

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

- 1 Q. Please state your name.
- 2 A. My name is Charles D. Hutcheson.
- 3 Q. Did you previously testify in this proceeding?
- 4 A. Yes, I did.
- 5 Q. What is the purpose of your rebuttal/update testimony?
- 6 A. My testimony: (1) updates my forecast of New York City  
7 property taxes; (2) updates the net property tax  
8 refunds being passed back to customers resulting from  
9 additional costs to achieve those refunds; and (3)  
10 rebuts portions of the testimony of the Staff  
11 Accounting Panel concerning property taxes, as well as  
12 Harvey Arnett's testimony on behalf of New York City  
13 and the Metropolitan Transportation Authority regarding  
14 depreciation.
- 15 Q. Please summarize your update testimony.
- 16 A. My update testimony explains the reasons for my update  
17 of the New York City property tax forecast and  
18 quantifies some additional costs to achieve certain  
19 property tax refunds. The update to the New York City  
20 forecast results in a decrease to the rate year  
21 forecast of property taxes totaling \$23.551 million,  
22 and was required for a number of reasons:

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

- 1           • Changes to tax rates to reflect the expected actual  
2           rates for fiscal year 2009/10 that were not known at  
3           the time of the initial filing;
- 4           • Use of the final assessment roll for REUC (Real  
5           Estate of Utility Corporations ("REUC") - non  
6           special franchise property) for fiscal year 2009/10  
7           instead of the tentative roll that was used in the  
8           initial filing;
- 9           • An update of Industrial and Commercial Incentive  
10          Program ("ICIP") benefits not included in the final  
11          2009/10 assessment roll that are expected to be  
12          received prior to March 31, 2010;
- 13          • An update to the credit known as the 626 credit to  
14          reflect the latest information on the credit amount  
15          that was not available at the time of the initial  
16          filing; and
- 17          • Changes in the forecast of property taxes as a  
18          result of the Company's Accounting Panel update to  
19          the plant forecast reflected in the austerity plan  
20          filed pursuant to the Commission's April 24, 2009  
21          order in the last electric rate case ("2009 Rate  
22          Order").
- 23    Q.    Please summarize the rebuttal portion of your  
24          testimony.

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 A. Regarding property taxes, my rebuttal testimony will  
2 address the Staff Accounting Panel's downward  
3 adjustments to the Company's property tax forecast  
4 regarding their escalated tax rates and how the Staff  
5 Accounting Panel computed those rates.  
6 The Company's Property Tax Panel will address the Staff  
7 Accounting Panel and Staff Policy Panel positions on  
8 the subject of the need for a property tax  
9 reconciliation and property tax incentives.

10 PROPERTY TAX UPDATE

11 Q. As to your update of the New York City forecast, please  
12 discuss changes concerning tax rates.

13 A. At the time of the Company's May 2009 filing, New York  
14 City had not yet determined final tax rates for fiscal  
15 year 2009/10 so I had asked for and received  
16 preliminary tax rates from staff at the New York City  
17 Council. I used those rates for the 2009/10 fiscal  
18 year in the May filing, and based my escalation of  
19 fiscal year 2010/11 on data that included those tax  
20 rates. Since then, the Council has computed rates  
21 under a zero percent cap scenario that Council staff  
22 expects will become final later this year, subject to  
23 the Council officially amending the Tax Fixing  
24 Resolution. I have used these expected final rates in

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 the update for fiscal 2009/10, and have used them as  
2 the starting point to escalate rates for fiscal  
3 2010/11. The revised rates are slightly below the  
4 preliminary rates used in the May filing, resulting in  
5 a decrease to the rate year property tax forecast of  
6 \$13.437 million.

7 Q. Please describe your next update adjustment.

8 A. I used the final REUC assessment roll for fiscal year  
9 2009/10 in the update, replacing the tentative  
10 assessments used in the initial filing. The final  
11 roll, which was issued on May 25 and was not available  
12 to use in the May filing, reflects an assessed value  
13 that is approximately \$17 million lower than the  
14 tentative roll. The tax impact on the rate year of  
15 that lower assessment amounts to a decrease of \$2.214  
16 million.

17 Q. What was the reason for the change between the  
18 tentative and final rolls?

19 A. The final roll was lower due to an ICIP tax benefit for  
20 the equipment approved as part of the Parkview  
21 substation project. However, the final roll did not  
22 include a benefit expected for the portion of the  
23 project that houses the equipment, the structural  
24 portion of the substation project. We have filed a

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 formal complaint on this item and are working with the  
2 City to try to secure the benefit for fiscal year  
3 2009/10.

4 Q. Does your update reflect an adjustment to include the  
5 anticipated ICIP benefit for the structural portion not  
6 reflected in the final assessment roll?

7 A. Yes, I adjusted the rate year to reflect that expected  
8 benefit, as well as certain other ICIP benefits the  
9 Company continues to expect to receive applicable to  
10 the 2009/10 fiscal year. The anticipated rate year tax  
11 benefits included in the update lower property taxes by  
12 \$1.742 million.

