurance among American corporations. The survey
3 also still suffers from the same deficiencies laid out
4 in my answer to NYECC 15s (Exhibit__(RH-12)), that
5 make it of no value for application to the D&O
6 coverage limits required by the Company.

7 Q. In recommending that the Commission continue limiting
8 the Company's D&O coverage limit to \$200 million, did
9 Mr. Bomke comment on any of the other considerations
10 which form the basis of coverage amount?

11 A. No, he did not. Mr. Bomke apparently derived his
12 views on the Company's D&O insurance solely by
13 examining the Company's survey, a limited tool, as I
14 have otherwise testified.

15 Q. Do you have a comment on Mr. Bomke's criticism of the
16 Company's not having conducted a D&O insurance survey
17 every year?

18 A. Yes. As I answered NYECC-15a, the Company does not
19 believe that an annual survey is necessary. Moreover,
20 the Company is unaware of any industry event(s) that
21 would have indicated that a survey would have been a
22 worthwhile use of resources in either 2007 or 2008.

23 Q. Mr. Bomke, on page 36 of his testimony, observes that

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1 in the last electric rate order the Commission found
2 the Company's claims of distinctions between it and
3 the participants in its survey were not credible. Can
4 you offer a comment?

5 A. Yes. As I have testified above, the Company explained
6 the manner in which it purchases its D&O insurance,
7 the reliance it places on experts in the field and the
8 use of its survey simply to test whether the coverage
9 limit is sound. Here, I would note, per my testimony
10 on page 23 above, that with respect to issuance costs
11 for debt, Staff found the Company's forecast based on
12 "guidance from knowledgeable underwriters" to be
13 reasonable. I have also explained that our survey was
14 gathered confidentially such that discussion of
15 details of individual companies would violate that
16 confidentiality. Finally, even without specific
17 information for any other company included in our
18 survey, it is plain that no other company is the
19 equivalent of this Company and all of the factors
20 which make it unique, such as its location and its
21 operation of the largest underground electrical system
22 in the country. That the Commission apparently did
23 not agree with these facts in the last case makes them

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1 no less true today than they were then.

2 Q. On line 14 of page 39 of his testimony, Mr. Bomke
3 states concerning the Company's survey of other
4 utilities, "This additional Company survey data
5 suggests that the Company's retention limit should be
6 increased from \$5 million to a minimum of \$7.5 million
7 or a maximum of \$10 million based upon the retention
8 limits of the Company's designated peer group." Do
9 you have any comments on this statement?

10 A. Yes. Contrary to Mr. Bomke's assertion, the survey
11 data does not "suggest" an increase in the Company's
12 retention limit. Based on the data presented, which
13 did not seek to collect every factor which affects the
14 amount of coverage, the Company's retention limit is
15 reasonable. This additional survey shows that of the
16 ten public utilities with a market cap of \$10 billion
17 or more, six have higher retention limits than the
18 Company's limit of \$5 million and four have the same
19 or lower. Just as we compared our coverage limits with
20 other large utilities, we also compared the retention
21 limit. We concluded for retention limit, as we did
22 for the coverage limit, that our limits were within
23 the zone of reasonableness. Again, the survey is only

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1 a survey, not the Company's basis for setting every
2 component of its D&O insurance policy. The purpose of
3 insurance is to shift liability exposure in order to
4 reasonably minimize the financial impact of insurable
5 incidents. Increasing retention limits, as Mr. Bomke
6 implies, is not cost free. Changing the retention
7 limits requires the assumption of additional risk and
8 the distinct possibility of incurring significant
9 expense. If the retention limits were increased, that
10 gap, rather than being met by insurance, would still
11 have to be paid by the Company and its customers. Mr.
12 Bomke makes no presentation whatsoever of the actual
13 cost implications of changing retention limits.

