

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 Q. Please state your names.

2 A. Thomas M. Gencarelli and Paul Cherian.

3 Q. Have you previously submitted testimony in this proceeding?

4 A. Yes. We previously submitted testimony as the Municipal  
5 Infrastructure Support Panel ("MISP").

6 Q. What is the purpose of your additional testimony?

7 A. We are updating our forecast to reflect two adjustments  
8 identified during the discovery process. Both adjustments  
9 are reductions, which total \$6.158 million, and reduce the  
10 Company's O&M forecast from \$95.232 million to \$89.074  
11 million.

12 We are also rebutting the testimony of the Staff  
13 Interference Panel ("SIP") regarding Staff's recommended  
14 level of both World Trade Center ("WTC") and non-WTC O&M  
15 and Capital interference expenditures and Staff's rejection  
16 of the Company's proposed bi-lateral reconciliation  
17 mechanism. Because Consumer Protection Board ("CPB")  
18 witness Helmuth Schultz ("Schultz") makes essentially the  
19 same recommendations offered by the SIP regarding the  
20 proper level of non-WTC O&M interference expenditures, our  
21 testimony on that issue also rebuts Mr. Schultz's direct  
22 testimony.

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

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Q. Please explain the update to your forecast.

A. We are reducing our forecast to reflect the changes reflected in the Company's interrogatory response to Staff-403, which is included in the Staff Interference Panel's Exhibit \_\_\_ (SIP-1). We are also reducing the forecast to eliminate an inflation adjustment made to our initial forecast.

Q. Please explain the adjustment resulting from the response to DPS-403.

A. We are reducing our O&M forecast for the Rate Year, excluding Company labor, for the non-WTC area, from \$73.525 million to \$70.259 million, a decrease of \$3.266 million. As explained in Exhibit \_\_\_ (SIP-1), this adjustment corrects an error in the Highway (excluding WTC) Capital Commitment numbers listed in Exhibit \_\_ (MISP-2) that occurred in the process of extracting the WTC related expenditures from the overall Highway Capital Commitment numbers. We also adopted Staff's suggestion to use fiscal year data because it reflects the City's fiscal year rather than the calendar year.

Q. Please explain your second adjustment.

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 A. Our initial forecast included an inflation adjustment.  
2 Inflation should not be applied to the interference  
3 forecasted amounts as the basis of our forecasted  
4 expenditures is directly tied to New York City's ("NYC" or  
5 "City") forecasted expenditures. Therefore, we are  
6 reducing our initial combined non-WTC and WTC O&M forecast  
7 by an additional \$2.891 million. These figures are  
8 included in our revised exhibits.

9 Q. Have you updated any of your exhibits to reflect these  
10 revisions?

11 A. Yes, we have corrected Exhibits \_\_ (MISP-1) and (MISP-2) to  
12 reflect these changes.

13 Q. I show you Exhibit \_\_\_ (MISP-1) REVISED, which is entitled  
14 "CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. ELECTRIC  
15 INTERFERENCE O&M AND CAPITAL EXPENDITURE FORECAST  
16 EXCLUDING LOWER MANHATTAN - Revision 1" and ask if it was  
17 prepared under your direction and supervision?

18 A. Yes, it was.

19 MARK FOR IDENTIFICATION EXHIBIT \_\_ (MISP-1) REVISED

20 Q. I show you Exhibit \_\_\_ (MISP-2) Page 1 REVISED, which is  
21 entitled "CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. NEW  
22 YORK CITY CAPITAL COMMITMENT & EXPENDITURES AND CON EDISON

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 O&M INTERFERENCE FORECAST 2009-2013" and ask if it was  
2 prepared under your direction and supervision?

3 A. Yes, it was.

4 MARK FOR IDENTIFICATION EXHIBIT \_\_\_\_ (MISP-2) PAGE 1 REVISED

5 Q. Are you proposing to update your forecasts in any other  
6 manner?

7 A. No.

8 Q. What is your total adjustment and revised requested  
9 amounts?

10 A. We have lowered our non-WTC O&M forecast from \$73.526  
11 million to \$70.259. The WTC O&M forecast remains the same  
12 at \$18.815 million. Therefore, our total revised non-WTC  
13 and WTC O&M request is \$89.074 million.

14 **STAFF INTERFERENCE PANEL**

15 Q. Have you reviewed the SIP's testimony regarding  
16 interference costs?

17 A. Yes. The SIP proposes reductions to electric interference  
18 costs for both O&M and capital, in both the WTC and non-WTC  
19 categories.