13 Q. Is there any uncertainty to the ICIP benefits?

14 A. Yes. We continue to work with the City in an attempt  
15 to receive what we believe we are due.

16 Q. Please describe the update for 626 credits.

17 A. Section 626 of the Real Property Tax Law provides for a  
18 credit against the Company's special franchise property  
19 tax payments for certain gross receipts tax payments  
20 the Company is required to make under the provisions of  
21 franchises granted to predecessor companies. The gross  
22 receipts tax is based on revenues, and I have updated  
23 the estimate used in the initial filing to reflect the  
24 actual gross receipts tax reflected on the tax returns

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 eligible for 626 credits applicable to the first-half  
2 of the 2009/10 fiscal year. That actual tax, which  
3 reduces the property tax dollar for dollar, was greater  
4 than had been estimated and resulted in a larger  
5 incremental credit due the Company, which reduced the  
6 rate year tax liability by \$1.017 million.

7 Q. Please now discuss the update due to the Company  
8 Accounting Panel's updated plant forecast.

9 A. The Company's Accounting Panel updated forecast  
10 included in the July Preliminary Update resulted in a  
11 decrease in plant additions applicable to the Austerity  
12 Plan. I computed the rate year property tax impact of  
13 those decreases resulting in lower property taxes  
14 totaling \$5.141 million.

15 Q. Can you summarize the adjustments to your forecast that  
16 you just described?

17 A. The following table summarizes my adjustments:

Summary of Property Tax Adjustments  
July 10, 2009 Preliminary Update  
(000)

<u>Item</u>	<u>Amount</u>
Tax Rates	\$(13,437)
Assessment Roll	(2,214)
ICIP	(1,742)

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

626 Credits	(1,018)
Plant forecast	<u>(5,141)</u>
Total Forecast Adjustments	<u>\$ (23,552)</u>

1

2 Q. Do you have another adjustment not related to your  
3 forecast?

4 A. Yes. The additional adjustment is applicable to net  
5 property tax refunds.

6 Q. Please describe that adjustment.

7 A. As a result of property tax settlements with the Towns  
8 of Harrison, East Fishkill, and the City of White  
9 Plains, the Company had estimated gross refunds to be  
10 received totaling \$2.834 million, of which \$2.720  
11 million was applicable to electric facilities. In the  
12 initial filing, our costs to achieve those refunds,  
13 principally for attorney and appraisal fees, totaled  
14 approximately \$162,000. Those costs were as of March  
15 2009, and had inadvertently omitted the costs incurred  
16 for Harrison and White Plains. The costs to achieve  
17 were updated through June 2009, resulting in an  
18 incremental increase of approximately \$93,000. The  
19 Company's Accounting Panel has reduced the deferred  
20 property tax refunds being passed back to customers  
21 over three years to reflect these adjustments.

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 Q. Has the Staff Accounting Panel made its own adjustment  
2 for these refunds?

3 A. Yes. They removed the refunds from their proposed cost  
4 of service because they were advised by Staff Counsel  
5 that a State Administrative Procedures Act notice  
6 regarding the anticipated refunds has not been issued,  
7 and may not be issued in time for the Commission to  
8 include the customer's share of the refunds in the  
9 final revenue requirement.

10 Q. Do you have any concerns with the Staff Accounting  
11 Panel adjustment for refunds?

12 A. No, I do not.

13 Q. Did you update for Westchester and Other property  
14 taxes?

15 A. No. Approximately two-thirds of taxes relating to  
16 Westchester and Other relate to school taxes that are  
17 paid during September. Without having those actual  
18 amounts, I did not think it was necessary to update  
19 Westchester and Other at this time.

20 PROPERTY TAX REBUTTAL

21 Q. Did the Staff Accounting Panel propose adjustments to  
22 your forecast of property taxes?

23 A. Yes. The Staff Accounting Panel has proposed a  
24 reduction in the forecast of New York City property

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 taxes of \$13.585 million and a reduction to the  
2 Westchester and Other forecast of \$3.823 million.

3 Q. What are the bases of the Staff estimates?

4 A. In the case of New York City property taxes, the Staff  
5 Accounting Panel proposes to rely on the Company's  
6 computation of a five-year average of historical  
7 property tax rates. For Westchester and Other, they  
8 propose to rely on the Company's computation of a five-  
9 year average of historical property tax payment  
10 information.

11 Q. How do Staff's proposals differ from the Company's  
12 proposals?

13 A. The Company used these computations as the basis for  
14 escalation factors for future property taxes, subject  
15 to adjustments. At issue is whether judgment should be  
16 used in relying upon the results of the historical  
17 computations in order to arrive at a reasonable  
18 escalation factor in order to forecast future property  
19 taxes.

20 Q. Regarding each of the computations, does the Staff  
21 Accounting Panel have any dispute with the computation  
22 methodology?

23 A. It does not appear they dispute the computations in any  
24 way, since they are recommending the mathematical

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 results be used for determining future property tax  
2 levels.

3 Q. Please describe why you disagree with the Staff  
4 Accounting Panel's proposal to rely on these  
5 computations without adjustment.