14 Q. Does this conclude your rebuttal testimony?

15 A. It does.

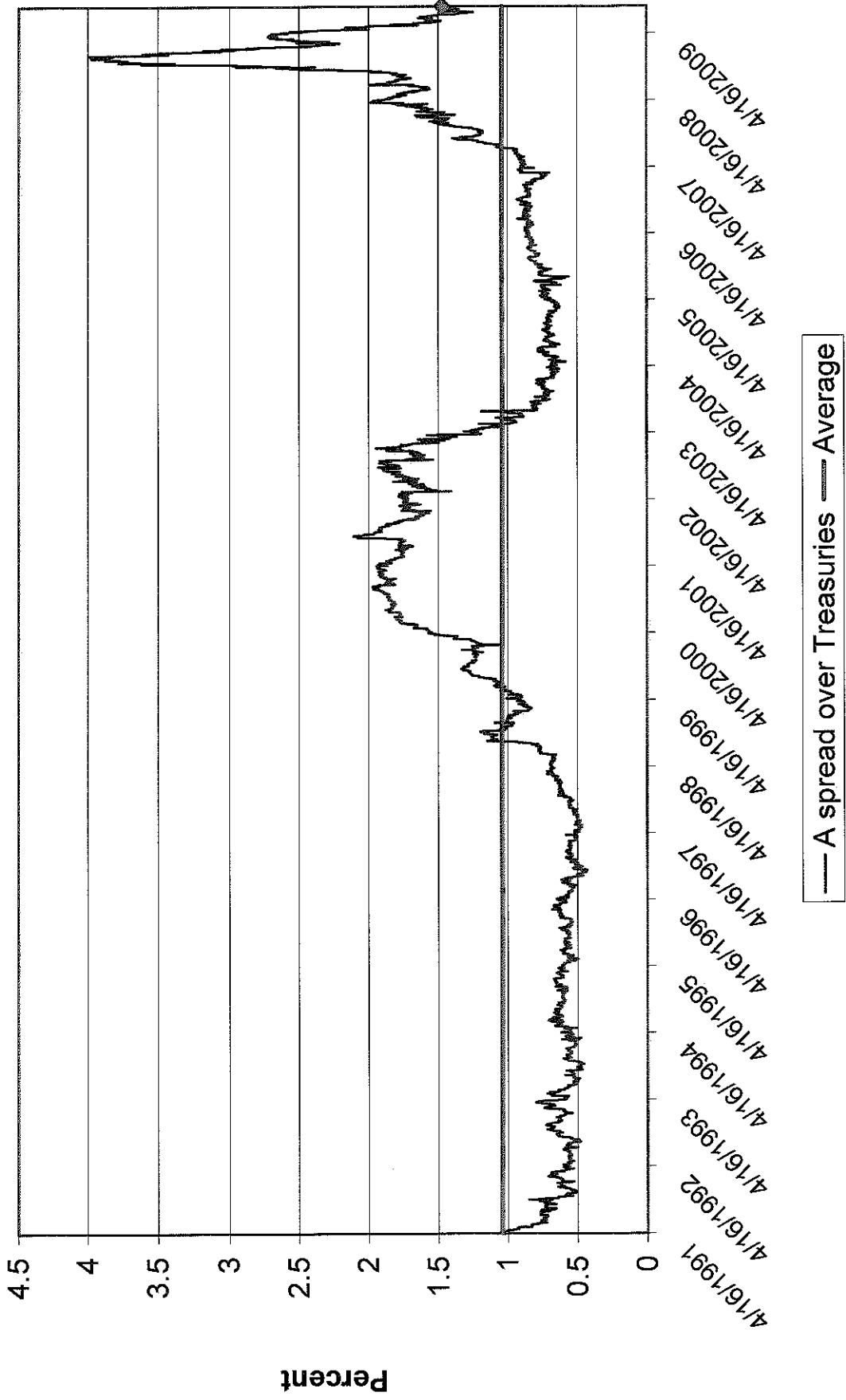
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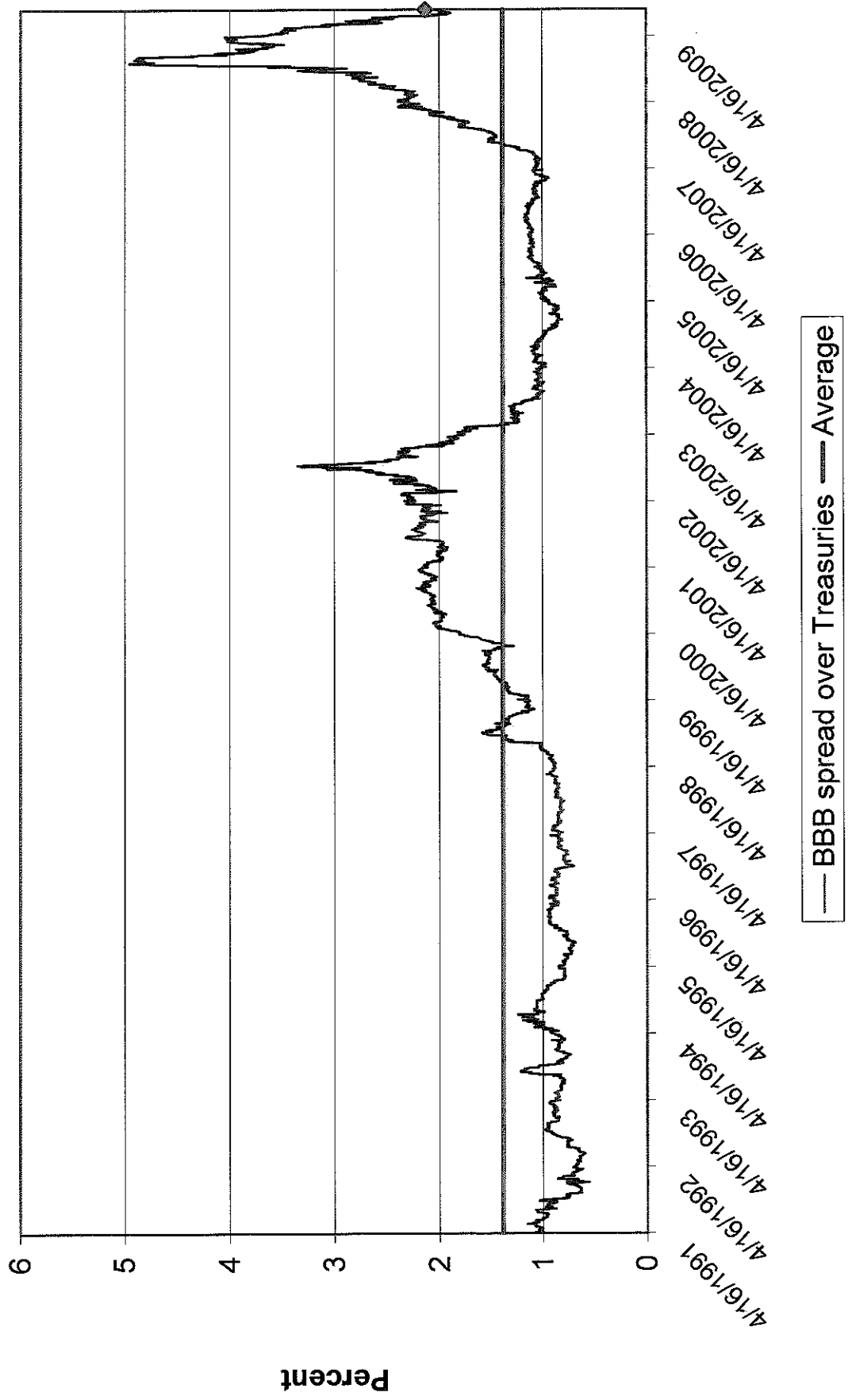
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19