20 Q. What are the effects of Staff's reductions to your revised  
21 forecast?

22 A. The change to the O&M forecast reduces the Company's non-

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 WTC O&M interference expenditure forecast from \$70.259  
2 million, as proposed in our revised exhibits, to \$58.242  
3 million, a \$12.017 million downward adjustment. The change  
4 to the Company's WTC O&M interference expenditure is from  
5 \$18.815 million to \$10.228 million, an \$8.587 million  
6 reduction. For O&M, Staff's adjustments reduce the  
7 Company's total (WTC and non-WTC) municipal infrastructure  
8 support request by a total of \$20.6 million.

9 On the capital side, the SIP proposes to reduce the  
10 Company's total interference capital forecast by \$7.131  
11 million, from \$45.00 million to \$37.869 million. Staff's  
12 adjustment reduces the non-WTC capital expenditures from  
13 \$28.861 million to \$23.777 million (a reduction of \$5.09  
14 million) and the WTC capital expenditures from \$16.139  
15 million to \$14.092 (a reduction of \$2.05 million).

16 We explain below why each of these adjustments should be  
17 rejected, including the fact that Staff applies different  
18 forecast methodologies to the different categories of  
19 interference costs without providing a reasonable basis for  
20 these different approaches.

21 Non-WTC O&M Interference Expenditure Forecast

22 Q. Please explain the SIP's methodology for adjusting the

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 Company's non-WTC O&M forecast.

2 A. Staff relies solely on an historical average of City  
3 expenditures to project future interference costs.

4 Staff reviewed the City's average actual expenditures in  
5 the water main (WM-1 and WM-6 only), sewer, highway  
6 (excluding WTC) and highway bridges categories for the past  
7 five years and concluded that over the 2004-2008 time  
8 period, the City's average annual expenditure for these  
9 categories was \$684.4 million.

10 Staff then applied general escalation factor of 3.13  
11 percent based on Gross Domestic Product price deflator to  
12 forecast the expected City expenditure for fiscal years  
13 2010 through 2013. Staff's next step utilized the  
14 Company's methodology for calculating the percentage of  
15 Company expenditures to City expenditures (11.8 percent) as  
16 well as comparing Company electric work to total Company  
17 work (74 percent), and removing Company labor (3.83  
18 percent), to derive its interference forecast.

19 Q. What methodology did the Panel use to calculate this  
20 amount?

21 A. The Company reviewed the City's January 2009 Commitment  
22 Plans and based its forecast on the City's planned

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 expenditures, since the City's expenditures drive the  
2 Company's spending and the City's projections are the best  
3 information available to the Company in developing the  
4 Company's forecast.

5 Q. What is the result of the SIP's calculation?

6 A. Staff reduces the Company's Rate Year forecast for non-WTC  
7 interference O&M from \$70.259 million to \$58.242 million.

8 Q. Does Staff provide any reasons for rejecting the Company's  
9 proposed forecast?

10 A. Yes. Staff alleges that the Commission rejected this  
11 methodology because the Company's forecast is nearly \$15  
12 million above the average of the last five years of the  
13 Company's actual expenditures; the Company's proposed  
14 methodology resulted in an over-recovery of costs for the  
15 rate year in Case 07-E-0523; the Company proposed an  
16 additional step to its historical approach to forecasting  
17 these costs, which Staff says is proof that the Company has  
18 an overzealous forecast; the Commission adopted Staff's  
19 proposed methodology and rejected the Company's forecasting  
20 methodology in Case 08-E-0539; based on the Company's year-  
21 to-date expenditures for 2009, Staff estimates annual 2009  
22 expenditures will be approximately \$40 million,

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 significantly less than the rate year request; and Staff  
2 claims that there could be an overlap in some WTC and non-  
3 WTC expenditures.

4 Q. Do you agree either with Staff's methodology for  
5 calculating the forecast or its reasons for rejecting the  
6 Company's forecast?

7 A. No. We disagree with Staff's methodology primarily because  
8 it looks solely at past expenditures and has no tie, either  
9 directly or indirectly, to the City's forward-looking  
10 Capital Commitment Plan. Staff's methodology also fails to  
11 recognize that there are many variables affecting the  
12 actual City expenditures that are beyond the Company's  
13 control.

14 Q. Please explain why it is not reasonable to use a five-year  
15 average as a proxy for future expenditures of municipal  
16 infrastructure support O&M costs.

17 A. Using an average historical amount to establish a future  
18 spending target is reasonable in some circumstances, such  
19 as where there is little variation from year to year over  
20 the historical period and where the Company can exercise  
21 reasonable control over the incurrence of such costs if  
22 there are unanticipated events. Neither is the case for

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 interference costs.