6 A. The Company used the computations as a first step to  
7 develop an escalation factor, which could be positive  
8 or negative, depending upon historical circumstances.  
9 As explained in my initial testimony (at 35-36), I  
10 based my estimate of New York City tax rate changes for  
11 periods subsequent to the current fiscal year 2009/10  
12 for each tax class by "looking at the most recent six  
13 fiscal years of history for each class so that I could  
14 develop percentage changes for five individual fiscal  
15 years. I used judgment as to whether those tax rates  
16 should be increased or decreased based on recent trends  
17 within the six years used in the computation as well as  
18 other information that I believed could influence the  
19 trend."

20 Q. What did the unadjusted five-year average show for New  
21 York City?

22 A. For class 3, the unadjusted five-year average increase  
23 was 0.30% and for class 4, the unadjusted five-year  
24 average was a decrease of 2.04%. These computations

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 reflect updated tax rate information regarding the  
2 2009/10 fiscal year tax rates, received from the NYC  
3 Council after the Company's initial filing, and are the  
4 percentages used to estimate property taxes as part of  
5 the Company's July 2009 Preliminary Update.

6 Q. What tax rate percentages did you use in your forecast  
7 of New York City property taxes?

8 A. I used a 2 percent increase for both class 3 and class  
9 4 property classes.

10 Q. Why?

11 A. I explained my reasons for using judgment in my direct  
12 testimony in this proceeding (at 37-38), and those  
13 reasons continue to support the five-year average in  
14 the July 2009 Preliminary Update, which modified the  
15 five-year average somewhat because of more up-to-date  
16 information received from the City Council on the  
17 2009/10 tax rates.

18 Q. Please continue.

19 A. In order to help follow my explanation justifying my  
20 use of judgment, I have attached the workpaper  
21 computing the New York City five-year average that was  
22 submitted to Staff as part of the July Preliminary  
23 Update. The exhibit is entitled "HISTORICAL TAX RATES

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 AND DEVELOPMENT OF TAX RATE ESCALATION FOR FORECAST,  
2 CLASS 3 & 4 TAX RATES."

3 MARK FOR IDENTIFICATION AS EXHIBIT \_\_\_\_ (CH-5)

4 Q. What does the exhibit show?

5 A. The exhibit shows the class 3 and class 4 tax rates for  
6 New York City for the last six fiscal years and the  
7 computation of the five-year average. It also computes  
8 the forecasted tax rates for fiscal years subsequent to  
9 2009/10.

10 Q. What was the five-year average for each class?

11 A. The five-year average for class 3 and class 4 was 0.30%  
12 and -2.04%, respectively.

13 Q. Please continue with your explanation as to why you are  
14 not recommending that the unadjusted historical  
15 averages be used to forecast future property taxes.

16 A. I elected to escalate the assumed final rates I  
17 received from the NYC Council for fiscal year 2009/10  
18 for both class 3 and class 4 by 2 percent annually. I  
19 did not think the very small average increase shown for  
20 class 3 (0.30%) or the negative escalation for class 4  
21 (-2.04%) was reasonable so soon after the large  
22 increase in the 2008/09 fiscal year.

23 Q. Why not?

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 A. I placed greater weight in the more recent data for  
2 each of the classes than in the earlier years. For  
3 instance, the percent change for class 3 from FY  
4 2007/08 to FY 2008/09 was 4.85 percent, and for class 4  
5 it was 1.81 percent. Similarly, the most recent rates  
6 received from the City Council for use in fiscal year  
7 2009/10 indicated the class 3 rate increased by 4.98  
8 percent when compared to FY 2008/09 while the class 4  
9 rate again yielded a 1.81 percent increase. I  
10 concluded that the recent activity indicated by those  
11 last two percentages for each of the tax classes gave a  
12 clearer indication of where rates have headed and where  
13 they may be heading in the near future, especially when  
14 trying to predict what will happen to tax rates in the  
15 current economy.

16 As I explained in my initial testimony (at 37-38), I  
17 see no basis for assuming that municipalities will be  
18 able to cut rates during the current economic  
19 situation, and therefore, past rate cuts are not likely  
20 to repeat any time soon given the erosion of other  
21 revenue sources available to the municipalities.  
22 Accordingly, it is unreasonable to use a negative or  
23 zero percent escalation for the upcoming rate year.  
24 The reasonableness of my assumption is borne out by the

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 Staff Accounting Panel's expressed concern about the  
2 continuing rise in New York City property taxes paid by  
3 the Company and their various proposals to provide  
4 positive and negative incentives to the Company to  
5 exert efforts to reduce property tax rates. Staff's  
6 forecast of a negative escalation for property tax  
7 rates directly contradicts their concerns in this area.

8 Q. Did the Commission comment on tax rates increasing as a  
9 result of the poor economy in the 2009 Rate Order?

10 A. Yes. The Commission noted (at 104) that "Current  
11 expectations are that there is and will continue to be  
12 pressure on taxing authorities to increase revenues  
13 through new or higher taxes to replace revenues lost as  
14 a result of the economic downturn."