A-rated utility spread over Treasuries



BBB-rated utility spread over Treasuries



Panel DCF Results vs. Average Of Moody's and S&P Ratings

Exhibit__(RH-9)

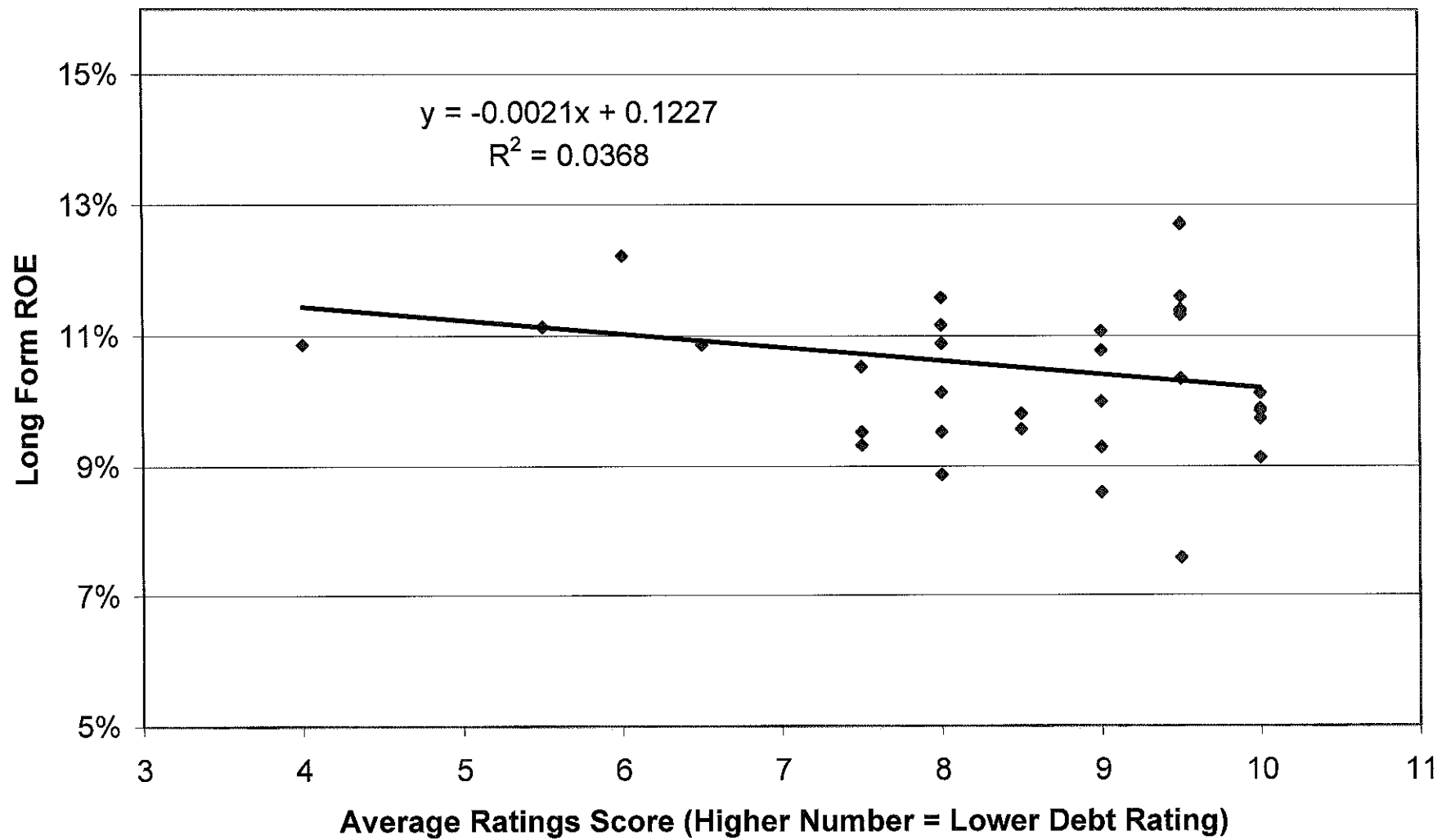


Exhibit __ (RH-10)