2 Q. Please explain.

3 A. In our Exhibit \_\_ (MISP\_\_2, page 5) and in our response to  
4 Staff-15, we provide our actual non-WTC O&M expenditures  
5 (excluding labor) as being:

6 2004 \$53.825 million

7 2005 \$67.358 million

8 2006 \$51.930 million

9 2007 \$51.482 million

10 2008 \$60.803 million

11 As shown in the above table, the Company's actual  
12 interference expenditures vary from year to year by as much  
13 as \$15 million, or 25 percent. Accordingly, using Staff's  
14 average of \$58 million would have resulted in the Company  
15 under-collecting its costs by as much as approximately \$9  
16 million in 2005 and \$2.6 million in 2008. While the  
17 Company would have over-recovered its costs in the other  
18 years, the Company notes that there were bilateral  
19 reconciliations in place for each of these years,  
20 consistent with its position, and the Commission's  
21 recognition, that neither the Company nor customers should  
22 be subject to material under-recovery or over-recovery of

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 costs over which the Company has no direct control.

2 Q. Please list some of the variables that result in these  
3 expenditures being beyond the Company's direct control.

4 A. These variables, which Staff's methodology fails to  
5 recognize, include, but are not limited to, the following:  
6 the projects the City chooses to undertake, the sources and  
7 influx of capital money for infrastructures projects, the  
8 type of jobs awarded by the City, the congestion of the  
9 area (residential/commercial/boroughs), the number and  
10 magnitude of Con Edison systems within the boundaries of  
11 the project, scope changes, scheduled versus actual  
12 commencement of field work, the ability of the City to  
13 accommodate utility requests that would reduce interference  
14 impact, and if the project is bid as a Section-U project or  
15 non Section- U project.

16 Q. Wouldn't the application of a five-year average smooth out  
17 these differences over the long term?

18 A. Theoretically, yes, if applied annually and consistently  
19 over many years. However, there is no reason to believe  
20 that Staff would propose or the Commission would adopt, in  
21 a future rate proceeding, the use of a five-year average if  
22 there was reason to believe that the Company would not

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 incur costs at the average level. For example, if the City  
2 announced dramatic cuts in its budget that demonstrated  
3 that the Company would incur costs well under \$58 million  
4 even if the City completed 100 percent of its forecasted  
5 projects, there is no reasonable basis to believe that the  
6 Commission would set rates that assume the Company would  
7 incur costs at a five-year average that showed \$58 million  
8 of Company expenditures. The Recommended Decision in Case  
9 08-E-0539 specifically recognized this circumstance with  
10 respect to property taxes. Mr. Hutcheson discusses this  
11 situation in more detail in his rebuttal testimony. The  
12 underlying premise is equally applicable to interference  
13 costs.

14 Q. Staff claims that the Commission's approved methodology in  
15 Case 07-E-0523 resulted in an over-recovery of over \$11  
16 million. Do you agree?

17 A. The Commission adopted a downward-only reconciliation for  
18 interference expenses in Case 07-E-0523. Staff concedes  
19 (pp. 9-10) that the Company was required to defer and  
20 return to customers any costs that were below the level set  
21 in rates. Therefore, there was no over-recovery. However,  
22 the lower than forecasted spending during that period does

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 not provide a basis for ignoring evidence of future events  
2 in favor of a historical average, where the results can be  
3 materially adverse to the interests of both customers and  
4 the Company, as explained above.

5 For the same reasons, the Commission should reject the same  
6 Staff argument (noted below) as respects WTC O&M costs.

7 Q. Why should the City's Commitment Plan be used as a basis  
8 for forecasting the Company's expenditures?

9 A. The City is in the best position to ascertain its financial  
10 health and funding sources to undertake the infrastructure  
11 programs identified in its Commitment Plan. The fact that  
12 these Commitment Plans are published three times a year  
13 illustrates that the situation is dynamic and the City  
14 considers it a priority to continue to refine the forecast  
15 based upon many internal and external influences.

16 Moreover, the Company's methodology for estimating future  
17 costs utilizes the City's January Commitment Plan, as  
18 recommended by Staff in Case 07-E-0523. The City's January  
19 Plans have a demonstrated 91.9 percent historical accuracy  
20 rate of planned versus actual expenditures as shown in  
21 Exhibit \_\_ (MISP-2 page 2 of 4 REVISED).

22 Q. What is the "new step" in the Company's methodology?

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 A. As discussed in our initial testimony (pp. 21-22), the "new  
2 step" applies a mitigation factor to the Company's non-WTC  
3 O&M calculation. The mitigation factor is derived by  
4 comparing the Company's budget of interference O&M for the  
5 past five years to the Company's actual expenditures. The  
6 Company proposed to add this step to its forecast  
7 methodology in order to mitigate the rate impact on  
8 customers while preserving the existing process. Applying  
9 the "new step" the Company proposes will almost always  
10 result in a lower forecast. However, because these costs  
11 remain outside our direct control, for the reasons given  
12 above, this "new step" was proposed in conjunction with our  
13 recommendation for a bilateral reconciliation mechanism,  
14 discussed below.