15 Q. Why does the Staff Accounting Panel recommend using the  
16 computations without applying judgment?

17 A. The Staff Accounting Panel (at 93) "is concerned with  
18 the departure from the traditional method of  
19 forecasting the property tax and substituting a  
20 judgmental determination."

21 Q. Does the use of judgment represent a departure from the  
22 traditional method of forecasting the property tax  
23 escalation factor?

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 A. I believe the Staff Accounting Panel has erred in its  
2 characterization of what the traditional method is.  
3 The Staff Accounting Panel states (at 93) "In the 2009  
4 Rate Order, the Commission departed from its  
5 traditional methodology in order to account for special  
6 circumstances in the economy and the City of New York's  
7 finances." However, they assert that prior to the 2009  
8 Rate Order, "the Commission used a five year average to  
9 estimate the change in tax rates." It is during this  
10 prior period that Staff asserts the Commission  
11 established a traditional method, which is where I  
12 believe they are mistaken.

13 Q. Did the Commission use such a five-year average prior  
14 to the 2009 rate order?

15 A. The Company does not believe there was a precedent. In  
16 the 2009 Rate Order, the Commission noted the Judges  
17 (RD, at 112) "Agreed that property tax expense  
18 forecasts based on five-year historic averages were  
19 previously adopted for the Company, but found that this  
20 occurred primarily in the context of the adoption of  
21 the terms of joint proposals. A forecast based on a  
22 five-year historic average was also adopted in the 2008  
23 Rate Order, in the context of a litigated rate case.  
24 However, that Order did not discuss expressly whether

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 this is the exclusive method that ought to be used to  
2 forecast property tax expense." It stated (at 102)  
3 that "'the best estimate' ought to be used."

4 Q. How did the Commission rule?

5 A. The Commission's "revenue requirement calculations  
6 reflect property tax expense updates provided by the  
7 Company, including some provided after the briefs on  
8 exceptions" (at 103), which reflected the use of  
9 judgment in the development of escalation rates.  
10 Regardless as to whether this was indeed a "departure  
11 from the traditional method" as Staff contends and  
12 which the Company contests, the Commission has now  
13 firmly established that it is proper to use appropriate  
14 judgment to arrive at the best available forecast of  
15 property taxes.

16 Q. Did the Staff Accounting Panel advance other support  
17 for its argument to use the five-year average?

18 A. Yes. They discuss the 7.5 percent mid-year tax rate  
19 increase during fiscal year 2008/09 to help justify  
20 their position. Their intent was to show that in the  
21 past, the City's rates have dropped after such a large  
22 increase. As proof, they point to the City only having  
23 one such mid-year increase in the last 28 years, and  
24 following that 18.5 percent rate increase in the middle

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 of fiscal year 2002/03, tax rates decreased in four of  
2 the next five years. The Staff Accounting Panel's  
3 logic is that by using judgment to reflect a higher  
4 escalation percentage, the Commission would inherently  
5 be overstating the ensuing year's tax expense because  
6 history shows the rates drop after such an increase.

7 Q. Do you agree with their speculations?

8 A. No. A single mid-year rate increase during a 28-year  
9 period that happened to be followed by declining tax  
10 rates does not provide any basis for reaching a  
11 conclusion based on history. At a minimum, one would  
12 need to evaluate all of the economic circumstances in  
13 the ensuing four years to determine why tax rates  
14 declined in those years. As discussed above, based  
15 upon current economic circumstances, there is no basis  
16 for assuming that tax rates will decline during the  
17 rate year since a poor economy could lead the City to  
18 rely upon increased property taxes to offset other  
19 declining revenues that may not rebound to recent  
20 historic levels anytime soon.

21 Q. Has the City relied more heavily on property taxes for  
22 revenues?

23 A. Over time, the percentage of property taxes vs. the  
24 total New York City budget has varied. However, for

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 fiscal year 2008/09, property taxes comprised 23  
2 percent of New York City's total budget. In 2009/10,  
3 property taxes represented 27 percent of the City's  
4 total budget. In terms of dollars, the budget remained  
5 flat, amounting to \$59.17 billion in 2008/09 and \$59.48  
6 billion in 2009/10. However, the property tax levy  
7 increased from \$13.78 billion to \$16.07 billion.

8 Q. Will this growth continue in the next few years?

9 A. I don't know, but I think it is an indication of the  
10 pressure on the City to rely more heavily on property  
11 taxes in the short-term.

12 Q. Do you have other reasons whereby you disagree with the  
13 Staff Accounting Panel's speculations?

14 A. Yes, they are incorrect in their assertion that tax  
15 rates have not again increased following the January 1,  
16 2009 mid-year increase.