Name	Market to Book Ratio
1 DPL INC	2.97
2 NSTAR	1.91
3 SOUTHERN CO	1.85
4 FPL GROUP INC	1.85
5 ENTERGY CORP	1.78
6 MGE ENERGY INC	1.77
7 FIRSTENERGY CORP	1.59
8 WISCONSIN ENERGY CORP	1.54
9 P G & E CORP	1.52
10 SEMPRA ENERGY	1.48
11 TECO ENERGY INC	1.47
12 VECTREN CORPORATION	1.42
13 CLECO CORPORATION	1.42
14 ALLETE INC	1.32
15 XCEL ENERGY INC	1.30
16 NORTHEAST UTILITIES	1.23
17 AMERICAN ELECTRIC POWER	1.18
18 EMPIRE DISTRICT ELECTRIC CO	1.18
19 HAWAIIAN ELECTRIC INDS	1.18
20 PROGRESS ENERGY INC	1.18
21 EDISON INTERNATIONAL	1.18
22 CONSOLIDATED EDISON INC	1.16
23 ALLIANT ENERGY CORP	1.09
24 AVISTA CORP	1.07
25 PINNACLE WEST CAPITAL	1.04
26 WESTAR ENERGY INC	1.04
27 IDACORP INC	1.03
28 PORTLAND GENERAL ELECTRIC CO	1.01
29 DUKE ENERGY CORP	0.96
30 BLACK HILLS CORP	0.95
31 DTE ENERGY COMPANY	0.95
32 GREAT PLAINS ENERGY INC	0.89
33 AMEREN CORPORATION	0.78
	1.34

Exhibit RH__(11)

Rank	Name	Market to Book Ratio
1	BOEING CO	203.8
2	WESTERN UNION CO	47.84
3	YUM! BRANDS INC	34.04
4	COCA-COLA ENTERPRISES	21.44
5	HERSHEY CO/THE	21.24
6	WINDSTREAM CORP	18.52
7	LORILLARD INC	18.48
8	AVON PRODUCTS INC	16.56
9	COLGATE-PALMOLIVE CO	16.02
10	CAMPBELL SOUP CO	15.26
11	PHILIP MORRIS INTERNATIONAL	14.72
12	NATIONAL SEMICONDUCTOR CORP	14.21
13	CB RICHARD ELLIS GROUP INC-A	12.93
14	AMAZON.COM INC	11.94
15	ALTRIA GROUP INC	11.13
16	LOCKHEED MARTIN CORP	10.89
17	MASTERCARD INC-CLASS A	10.8
18	INTL BUSINESS MACHINES CORP	10.39
19	KELLOGG CO	10.37
20	APOLLO GROUP INC-CL A	10.2
21	TENET HEALTHCARE CORP	9.52
22	SALESFORCE.COM INC	9.17
23	C.H. ROBINSON WORLDWIDE INC	8.97
24	UNITED PARCEL SERVICE-CL B	8.6
25	FREEMPORT-MCMORAN COPPER	8.03
26	GILEAD SCIENCES INC	7.98
27	PAYCHEX INC	7.96
28	HJ HEINZ CO	7.64
29	PEPSICO INC	7.61
30	INTUITIVE SURGICAL INC	7.37
31	GOODYEAR TIRE & RUBBER CO	7.35
32	FMC TECHNOLOGIES INC	7.32
33	WATERS CORP	7.21
34	DELL INC	7.03
35	EXPRESS SCRIPTS INC	6.99
36	SOUTHWESTERN ENERGY CO	6.87
37	MARRIOTT INTERNATIONAL-CL A	6.71
38	VERISIGN INC	6.65
39	ALTERA CORPORATION	6.64
40	INTL GAME TECHNOLOGY	6.61
41	PRAXAIR INC	6.56
42	H&R BLOCK INC	6.52
43	APPLE INC	6.41
44	COACH INC	6.3
45	ECOLAB INC	6.26
46	CELGENE CORP	6.25
47	BMC SOFTWARE INC	6.2
48	MCGRAW-HILL COMPANIES INC	5.99
49	FEDERATED INVESTORS INC-CL B	5.86

Exhibit RH__(11)

Rank	Name	Market to Book Ratio
50	TJX COMPANIES INC	5.71
51	MICROSOFT CORP	5.7
52	DIRECTV GROUP INC/THE	5.67
53	STARBUCKS CORP	5.46
54	BAXTER INTERNATIONAL INC	5.41
55	COCA-COLA CO/THE	5.38
56	EXPEDITORS INTL WASH INC	5.36
57	KIMBERLY-CLARK CORP	5.32
58	STERICYCLE INC	5.31
59	TERADATA CORP	5.27
60	FRONTIER COMMUNICATIONS CORP	5.15
61	NORDSTROM INC	5.06
62	GOOGLE INC-CL A	4.96
63	SIMON PROPERTY GROUP INC	4.96
64	COGNIZANT TECH SOLUTIONS-A	4.96
65	FASTENAL CO	4.91
66	SCHERING-PLOUGH CORP	4.83
67	3M CO	4.82
68	SCRIPPS NETWORKS INTER-CL A	4.81
69	SHERWIN-WILLIAMS CO/THE	4.74
70	AMERICAN TOWER CORP-CL A	4.74
71	CONSOL ENERGY INC	4.71
72	MCDONALD'S CORP	4.66
73	OWENS-ILLINOIS INC	4.66
74	PEPSI BOTTLING GROUP INC	4.62
75	ROCKWELL COLLINS INC.	4.62
76	MEDCO HEALTH SOLUTIONS INC	4.6
77	T ROWE PRICE GROUP INC	4.59
78	WYNN RESORTS LTD	4.58
79	CATERPILLAR INC	4.55
80	AMPHENOL CORP-CL A	4.47
81	VARIAN MEDICAL SYSTEMS INC	4.43
82	RED HAT INC	4.43
83	ELI LILLY & CO	4.42
84	ESTEE LAUDER COMPANIES-CL A	4.38
85	SYSCO CORP	4.36
86	SCHWAB (CHARLES) CORP	4.34
87	INTL FLAVORS & FRAGRANCES	4.33
88	ROBERT HALF INTL INC	4.32
89	NETAPP INC	4.26
90	SIGMA-ALDRICH	4.24
91	DU PONT (E.I.) DE NEMOURS	4.21
92	BROWN-FORMAN CORP-CLASS B	4.17
93	ORACLE CORP	4.11
94	PACTIV CORPORATION	4.1
95	MONSANTO CO	4.06
96	FLIR SYSTEMS INC	4.06
97	ALLERGAN INC	4.01
98	DEVRY INC	4
99	FMC CORP	3.99