15 Q. Do you agree with Staff's claim that the Company's proposed  
16 "new step" demonstrates that the Company has an overzealous  
17 forecast?

18 A. No. The Company has continually sought to improve its  
19 forecasting methodology and respond to recommendations. As  
20 indicated above, the Company's proposed methodology  
21 reflects Staff's recommendation to use the January  
22 Commitment Plan.

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 Q. Turning to Staff's fourth point, that the Commission  
2 recently adopted Staff's proposed methodology and rejected  
3 the Company's, do you have any comments?

4 A. First, considering the number of times that Staff has  
5 proposed a change in methodologies for calculating  
6 interference costs, the notion that Commission action in  
7 the prior case should preclude consideration of its  
8 application in a subsequent case, should be rejected out of  
9 hand. Moreover, the Company believes that the "new step"  
10 it has added to mitigate its forecast addresses the  
11 Commission's concerns relative to the methodology it  
12 adopted in Case 07-E-0523. Using a five year average, such  
13 as the one proposed by Staff, will not allow the Company to  
14 properly forecast its expected costs.

15 Q. Do you agree with Staff's assertion that the current rate  
16 year electric interference expenditure through June 2009 is  
17 \$10.135 million?

18 A. Yes. We provided that information in response to Staff-  
19 236.

20 Q. Staff claims (at p. 11) that the expenditures for the  
21 current rate year can be forecast by applying the  
22 expenditures to date and annualizing them on a linear

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 basis. Do you agree that annualizing actual expenditures  
2 to date will produce a reasonable forecast of actual  
3 expenditures for calendar year 2009?

4 A. No. Monthly expenditures for interference are not linear,  
5 as interference work is influenced by various factors like  
6 weather, as well as the number and types of projects  
7 proceeding in parallel. In the updated response to Staff  
8 interrogatory 236 (updated monthly and last provided to  
9 Staff in September with August data) , actual expenditures  
10 through August 2009 are \$19.5 million for non-WTC O&M. This  
11 represents an increase of 38 percent of average monthly  
12 expenditures in the months of July and August when compared  
13 to monthly expenditures during the months of April to June.

14 Q. What is the Company's current year-end non-WTC O&M  
15 forecast?

16 A. Our year end forecast is \$64.5 million, which is below our  
17 initial forecast due to major delays in casting regrades,  
18 significant favorable arbitration wins, negotiated  
19 settlements where the costs came in under our engineering  
20 estimates and jobs not starting in the field as scheduled.

21 Q. Please address Staff's final point about the overlap of  
22 projects between WTC and non-WTC categories.

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 A. Of the hundreds of jobs listed, we agree that we made an  
2 error in overlapping two projects. This error has been  
3 identified, corrected and is included as part of our  
4 update. We believe we have identified all overlaps and  
5 Staff offers no evidence to support its assertion that  
6 there may be additional overlaps.

7 WTC O&M Interference Expenses

8 Q. How does the Company forecast WTC O&M interference costs?

9 A. As explained on pages 25-29 of our initial testimony, the  
10 Company reviews the projected projects and develops an  
11 overall estimate considering each project.

12 Q. Does Staff agree with this methodology?

13 A. No. Staff claims that the Company's expenditures have been  
14 lower than forecast in the past two years; that the  
15 methodology adopted in Case 07-E-0523 resulted in an over  
16 recovery of costs for the Company; and that actual year to  
17 date expenditures for this category are below forecast. As  
18 a result, the SIP recommends that the Company's forecast  
19 for WTC O&M interference costs be reduced by \$8.587 million  
20 from \$18.815 million to \$10.228 million.

21 Q. Please explain the SIP's methodology for this adjustment.

22 A. The SIP's proposed forecast methodology for WTC O&M is

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 similar to the methodology it proposes for non-WTC O&M,  
2 with one important distinction. Rather than using a five-  
3 year average to develop the ratio of Con Edison's historic  
4 WTC O&M interference spending as a function of the City's  
5 historic WTC infrastructure spending, Staff proposes using  
6 a two-year average.

7 Q. Do you agree with Staff's methodology?

8 A. No, we do not. For the same reasons discussed above in  
9 connection with Staff's proposed forecast methodology for  
10 non-WTC O&M expenses, we do not agree with using averages  
11 of past expenditures to forecast future interference  
12 expenditures. This is especially the case in Lower  
13 Manhattan for interference work.