17 Q. What did the Staff Accounting Panel say?

18 A. They stated (at 94) the "City left its property tax  
19 rates unchanged for all four classes" on July 1 [2009]  
20 of this year. That is not correct. Although the City  
21 billed customers using the last known tax rates (the  
22 final rates in effect for fiscal year 2008/09, which  
23 reflected the 7.5 percent increase), the Council has  
24 informed the Company of the expected final tax rates

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 for fiscal 2009/10, which are expected to be formally  
2 finalized by the City Council later this year. As  
3 indicated above and on Exhibit \_\_\_\_ (CH-5), the  
4 increases are 4.98 percent and 1.81 percent for classes  
5 3 and 4, respectively. The Company's tax liability for  
6 the entire fiscal year will be based on these increased  
7 rates, and a retroactive adjustment (to July 1, 2009)  
8 will be made by the City in its January 2010 bills to  
9 reflect these higher rates. Therefore, the Staff  
10 Accounting Panel has erred in stating that the City has  
11 not increased rates subsequent to the January 1, 2009  
12 mid-year rate increase, which goes against their theory  
13 of tax rate decreases after a mid-year increase.

14 Q. Please discuss why you disagree with the Staff  
15 Accounting Panel's adjustment for the Westchester and  
16 Other property tax forecast.

17 A. I disagree for many of the same reasons that I disagree  
18 with Staff's escalation factor for New York City  
19 property taxes. The Westchester and Other five-year  
20 average is developed in a similar fashion, and only  
21 differs in that the source data used for the  
22 Westchester and Other computation is tax payments while  
23 the source data used for New York City is tax rates.  
24 Payment information is used for Westchester and Other

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1           because use of rates is not practicable because of the  
2           many different rates for each of the taxing authorities  
3           in areas outside of New York City. The Staff  
4           Accounting Panel has concluded that a five-year average  
5           without the application of judgment should be applied  
6           to Westchester and Other to be consistent with the  
7           methodology they propose in New York City. I would  
8           agree with the need to be consistent, but strongly  
9           disagree omitting judgment to determine an escalation  
10          factor where current circumstances indicate that the  
11          computation of a five-year average does not produce a  
12          reasonable result to be used in the short-term.

13   Q.    Do you have an exhibit to help support your use of a 4  
14          percent escalation rate for Westchester and Other?

15   A.    Yes. I have an exhibit entitled "FIVE YEAR AVERAGE OF  
16          PROPERTY TAXES PAID, WESTCHESTER AND UPSTATE."

17                 MARK FOR IDENTIFICATION AS EXHIBIT \_\_\_\_ (CH-6)

18   Q.    What does the exhibit show?

19   A.    The exhibit summarizes the tax payments made for the  
20          last six calendar years and computes the five-year  
21          average for Westchester and Other.

22   Q.    What was the five-year average?

23   A.    The five-year average was 2.13 percent.

24   Q.    Why did you use a 4 percent escalation?

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 A. I relied on the five-year average as a starting point,  
2 and I placed great weight on the pressure tax  
3 authorities have and will be facing to balance their  
4 budgets in a down economy to support my use of a 4.0  
5 percent escalation factor. I also discounted the fact  
6 that the dollar change (\$168,000) and percent change  
7 (0.14 percent) shown for 2008 were very low in relation  
8 to the preceding years because they were not  
9 representative of the earlier years due to the  
10 significant success the Company had in reducing our tax  
11 liability in 2008 for Westchester and Other. For  
12 instance, tax payments were lower by approximately \$3  
13 million for these settlements. Without the  
14 settlements, the five-year average would have been 2.63  
15 percent and the increase for 2008 compared to 2007  
16 would have been 2.61 percent instead of 0.14 percent.

17 Q. Do you have any final comments on the reliance on five-  
18 year averages?

19 A. Yes. To further justify their strict reliance on a  
20 five-year average without the use of judgment, the  
21 Staff Accounting Panel asserts (at 94-95) that  
22 "Repeated departures from recognized and verifiable  
23 averages carry a strong potential for error over time."  
24 Such a statement is inconsistent with other positions

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 Staff has taken in this case and past cases. For  
2 instance, in this case, the Staff Interference Panel  
3 (p. 19) selectively uses an "unadjusted" five-year  
4 average, as explained in the rebuttal testimony of the  
5 Company's Municipal Infrastructure Support Panel.  
6 As stated in the presiding officers' Recommended  
7 Decision in Case 08-E-0539 (pp. 201-202):

8  
9 DPS Staff claims that consistent use of unadjusted  
10 five-year averages variations between forecasts  
11 and actual property tax rates will even out over  
12 time. This assertion is not intuitively obvious  
13 and amounts to a bare assertion. DPS Staff's flip  
14 side argument, that "selectively discarding" the  
15 average only in years when the Company forecasts  
16 tax rate increases higher than average will lead  
17 to over-collecting property tax expenses over  
18 time, also appears disingenuous. DPS Staff fails  
19 to explain why the use of judgment to adjust  
20 historic averages would be limited to those  
21 circumstances. Even assuming the Company would  
22 have no incentive to predict decreases from  
23 historic averages, there is little reason to  
24 believe DPS Staff or other parties would not  
25 recommend judgmental adjustments if they saw  
26 changed circumstances leading them to view the  
27 conclusion that tax rates would drop in the rate  
28 year as reasonable. Moreover, the flexibility to  
29 depart from historic averages when tax rates can  
30 reasonably be predicted to fall is hardly an  
31 approach the Commission should decline to follow  
32 if the interests of ratepayers are to be  
33 protected.