Exhibit RH__(11)

Rank	Name	Market to Book Ratio
100	QUALCOMM INC	3.94
101	SCHLUMBERGER LTD	3.94
102	BROADCOM CORP-CL A	3.93
103	ROCKWELL AUTOMATION INC	3.89
104	AUTODESK INC	3.89
105	AGILENT TECHNOLOGIES INC	3.86
106	GENERAL MILLS INC	3.79
107	CR BARD INC	3.76
108	ADOBE SYSTEMS INC	3.71
109	NVIDIA CORP	3.7
110	AUTOMATIC DATA PROCESSING	3.69
111	BALL CORP	3.68
112	DIAMOND OFFSHORE DRILLING	3.66
113	JOHNSON & JOHNSON	3.62
114	PALL CORP	3.59
115	ABBOTT LABORATORIES	3.58
116	MCCORMICK & CO-NON VTG SHRS	3.58
117	HONEYWELL INTERNATIONAL INC	3.58
118	EMERSON ELECTRIC CO	3.57
119	SARA LEE CORP	3.56
120	ST JUDE MEDICAL INC	3.54
121	INTUIT INC	3.51
122	CISCO SYSTEMS INC	3.5
123	STARWOOD HOTELS & RESORTS	3.5
124	LABORATORY CRP OF AMER HLDGS	3.45
125	AIR PRODUCTS & CHEMICALS INC	3.43
126	MCAFEE INC	3.42
127	UNITED TECHNOLOGIES CORP	3.42
128	FLOWSERVE CORP	3.4
129	MICROCHIP TECHNOLOGY INC	3.39
130	FLUOR CORP	3.37
131	QLOGIC CORP	3.33
132	MERCK & CO. INC.	3.32
133	CITRIX SYSTEMS INC	3.32
134	DARDEN RESTAURANTS INC	3.31
135	BED BATH & BEYOND INC	3.3
136	RANGE RESOURCES CORP	3.29
137	NIKE INC -CL B	3.28
138	XILINX INC	3.28
139	JANUS CAPITAL GROUP INC	3.26
140	TEXAS INSTRUMENTS INC	3.26
141	DEERE & CO	3.25
142	GAP INC/THE	3.24
143	FRANKLIN RESOURCES INC	3.23
144	ANALOG DEVICES INC	3.23
145	BECTON DICKINSON AND CO	3.22
146	INTERCONTINENTALEXCHANGE INC	3.22
147	EL PASO CORP	3.2
148	VW GRAINGER INC	3.18
149	MEDTRONIC INC	3.16

Exhibit RH__(11)

Rank	Name	Market to Book Ratio
150	EXXON MOBIL CORP	3.16
151	BRISTOL-MYERS SQUIBB CO	3.15
152	HOSPIRA INC	3.14
153	STRYKER CORP	3.14
154	AFLAC INC	3.13
155	AK STEEL HOLDING CORP	3.12
156	PPG INDUSTRIES INC	3.11
157	MATTEL INC	3.11
158	SYMANTEC CORP	3.1
159	WYETH	3.1
160	CAMERON INTERNATIONAL CORP	3.09
161	AVERY DENNISON CORP	3.08
162	OMNICOM GROUP	3.07
163	AMERICAN EXPRESS CO	3.05
164	CIENA CORP	3.03
165	HALLIBURTON CO	3
166	DENTSPLY INTERNATIONAL INC	2.97
167	IRON MOUNTAIN INC	2.94
168	HASBRO INC	2.92
169	EXPEDIA INC	2.91
170	PACCAR INC	2.9
171	TOTAL SYSTEM SERVICES INC	2.9
172	AMGEN INC	2.89
173	TIFFANY & CO	2.88
174	WAL-MART STORES INC	2.88
175	PEABODY ENERGY CORP	2.88
176	DAVITA INC	2.87
177	LIMITED BRANDS INC	2.86
178	PLUM CREEK TIMBER CO	2.84
179	ILLINOIS TOOL WORKS	2.81
180	INTEL CORP	2.79
181	EXELON CORP	2.79
182	MILLIPORE CORP	2.78
183	DEAN FOODS CO	2.77
184	STAPLES INC	2.75
185	KLA-TENCOR CORPORATION	2.75
186	KOHL'S CORP	2.73
187	ITT CORP	2.72
188	CF INDUSTRIES HOLDINGS INC	2.71
189	PATTERSON COS INC	2.71
190	PROCTER & GAMBLE CO/THE	2.71
191	CUMMINS INC	2.7
192	PRECISION CASTPARTS CORP	2.7
193	FISERV INC	2.69
194	BEST BUY CO INC	2.68
195	POLO RALPH LAUREN CORP	2.67
196	LSI CORP	2.67
197	HEWLETT-PACKARD CO	2.66
198	COSTCO WHOLESALE CORP	2.64
199	EBAY INC	2.62