14 Q. Please explain.

15 A. Currently, work in Lower Manhattan is being done under the  
16 protocol of Joint Bidding. Implementation of Joint Bidding  
17 in Lower Manhattan began in late 2007 and will be applied  
18 to all future projects. Joint Bidding is intended to  
19 enhance competitive pricing, minimize schedule delays,  
20 mitigate community impacts and apportion costs more fairly.  
21 What Staff's methodology fails to recognize is that the  
22 implementation of Joint Bidding slowed project starts in

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 2007 and 2008, resulting in lower expenditures than were  
2 forecasted. Specifically, there were delays associated  
3 with implementation of the Joint Bidding protocol which  
4 affected five major projects scheduled for 2008. This  
5 information was provided to Staff in response to Staff  
6 interrogatory 318.

7 Accordingly, not only is there no basis for assuming this  
8 lower level of expenditures will recur in the rate year,  
9 the City is now moving at a greater pace to make up for  
10 lost time and in some cases is accelerating working  
11 projects. For example, we now have five active projects  
12 and two projects bid in Lower Manhattan.

13 Q. Do you have an exhibit providing the current status of  
14 several major Lower Manhattan projects?

15 A. Yes. The exhibit is entitled "CONSOLIDATED EDISON COMPANY  
16 OF NEW YORK, INC. - LOWER MANHATTAN PROJECT TIMELINE."

17 Q. Was this exhibit prepared under your direction?

18 A. Yes, it was.

19 MARK FOR IDENTIFICATION AS EXHIBIT \_\_\_\_ (MISP-7)

20 Q. Do you have additional comments regarding Staff's use of a  
21 two-year average to develop the ratio between Con Edison's  
22 and the City's WTC expenditures?

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 A. Yes. Staff's use of a two-year average demonstrates the  
2 concern discussed above regarding Staff's claim that the  
3 use of a five-year average will smooth out anomalies over  
4 time. Here, where Staff finds that recent events argue in  
5 favor of a lower expense forecast than would be produced by  
6 a straight five-year average, Staff argues in favor of a  
7 deviation from the five-year average. This underscores the  
8 fact that Staff's methodologies are results-driven rather  
9 than based on reasoned and consistent application of  
10 ratemaking principles that are equitable to both customers  
11 and the Company. Staff's methodology to predict future  
12 cost is once again based upon mathematical formulas with no  
13 consideration for the actual projects on the City's  
14 schedule.

15 Q. Please address Staff's claim that spending to date in 2009  
16 demonstrates that the Company will spend less than the  
17 forecasted amount for 2009.

18 A. Again, as the Company has explained above with respect to  
19 non-WTC O&M, WTC O&M monthly costs are not linear.  
20 Therefore, it is not appropriate to annualize costs based  
21 solely on monthly cost data through June 2009. We are,  
22 however, anticipating an under-run in our WTC O&M

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 expenditure for this year attributable to the WTC work  
2 being more capital intensive, which has shifted some  
3 emphasis on retirement of existing facilities.  
4 Additionally, the introduction and use of the Joint Bidding  
5 protocol may be yielding some financial advantages, which  
6 are being realized in the form of lower costs for projects  
7 compared to initial estimates.

8 Q. Have you been able to quantify any potential savings  
9 realized as a result of implementing Joint Bidding in Lower  
10 Manhattan?

11 A. No. The overall savings of Joint Bidding have not been  
12 quantified due to lack of long term historical data. In  
13 fact, the first of the Joint Bid projects has not yet been  
14 concluded/closed out. Because of this lack of information,  
15 we continue to believe that a fair approach to protect the  
16 rate payers and the Company is a bilateral reconciliation.

17 Q. Please comment on Staff's claim that its proposed  
18 methodology eliminates the need for an update to the  
19 Company's O&M expenses.

20 A. There is no basis for Staff's suggestion that avoiding an  
21 update is an added benefit of its methodology. The  
22 Commission's procedures for conducting updates are well-

1 established and its experience in this area is extensive.

2 Moreover, the Commission should not adopt an inferior  
3 forecasting methodology just to avoid the potential for an  
4 additional administrative step.

5 Capital Interference Costs

6 Q. What is the Staff's forecast for Capital Interference  
7 expenditures?

8 A. The Staff is proposing \$23.77 million for non-WTC in each  
9 of 2010 and 2011 and \$14.09 million for WTC capital  
10 expenditures in each of 2010 and 2011.

11 Q. How did the Company forecast capital expenditures?

12 A. As explained in our initial testimony at page 25, line 1  
13 through 9, the Company's forecast was based upon a project  
14 by project review.