34

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 That is not to say that the Commission should adopt the  
2 Staff approach to using an unadjusted five-year average  
3 even if it was the Commission's intention that such an  
4 approach would be applied consistently over the long  
5 term. The Company believes it is still important to  
6 "get it right" in each case. Intentionally setting  
7 rates that reflect costs known to be above or below  
8 what is likely to occur can have other unintended  
9 consequences for customers and the Company in the  
10 context of other accounting and ratemaking policies  
11 (e.g., deferral accounting).

12 Therefore, for all of the reasons I have discussed, I  
13 recommend the Commission reject the Staff Accounting  
14 Panel's arguments concerning absolute reliance on the  
15 results of a five-year average and reject both of  
16 Staff's reductions to the property tax forecasts  
17 totaling \$17.408 million.

18 Q. Do you intend to update property taxes later in this  
19 proceeding?

20 A. I proposed in my initial testimony that the Company be  
21 allowed to update property taxes throughout the case,  
22 which would allow for a rate update in New York City;  
23 an update for Westchester and Other to include school

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 taxes; and an update for the uncertain ICIP benefits  
2 that I have forecasted for customer benefit.

3 Q. Do you have any comments on the Staff Accounting  
4 Panel's recommendation to reject the use or limit the  
5 ability of the Company to reconcile property taxes?

6 A. The Company's Property Tax Panel, which I am a member  
7 of, will discuss the need for a reconciliation of  
8 property taxes in their rebuttal to the Staff  
9 Accounting Panel.

10 DEPRECIATION REBUTTAL

11 Q. Please summarize Mr. Arnett's depreciation proposal.

12 A. Mr. Arnett has recommended that the Commission reject  
13 the Company's proposal to increase the existing reserve  
14 deficiency amortization by \$12.9 million annually over  
15 a 13-year period. In addition, he recommends that the  
16 Company's proposal for using the gains on future  
17 property sales and/or tax refunds also be rejected by  
18 the Commission. Mr. Arnett states (at 12) "The utility  
19 has apparently limited its analysis and recommendation  
20 to its three-year proposed rate plan." He further  
21 states (at 15) "the Commission should reject these  
22 proposals until such time as it has a complete response  
23 on the utility's future expectation as to the build up

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 of this reserve and the options and timetable for  
2 addressing it."

3 Q. Did Staff address your depreciation proposals?

4 A. Yes. The Staff Depreciation Panel's stated purpose of  
5 their testimony in this proceeding was to (at 3)  
6 "address [the Company's] proposals regarding book  
7 depreciation rates and the depreciation reserve." The  
8 Staff Depreciation Panel has done a full analysis of  
9 the Company's depreciation proposals and concluded (at  
10 14) "delivery rates only be adjusted to recover the  
11 amount of the reserve deficiency that is in excess of  
12 the 10% tolerance band, as proposed by the Company."  
13 The Staff Depreciation Panel did not indicate the  
14 Company has, in any way, failed to respond to the  
15 Commission's Order.

16 Q. Did Staff oppose any of your depreciation proposals in  
17 this case?

18 A. The Staff Depreciation Panel accepted all of my rate  
19 proposals. They have recommended rejection of only my  
20 proposal to use sale proceeds and property tax refunds  
21 to offset the reserve deficiency, as Mr. Arnett did.

22 Q. Do you agree with Mr. Arnett's recommendation to reject  
23 your proposal concerning recovery of the reserve  
24 variation?

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 A. I do not. I especially disagree with his stated  
2 conclusion that the Company has not provided a complete  
3 response regarding the Company's future expectation as  
4 to the build up of the depreciation reserve and the  
5 options and timetable for addressing it, and that the  
6 Company (Arnett, p. 12) has "apparently limited its  
7 analysis and recommendation to its three-year proposed  
8 rate plan."

9 Q. Please explain why you disagree with his conclusions.

10 A. My initial testimony (pp. 18 to 30) presented a  
11 comprehensive plan on my expectations regarding the  
12 reserve deficiency. The testimony provided certain  
13 background information on the total amount of the  
14 deficiency; the amount in rates regarding current  
15 recovery of the deficiency; a summary of my proposals  
16 regarding the amounts within and outside of the  
17 Commission's tolerance band; the Company's current and  
18 near-term position on that tolerance band; reasons why  
19 the deficiency exists and why it has continued to grow;  
20 my expectations as to whether the deficiency will  
21 continue to grow in the future; my reasons supporting  
22 those expectations; and my overall conclusion (at 28)  
23 that I believe "the deficiency will level-off somewhat"  
24 after allowing "adequate time for the depreciation rate

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 increases approved in Case 07-E-0523 to become fully  
2 effective."

3 Q. Do you have any comments on his statement indicating  
4 the Company's response was applicable only to the  
5 three-year rate plan?

6 A. Yes, the Company response was not limited to the three-  
7 year rate plan. His excerpt (at 12) from my direct  
8 testimony where I state it is difficult to forecast a  
9 theoretical reserve, does not in any way lead one to  
10 conclude that the Company's response was limited to its  
11 three-year rate plan proposal.