Exhibit RH__(11)

Rank	Name	Market to Book Ratio
200	KB HOME	2.62
201	APARTMENT INVT & MGMT CO -A	2.62
202	FAMILY DOLLAR STORES	2.6
203	GOODRICH CORP	2.6
204	TERADYNE INC	2.6
205	HARRIS CORP	2.57
206	BLACK & DECKER CORP	2.56
207	WESTERN DIGITAL CORP	2.56
208	HARLEY-DAVIDSON INC	2.54
209	HOME DEPOT INC	2.52
210	CA INC	2.52
211	EASTMAN CHEMICAL COMPANY	2.51
212	TARGET CORP	2.51
213	QUEST DIAGNOSTICS	2.51
214	WHOLE FOODS MARKET INC	2.5
215	JUNIPER NETWORKS INC	2.49
216	EQT CORP	2.49
217	SUN MICROSYSTEMS INC	2.49
218	AIRGAS INC	2.48
219	WASTE MANAGEMENT INC	2.47
220	APPLIED MATERIALS INC	2.47
221	MCKESSON CORP	2.46
222	NEWELL RUBBERMAID INC	2.45
223	EQUIFAX INC	2.45
224	EMC CORP/MASS	2.44
225	VENTAS INC	2.43
226	NEW YORK TIMES CO -CL A	2.42
227	BIG LOTS INC	2.42
228	WALGREEN CO	2.42
229	DR PEPPER SNAPPLE GROUP INC	2.41
230	PUBLIC STORAGE	2.41
231	BURLINGTON NORTHERN SANTA FE	2.39
232	GENUINE PARTS CO	2.37
233	PROGRESSIVE CORP	2.37
234	MEREDITH CORP	2.35
235	NEWMONT MINING CORP	2.33
236	BIOGEN IDEC INC	2.33
237	AMERISOURCEBERGEN CORP	2.31
238	KROGER CO	2.31
239	LIFE TECHNOLOGIES CORP	2.3
240	NORTHERN TRUST CORP	2.3
241	DANAHER CORP	2.3
242	JACOBS ENGINEERING GROUP INC	2.3
243	HARMAN INTERNATIONAL	2.29
244	HORMEL FOODS CORP	2.29
245	DEVON ENERGY CORPORATION	2.29
246	VIACOM INC-CLASS B	2.28
247	GENERAL DYNAMICS CORP	2.25
248	DENBURY RESOURCES INC	2.24
249	OCCIDENTAL PETROLEUM CORP	2.24

Exhibit RH__(11)

Rank	Name	Market to Book Ratio
250	MASSEY ENERGY CO	2.23
251	STATE STREET CORP	2.23
252	VF CORP	2.21
253	FORTUNE BRANDS INC	2.21
254	EOG RESOURCES INC	2.2
255	CEPHALON INC	2.19
256	AES CORP	2.19
257	MARSH & MCLENNAN COS	2.18
258	APACHE CORP	2.17
259	BOSTON PROPERTIES INC	2.16
260	INTERPUBLIC GROUP OF COS INC	2.12
261	RADIOSHACK CORP	2.11
262	REYNOLDS AMERICAN INC	2.11
263	CABOT OIL & GAS CORP	2.11
264	INTERNATIONAL PAPER CO	2.1
265	NUCOR CORP	2.1
266	MOTOROLA INC	2.1
267	CSX CORP	2.1
268	CONAGRA FOODS INC	2.08
269	PPL CORPORATION	2.08
270	VORNADO REALTY TRUST	2.07
271	HOST HOTELS & RESORTS INC	2.05
272	O'REILLY AUTOMOTIVE INC	2.04
273	CENTERPOINT ENERGY INC	2.03
274	AVALONBAY COMMUNITIES INC	2.01
275	COMPUWARE CORP	2.01
276	MONSTER WORLDWIDE INC	2
277	ELECTRONIC ARTS INC	2
278	YAHOO! INC	1.99
279	JOHNSON CONTROLS INC	1.99
280	GENZYME CORP	1.99
281	RAYTHEON COMPANY	1.98
282	FOREST LABORATORIES INC	1.97
283	NOBLE ENERGY INC	1.97
284	UNION PACIFIC CORP	1.97
285	VERIZON COMMUNICATIONS INC	1.96
286	AON CORP	1.96
287	WEYERHAEUSER CO	1.94
288	CIGNA CORP	1.94
289	SPECTRA ENERGY CORP	1.94
290	DOW CHEMICAL	1.93
291	PUBLIC SERVICE ENTERPRISE GP	1.93
292	AKAMAI TECHNOLOGIES	1.92
293	CINTAS CORP	1.92
294	PARKER HANNIFIN CORP	1.92
295	MEMC ELECTRONIC MATERIALS	1.92
296	RR DONNELLEY & SONS CO	1.91
297	US BANCORP	1.91
298	JDS UNIPHASE CORP	1.89
299	TIME WARNER CABLE	1.89

Exhibit RH__(11)