15 Q. What reasons does SIP give for rejecting the Company's  
16 forecast?

17 A. Staff argues that the Company is not on track to spend the  
18 forecasted amounts for 2009 and that the five-year average  
19 shows much lower amounts of capital spending for both WTC  
20 and non-WTC.

21 Q. Please describe Staff's approach.

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 A. The SIP is again looking to the past to forecast  
2 future expenditures. For both WTC and non-WTC, Staff  
3 states (p. 25) "[w]e believe a more reasonable approach is  
4 to base the calendar year forecast upon the most recent  
5 actual spending level." As a result, Staff proposes taking  
6 the average capital expenses from 2005 through 2008 and  
7 then adding the 2009 actual to date with a linear  
8 extrapolation to determine the 2009 year end expenditure.

9 Q. Is Staff's proposed methodology consistent with what it has  
10 proposed in the last electric case?

11 A. No. In Case 08-E-0539, Staff proposed using an average of  
12 actual expenses in the last five years. In the current  
13 case, Staff proposes using an average of the last four  
14 years plus an extrapolation of the current year.

15 Q. Is Staff's proposed methodology consistent with what the  
16 Commission has adopted in the Company's last electric rate  
17 case?

18 A. No. In Case 08-E-0539, the Commission adopted an average  
19 of actual expenses in the last five years.

20 Q. Do you agree with Staff's proposed methodology?

21 A. No. For the same reasons discussed in the O&M sections of  
22 our testimony, the Company opposes the sole use of historic

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 averages to determine future forecasts for interference  
2 expenses. The fact that past expenditures have no bearing  
3 on the future cost is particularly true for WTC  
4 expenditures. The project delays, discussed above,  
5 occasioned by implementation of the Joint Bidding protocol  
6 led to lower expenditures in 2007 and 2008. However, there  
7 are more projects working in parallel in 2009, which  
8 includes the first Joint Bid projects commenced in October  
9 2007. We now have five active projects and two projects  
10 bid, waiting to be awarded and few projects on the bid  
11 cycle. See Exhibit\_\_ (MISP-7). For 2009, from January  
12 through August, we have expended \$12.2 million in capital  
13 expenditure and we are forecasting that our year end  
14 expenditure for 2009 would be approximately \$18 million, a  
15 variation of less than 5 percent from our forecast. Since  
16 we know the details of the upcoming projects and their  
17 potential impact, SIP's proposal to allow \$14.09 million  
18 for WTC for 2010 and 2011 will not provide the Company with  
19 adequate rate relief for the projects that are being  
20 undertaken.

21 Q. Please summarize the different methodologies Staff proposes  
22 for the different categories of interference expenditures.

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 A. Staff proposes three different methodologies for four  
2 interference categories:

3 For non-WTC O&M expenses, Staff proposes using a five-year  
4 average of the City's expenditures as a base to which  
5 several factors are applied, including a ratio derived from  
6 a comparison of the five-year average of the Company's  
7 expenditures to the five-year average of the City's  
8 expenditures.

9 For WTC O&M expenses, Staff proposes using a five-year  
10 average of the City's expenditures as a base to which  
11 several factors are applied, including a ratio derived from  
12 a comparison of the two-year average of the Company's  
13 expenditures to the two-year average of the City's  
14 expenditures.

15 Finally, for both non-WTC and WTC capital expenditures,  
16 Staff proposes using an average of four years of actual  
17 expenditures plus annualized data for the current year.

18 Q. Do you have any comments regarding these various  
19 methodologies?

20 A. As we discuss more fully in each of the sections above, we  
21 believe that Staff has failed to provide a reasonable  
22 explanation for utilizing the inconsistent methodologies it

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 proposes. Staff appears to be more motivated by the  
2 results yielded by its proposed methodologies, rather than  
3 by applying a consistent and equitable approach to  
4 forecasting the Company's interference expenditures.

5 RECONCILIATION

6 Q. Has Staff proposed a reconciliation mechanism for  
7 interference O&M expenditures?

8 A. Yes. Staff is recommending that the one-way downward  
9 reconciliation that was first put in place in Case 07-E-  
10 0523 be reinstated. Staff alleges that a bilateral  
11 reconciliation is unnecessary because (1) the Company's  
12 current expenditures are well below forecast, (2) the  
13 Company has an on-going prudence proceeding related to  
14 actions of certain employees (and that these actions could  
15 have increased the forecast), and (3) a bilateral  
16 reconciliation mechanism would not incent the Company to  
17 control costs.