12 Q. Do you have other reasons as to why the Commission  
13 should disallow Mr. Arnett's recommendation to reject  
14 your proposal regarding the increase in the recovery of  
15 the deficiency?

16 A. Yes. Mr. Arnett states (at 12-13) that "negative net  
17 salvage continues to be a growing problem." However,  
18 he also states (at 12) that a statement in my  
19 testimony, concluding with my expectations that the  
20 deficiency will increase in the future, but at a level  
21 more in line with what has been seen in the recent past  
22 "ignores the single biggest driver of a growing reserve  
23 deficiency, changes in the depreciation rates due to  
24 changes in service lives, life tables, and salvage

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 values." His statement clearly recognizes that all  
2 three of these factors - service lives, life tables,  
3 and salvage factors, all contribute to changes in the  
4 depreciation reserve deficiency. I completely agree  
5 that it is all three of those factors that contribute  
6 to reserve variations, and not just net negative  
7 salvage that is causing the deficiency to grow.

8 Q. Is net salvage a factor?

9 A. Yes, it is a contributing factor and I would agree  
10 that, in general, changes to net salvage factors are  
11 increasing the deficiency as opposed to other changes,  
12 like lives and life tables, which often offset the  
13 increases being driven by net salvage. In fact, the  
14 Company has supplied a summary of draft depreciation  
15 data to Mr. Arnett in response to an interrogatory  
16 (NYC6-322) based on my review of the depreciation  
17 studies and prior to my discussion with Mr. Rasmussen  
18 regarding limiting my depreciation proposals in an  
19 effort to hold down the Company's rate request. That  
20 draft depreciation data, which included changes to all  
21 three factors that influence the deficiency, produced a  
22 relatively small change in the total deficiency when  
23 the Book Basis rates were compared to the Proposed  
24 Basis rates.

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 Q. What was the change in the deficiency?

2 A. The total change between existing and proposed rates  
3 increased the deficiency by \$8.0 million. The amount  
4 in excess of the 10 percent tolerance band increased by  
5 \$7.2 million, while the amount within the tolerance  
6 band increased by approximately \$800,000. In relation  
7 to the total deficiency, these increases are very  
8 modest, in my opinion.

9 Q. Is the increase in the deficiency shown on the draft  
10 depreciation data supplied in the response to NYC6-322  
11 consistent with the plan you submitted in response to  
12 the Commission order?

13 A. Yes, it is. In my initial testimony (at 26), in  
14 response to a question asking whether I would expect  
15 the theoretical reserve (and therefore the deficiency)  
16 to continue to increase, I stated "I would expect that  
17 it will increase in the future, but at a level more in  
18 line with what has been seen in the recent past prior  
19 to the year end 2008 amount." I believe the Company  
20 response to the interrogatory indicates the draft  
21 depreciation data provides a good indication of what  
22 may be expected in the future as to changes in the  
23 reserve deficiency, at least with regard to changes  
24 resulting from proposed rates.

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 Q. Mr. Arnett (at 14) states that "recent negative net  
2 salvages would increase depreciation rates by over 135  
3 percent or over \$600 million annually, from \$457  
4 million to \$1.08 billion. In addition, the  
5 depreciation reserve deficiency would rise from \$728  
6 million to over \$6.3 billion." Do you agree with his  
7 conclusions?

8 A. No. Mr. Arnett was presenting a hypothetical example  
9 that shows what would occur if the average of the five  
10 most current years of net salvage experience was used  
11 to set depreciation rates. He states (at 14) that he  
12 is "not recommending using these five-year negative  
13 salvage rates to set depreciation rates because there  
14 are often too few observations in a five-year period to  
15 produce meaningful results for some accounts."

16 Q. Do you agree with Mr. Arnett's statement?

17 A. Yes, I do.

18 Q. Should the Commission be concerned with Mr. Arnett's  
19 hypothetical example?

20 A. The Commission is rightly concerned with the build-up  
21 of a large reserve deficiency. However, it need not be  
22 concerned with Mr. Arnett's hypothetical example. The  
23 long-used methodology to recover net salvage recognizes  
24 that these costs are incurred over many years and

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 allows for review of net salvage factors in each case  
2 filed by the Company. It is not appropriate to adjust  
3 depreciation rates solely for costs that have been  
4 incurred over just the last five years. Through the  
5 annual depreciation rate, the Company today is  
6 recovering a portion of net salvage costs, some of  
7 which have to do with assets remaining in service that  
8 were installed decades ago, and some of which relate to  
9 assets having been added to service in the current  
10 year.

11 Q. Did the draft depreciation data supplied in the  
12 interrogatory response include changes to net salvage  
13 factors?