Rank	Name	Market to Book Ratio
300	KRAFT FOODS INC-CLASS A	1.89
301	DOVER CORP	1.89
302	LEXMARK INTERNATIONAL INC-A	1.88
303	ZIMMER HOLDINGS INC	1.87
304	QUESTAR CORP	1.87
305	STANLEY WORKS/THE	1.86
306	SOUTHERN CO	1.86
307	EQUITY RESIDENTIAL	1.85
308	CONSTELLATION ENERGY GROUP	1.85
309	DOMINION RESOURCES INC/VA	1.85
310	BAKER HUGHES INC	1.84
311	FPL GROUP INC	1.84
312	VULCAN MATERIALS CO	1.83
313	BEMIS COMPANY	1.83
314	LEGGETT & PLATT INC	1.82
315	AMERICAN INTERNATIONAL GROUP	1.8
316	JABIL CIRCUIT INC	1.8
317	ENTERGY CORP	1.8
318	PFIZER INC	1.78
319	TEXTRON INC	1.78
320	GANNETT CO	1.77
321	J.C. PENNEY CO INC	1.76
322	PRINCIPAL FINANCIAL GROUP	1.76
323	MASCO CORP	1.75
324	QUANTA SERVICES INC	1.74
325	MURPHY OIL CORP	1.74
326	CORNING INC	1.73
327	WATSON PHARMACEUTICALS INC	1.73
328	AFFILIATED COMPUTER SVCS-A	1.73
329	ABERCROMBIE & FITCH CO-CL A	1.72
330	NORFOLK SOUTHERN CORP	1.72
331	GAMESTOP CORP-CLASS A	1.71
332	FEDEX CORP	1.71
333	NOVELLUS SYSTEMS INC	1.71
334	GOLDMAN SACHS GROUP INC	1.7
335	MOLEX INC	1.7
336	LOWE'S COS INC	1.69
337	DR HORTON INC	1.68
338	LEUCADIA NATIONAL CORP	1.68
339	SNAP-ON INC	1.68
340	MYLAN INC	1.67
341	METROPCS COMMUNICATIONS INC	1.66
342	CHEVRON CORP	1.66
343	NICOR INC	1.66
344	ALLEGHENY TECHNOLOGIES INC	1.64
345	MACY'S INC	1.64
346	TITANIUM METALS CORP	1.62
347	RYDER SYSTEM INC	1.62
348	INVESCO LTD	1.61
349	FIRSTENERGY CORP	1.6

Exhibit RH__(11)

Rank	Name	Market to Book Ratio
350	AT&T INC	1.59
351	WHIRLPOOL CORP	1.59
352	BJ SERVICES CO	1.59
353	WELLS FARGO & CO	1.59
354	WASHINGTON POST -CL B	1.58
355	GENERAL ELECTRIC CO	1.58
356	SEALED AIR CORP	1.58
357	PULTE HOMES INC	1.57
358	ANADARKO PETROLEUM CORP	1.56
359	L-3 COMMUNICATIONS HOLDINGS	1.56
360	SANDISK CORP	1.55
361	UNITEDHEALTH GROUP INC	1.53
362	HCP INC	1.53
363	P G & E CORP	1.53
364	WISCONSIN ENERGY CORP	1.53
365	AETNA INC	1.52
366	HEALTH CARE REIT INC	1.52
367	ALLEGHENY ENERGY INC	1.52
368	WALT DISNEY CO/THE	1.51
369	AUTONATION INC	1.51
370	CHESAPEAKE ENERGY CORP	1.51
371	HESS CORP	1.48
372	KIMCO REALTY CORP	1.48
373	PERKINELMER INC	1.48
374	MICRON TECHNOLOGY INC	1.48
375	TECO ENERGY INC	1.48
376	CONSTELLATION BRANDS INC-A	1.47
377	SEMPRA ENERGY	1.47
378	EATON CORP	1.46
379	CVS CAREMARK CORP	1.45
380	UNITED STATES STEEL CORP	1.44
381	TELLABS INC	1.44
382	TORCHMARK CORP	1.44
383	XTO ENERGY INC	1.4
384	NOVELL INC	1.4
385	ARCHER-DANIELS-MIDLAND CO	1.39
386	NEWS CORP-CL A	1.38
387	SOUTHWEST AIRLINES CO	1.38
388	HUDSON CITY BANCORP INC	1.37
389	REPUBLIC SERVICES INC	1.37
390	PRUDENTIAL FINANCIAL INC	1.35
391	OFFICE DEPOT INC	1.34
392	NORTHROP GRUMMAN CORP	1.34
393	FIDELITY NATIONAL INFORMATIO	1.34
394	HUMANA INC	1.33
395	NATIONAL OILWELL VARCO INC	1.33
396	BANK OF NEW YORK MELLON CORP	1.33
397	FIRST HORIZON NATIONAL CORP	1.32
398	COMPUTER SCIENCES CORP	1.32
399	SLM CORP	1.31

Exhibit RH__(11)