18 Q. Do you agree with the proposed reconciliation?

19 A. No. At the outset, Staff's references to the prudence  
20 proceeding resulting from the employee arrests should be  
21 rejected out of hand. Staff's recommendation prejudices,  
22 without any basis whatsoever, the outcome of that

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 proceeding. Contrary to their assertion (p. 22) that  
2 "[w]hile we are not addressing the issues raised in Case  
3 09-M-0114, and our recommendation in this case has no  
4 effect on that separate proceeding," their statement (p.  
5 23) that "even our forecasts might be higher than necessary  
6 and ratepayers should not be held responsible for such  
7 inflated costs" appears to be designed to result in a rate  
8 level for interference costs in this proceeding lower than  
9 otherwise should be the case. Again, there is no basis  
10 whatsoever for prejudging in any manner the outcome of that  
11 investigation. Moreover, the Commission has already  
12 established what it believes to be the reasonable and  
13 necessary protection for customers by making a portion of  
14 the Company's revenues subject to refund in the event there  
15 is a finding adverse to the Company in Case 09-M-0114. No  
16 additional protections are necessary or proper in this  
17 case. Nor should the prudence proceeding prejudice the  
18 Commission's deliberations on recommendations for or  
19 against a reconciliation mechanism.

20 Q. What is your response to Staff assertions (p. 23) that the  
21 Company would have no incentive to pursue cost-cutting  
22 initiatives such as the "Aggressive Arbitration Strategy"

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 if the Commission were to adopt a bilateral reconciliation  
2 mechanism?

3 A. The Company strongly disagrees. We have undertaken  
4 aggressive cost-cutting initiatives (including the  
5 Aggressive Arbitration Strategy described in our initial  
6 testimony at pages 30-36) during periods when a bilateral  
7 reconciliation mechanism for interference expenditures was  
8 also in place. To our knowledge, there have been neither  
9 any allegations nor any demonstrations in prior rate  
10 proceedings that the Company was not seeking to minimize  
11 these costs to the extent practicable, including for  
12 periods when a bilateral reconciliation was in place.  
13 Staff's assertion is plainly unfounded. Moreover, the  
14 Commission has adopted bilateral reconciliation mechanisms  
15 as recently as September 25, 2007 and September 22, 2008  
16 for the Company's current Gas and Steam rate plans. One  
17 would think if there was a concern that such a mechanism  
18 would remove the Company's incentive to minimize costs,  
19 there would be a greater concern for such a mechanism over  
20 a multi-year period than for a one-year period.

21 Q. Please continue.

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 A. The Company has had an aggressive arbitration policy in  
2 place since 2001.  
3 Attached herewith is Exhibit\_\_ (MISP-8) listing all  
4 arbitrations we engaged in by the year, the amount involved  
5 and the results. We have noted the cases in which we  
6 pursued arbitration while we had bilateral reconciliation  
7 for electric rates.

8 Q. I show you Exhibit \_\_ (MISP-8) which is entitled  
9 "CONSOLIDATED COMPANY OF NEW YORK INC. ARBITRATION  
10 STATISTICS" and ask if it was prepared under your direction  
11 and supervision?

12 A. Yes, it was.

13 MARK FOR IDENTIFICATION AS EXHIBIT \_\_\_\_ (MISP-8)

14 Q. Does the Company's proposed reconciliation mechanism ignore  
15 Staff concerns about there being an incentive for the  
16 Company to minimize its costs in this area?

17 A. No, it does not. Notwithstanding the Company's belief that  
18 a full reconciliation mechanism would not provide the  
19 Company a disincentive to minimize its costs, the Company's  
20 proposed mechanism includes a 2.5 percent dead-band to  
21 allow for normal variation in the estimating/forecasting  
22 process and respond to concerns that a bilateral

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 reconciliation may eliminate the Company's incentive to  
2 continually explore initiatives and improvements to control  
3 costs to the best of our ability.

4 Q. Does Staff address the Company's dead-band proposal?

5 A. No, they do not.

6 Q. You spoke earlier about Staff's inconsistent approach to  
7 forecasting expenses. Does Staff's proposed reconciliation  
8 mechanism pose another inconsistency?

9 A. Yes it does. While Staff proposed that the Company's  
10 methodology for non-WTC O&M expenditures be rejected  
11 because the Commission rejected it in the last case, Staff  
12 proposes a downward-only reconciliation notwithstanding the  
13 Commission rejecting such a mechanism in the last case.  
14 Moreover, Staff's proposal ignores the Commission's  
15 recognition that a downward-only reconciliation is  
16 unreasonable since these costs are outside the Company's  
17 control. As the Commission noted:

18 Given the extent to which the Company's municipal  
19 infrastructure operation and maintenance expenses are  
20 driven primarily by the City's plans and only  
21 secondarily by the efficiency with which the Company  
22 completes the necessary work, we decline to adopt a  
23 one-way, downward-only reconciliation for this expense  
24 category. Order, p. 90  
25

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 Q. Please address Staff's argument that a bi-lateral  
2 reconciliation is unnecessary because the Company's current  
3 expenditures are well below forecast.