14 A. Yes, there were changes to net salvage factors as well  
15 as service lives and life tables. The results of that  
16 data, when looked at in its entirety, demonstrate that  
17 the reserve deficiency did not spike because of the  
18 draft depreciation data changes. As already noted, the  
19 results of that analysis indicated a modest \$8.0  
20 million increase in the deficiency, which refutes Mr.  
21 Arnett's contention that "negative net salvage  
22 continues to be a growing problem" and therefore his  
23 concern about a large increase in the deficiency  
24 because of a need to propose higher negative net

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 salvage factors. The science of predicting future  
2 depreciation rates is not exact, and it can not be  
3 expected that my interpretation, or anyone else's  
4 interpretation, of the Company's depreciation studies  
5 will lead to rates that result in no increase or  
6 decrease in a depreciation reserve variation. That is  
7 precisely why reserve variations are usually tested  
8 with a "range-of-reasonableness" criterion.

9 Q. How then would the deficiency be eliminated?

10 A. As I stated in my initial testimony (at 29), my  
11 proposal to wait for the full implementation of the  
12 rates from Case 07-E-0523 to take effect will serve  
13 only to level-off the growth in the deficiency, but  
14 will not reduce it. In order to eliminate it, I stated  
15 (at 28) "the Company will consider asking for full  
16 recovery of the amount within the 10 percent tolerance  
17 band in its next rate proceeding." Such a decision  
18 will surely take into account the impact on our  
19 customers and the state of the economy.

20 Q. Has Mr. Arnett advanced a proposal in this case to  
21 reduce the deficiency?

22 A. No, and he has recommended rejection of the Company's  
23 proposal to use the proceeds from future property sales  
24 or tax refunds to offset the deficiency. He correctly

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

1 claims those amounts could be used by the Commission to  
2 lower bills, but he has not recognized the permanent  
3 effect such treatment would have on customer bills.  
4 For instance, in the Company's response to NYC6-323,  
5 the Company stated that the use of these one-time  
6 credits to reduce the depreciation reserve deficiency  
7 would act as a permanent reduction to customers' bills  
8 because of a permanent reduction to rate base. Not  
9 using the credits to effect a short-term rate reduction  
10 would require an increase in rates when the credits  
11 were exhausted.

12 Q. What do you conclude as to Mr. Arnett's recommendation  
13 to reject the increase in the depreciation reserve  
14 recovery you have proposed?

15 A. Mr. Arnett provides no basis for rejecting the \$12.9  
16 million increase in the amortization proposed by the  
17 Company beginning in RY1, other than providing his view  
18 that nothing should be done until a long-term plan is  
19 submitted by the Company. I have rebutted that  
20 conclusion by reiterating that the Company has fully  
21 responded to the Commission's request. If the  
22 Commission ultimately determines a different long-term  
23 approach, the \$12.9 million amount proposed by the  
24 Company could be adjusted prospectively.

Case No. 09-E-0428

CHARLES D. HUTCHESON - REBUTTAL/UPDATE  
ELECTRIC

- 1 Q. Does that conclude your rebuttal and update testimony?
- 2 A. Yes, it does.

**HISTORICAL TAX RATES AND DEVELOPMENT OF TAX RATE ESCALATION FOR FORECAST**

**CLASS 3 & 4 TAX RATES**

TAX YEAR	CLASS 3			CLASS 4		
	Tax Rate	Change	Percent	Tax Rate	Change	Percent
04/05	12.553	-	-	11.558	-	-
05/06	12.309	-0.244	-1.94%	11,306	-0.252	-2.18%
06/07	12.007	-0.302	-2.45%	10.997	-0.309	-2.73%
07/08	11.577	-0.430	-3.58%	10.059	-0.938	-8.53%
08/09(*)	12.138	0.561	4.85%	10.241	0.182	1.81%
09/10(**)	12.743	0.605	4.98%	10.426	0.185	1.81%
5-Year Average	73.327	0.190	0.30%	64.587	-1.132	-2.04%
Final amount		12.743			10.426	
Base amount		12.553			11.558	
Overall Increase		0.190			-1.132	
Compounding Factors		1.015135824			0.90205918	
		1.003009002			0.979596007	

**USED FOR FORECAST** 2.00%

\* Final Effective rates  
 \*\* Assumed Final Rates per NYC Council

**FORECASTED TAX RATES FROM TABLE ABOVE:**

	CLASS 3	CLASS 4	
Forecast 2009/2010	12.743%	10.426%	Used NYC Assumed Final Rates per NYC Council
Forecast 2010/2011	12.998%	10.635%	2% Escalation Factor
Forecast 2011/2012	13.258%	10.848%	
Forecast 2012/2013	13.523%	11.065%	
Forecast 2013/2014	13.793%	11.286%	
Forecast 2014/2015	14.069%	11.512%	

Five Year Average of Property Taxes Paid  
Westchester & Upstate  
(000)

Year	Total Property Taxes Paid		
	Total	Change	Percent
2003	108,969		
2004	110,424	1,455	1.34%
2005	112,972	2,548	2.31%
2006	116,182	3,210	2.84%
2007	120,919	4,737	4.08%
2008	121,087	168	0.14%
5-Year Average	690,553	11,950	2.13%
Used For Forecast			4.00%
Final amount	121,087		
Base amount	108,969		
Overall Increase	12,118		
Percentage Increase	1.111205939		
Five Year Average Inceaz	1.02131312		