Rank	Name	Market to Book Ratio
400	SCANA CORP	1.31
401	SMITH INTERNATIONAL INC	1.3
402	XCEL ENERGY INC	1.29
403	MEADWESTVACO CORP	1.28
404	METLIFE INC	1.28
405	WILLIAMS COS INC	1.27
406	BB&T CORP	1.26
407	CARNIVAL CORP	1.25
408	NABORS INDUSTRIES LTD	1.25
409	XEROX CORP	1.25
410	JM SMUCKER CO/THE	1.24
411	BOSTON SCIENTIFIC CORP	1.23
412	SUPERVALU INC	1.22
413	THERMO FISHER SCIENTIFIC INC	1.22
414	NORTHEAST UTILITIES	1.22
415	DISCOVER FINANCIAL SERVICES	1.21
416	LENNAR CORP-CL A	1.2
417	JPMORGAN CHASE & CO	1.2
418	CONVERGYS CORP	1.19
419	MOLSON COORS BREWING CO -B	1.19
420	CHUBB CORP	1.19
421	AMERICAN ELECTRIC POWER	1.19
422	EDISON INTERNATIONAL	1.19
423	COMCAST CORP-CL A	1.18
424	CONOCOPHILLIPS	1.18
425	SAFEWAY INC	1.17
426	WELLPOINT INC	1.17
427	SUNOCO INC	1.17
428	CMS ENERGY CORP	1.17
429	PROGRESS ENERGY INC	1.17
430	KING PHARMACEUTICALS INC	1.16
431	M & T BANK CORP	1.16
432	CONSOLIDATED EDISON INC	1.16
433	PIONEER NATURAL RESOURCES CO	1.15
434	NYSE EURONEXT	1.15
435	CARDINAL HEALTH INC	1.14
436	ENSCO INTERNATIONAL INC	1.14
437	MORGAN STANLEY	1.14
438	WYNDHAM WORLDWIDE CORP	1.13
439	MARATHON OIL CORP	1.09
440	ALLSTATE CORP	1.09

Exhibit RH__(11)

Rank	Name	Market to Book Ratio
441	PNC FINANCIAL SERVICES GROUP	1.08
442	ALCOA INC	1.07
443	PEOPLE'S UNITED FINANCIAL	1.05
444	PINNACLE WEST CAPITAL	1.05
445	CME GROUP INC	1.04
446	AMERIPRISE FINANCIAL INC	1.02
447	NASDAQ OMX GROUP/THE	1.02
448	CENTURYTEL INC	1.01
449	CINCINNATI FINANCIAL CORP	1.01
450	TRAVELERS COS INC/THE	1.01
451	LOEWS CORP	1
452	TYSON FOODS INC-CL A	0.99
453	LEGG MASON INC	0.99
454	UNUM GROUP	0.99
455	DUKE ENERGY CORP	0.97
456	CBS CORP-CLASS B NON VOTING	0.96
457	TIME WARNER INC	0.96
458	INTEGRYS ENERGY GROUP INC	0.95
459	DTE ENERGY COMPANY	0.94
460	COMERICA INC	0.93
461	ROWAN COMPANIES INC	0.91
462	XL CAPITAL LTD -CLASS A	0.9
463	SEARS HOLDINGS CORP	0.88
464	COVENTRY HEALTH CARE INC	0.88
465	LINCOLN NATIONAL CORP	0.87
466	ASSURANT INC	0.85
467	HARTFORD FINANCIAL SVCS GRP	0.84
468	PEPCO HOLDINGS INC	0.81
469	FIFTH THIRD BANCORP	0.8
470	BANK OF AMERICA CORP	0.77
471	AMEREN CORPORATION	0.77
472	NISOURCE INC	0.77
473	PROLOGIS	0.71
474	HUNTINGTON BANCSHARES INC	0.7
475	VALERO ENERGY CORP	0.69
476	TESORO CORP	0.67
477	CAPITAL ONE FINANCIAL CORP	0.67
478	E*TRADE FINANCIAL CORP	0.67
479	KEYCORP	0.65
480	SUNTRUST BANKS INC	0.65
481	SPRINT NEXTEL CORP	0.62
482	MARSHALL & ILSLEY CORP	0.61
483	ZIONS BANCORPORATION	0.56
484	GENWORTH FINANCIAL INC-CL A	0.55
485	MBIA INC	0.53
486	DYNEGY INC-CL A	0.48
487	REGIONS FINANCIAL CORP	0.47
488	CITIGROUP INC	0.31
	Average	3.62

Company Name: Con Edison
Case Description: 2009 Electric Rate Filing
Case: 09-E-0428

Response to NYECC Interrogatories – Set NYECC1
Date of Response:
Responding Witness:

Question No. :15s

Referencing page 61, line 11 - page 63, line 8 of your testimony and Exhibit - (RH-7): s. Referencing page 64, line 15- page 65, line 7, explain why data, including premiums paid by 32 companies with assets over \$10 billion from the 2007 Tower Perrin Survey of Insurance Purchasing and Claim Trends regarding Directors and Officers Liability in the last Con Edison Electric Rate Case, 08-E- 0539, (Exhibit 260), does or does not contain useful information for this proceeding?

RESPONSE:

Towers Perrin does not provide a cross-section of the companies in the survey to know whether they are public or private companies; are in industries with lesser or greater D&O risk; operate in major cities or not; or whether their cash flows and share prices are subject to volatility. We do know that only 5 of the 2,900 survey participants had more than 2,500 employees, as compared to over 14,000 at CECONY, and that only 8 of the 2,900 companies are publicly-traded utilities. As to asset size, as of the end of 2008, Con Edison had assets of \$33.5 billion, as compared to the threshold amount of \$10 billion cited in the question. We also have no information on the types of assets employed by these companies, which could well be financial or intangible in nature, whereas our assets are physically employed in energy generation, transmission and distribution in densely populated urban and suburban environments. Because of these many differences between Con Edison and the companies aggregated in the Towers Perrin data, we do not believe it contains useful information for this rate case proceeding.