4 A. We discuss above both the reasons for current spending  
5 levels and that actual spending levels may often be above  
6 or below forecast because, as the Commission itself has  
7 acknowledged, these costs are outside our control.  
8 Accordingly, we submit that our proposal for a bilateral  
9 reconciliation, with the proposed dead-band and our "new  
10 step" to mitigate the rate increase, addresses the various  
11 concerns raised and should be adopted.

12 Q. Does CPB propose a reconciliation mechanism?

13 A. Yes. One of the alternatives CPB witness Schultz proposes  
14 is for an over or under recovery mechanism for the  
15 difference between the allowed and actual costs. The  
16 Company agrees with this proposal and believes that its  
17 proposed bilateral reconciliation mechanism is consistent  
18 with CPB's proposal and should be adopted.

19 Q. Based upon the concerns expressed in Staff's and CPB's  
20 testimonies can you suggest any additional alternatives  
21 that would protect both parties?

MUNICIPAL INFRASTRUCTURE SUPPORT PANEL -UPDATE/REBUTTAL ELECTRIC

1 A. The Company would be willing to consider a reserve fund,  
2 similar to that used for storms, instead of a  
3 reconciliation mechanism to protect the Company against  
4 unanticipated and uncontrollable interference expenditures.

5 Q. Does this conclude your rebuttal and update testimony?

6 A. Yes, it does.

7

**CONSOLIDATED EDISON COMPANY OF NEW YORK INC.  
ELECTRIC INTERFERENCE O&M AND CAPITAL EXPENDITURE FORECAST  
EXCLUDING LOWER MAHATTAN**

**O&M FORECAST**

Rate year 1

Electric Interference expenditure forecast for rate year including Company labor	\$73,034,000
Company Labor 3.8% (Labor % based on 5 Year Average)	\$2,775,292
Net expenditure forecast excluding labor	\$70,258,708
<b>Historic year</b>	
Electric interference expenditure for historic year, twelve months ending Dec 31st 2008	\$63,061,141
Company labor	\$2,257,798
Net expenditure	\$60,803,343
Program change	\$9,455,365

**CAPITAL FORECAST**

	2010	2011	2012	2013
Electric Interference capital expenditure forecast	\$28,861,000	\$26,700,000	\$28,450,000	\$28,450,000

Exhibit \_\_ (MISP-1)  
Revised

**CONSOLIDATED EDISON COMPANY OF NEW YORK INC.  
NEW YORK CITY CAPITAL COMMITMENT & EXPENDITURES  
AND CON EDISON O&M INTERFERENCE FORECAST 2010 - 2013**

(millions)

NYC Capital Commitment (Jan 2009 Publication)					2009	2010	2011	2012	2013
Water (WM - 1 & WM - 6 Budget Categories)					100	171	215	97	252
Sewer					208	142	272	192	279
Highway (Excluding WTC)					(520) 623	(569) 544	(445) 409	277	320
Highway Bridge					673	723	474	105	593
Waterway Bridge					0	0	0	0	0
<b>Total Commitment</b>					<b>(1501)1604</b>	<b>(1605)1580</b>	<b>(1406)961</b>	<b>671</b>	<b>1444</b>
Five year Average Commitment Target 67.4% (See calc. below)					1012	1082	948	452	973
City Expenditure Forecast calculated @91.9% of target (See Page 2)						930	994	871	416

**Con Edison's Interference Forecast:**

	2010	2011	2012	2013
Con Edison's gross Interference forecast @ 11.8% of City forecast (5 Yr Avg) (See Page 3)	109.71	117.31	102.76	49.04
Elec. O&M forecast @ 74% of Con Ed gross forecast(5 Yr.Avg) (See Page 4)	81.18	86.81	76.05	36.29
Adjustment Factor applied to Elec. O&M forecast ( Act. vs. Bud. 88.43%) See Pg. 6	71.79	76.77	67.25	32.09

**RATE YEAR FORECAST**

	With Lab.	W/O Lab	Variance
Electric Interference forecast for rate year 4/01/10 - 3/31/11 (RY1)	73.034	70.259	-3.27
Electric Interference forecast for rate year 4/01/11 - 3/31/12 (RY2)	74.386	71.559	1.28
Electric Interference forecast for rate year 4/01/12 - 3/31/13 (RY3)	58.459	56.237	1.24

Five year average Commitment target calculation for January Commitment Plans

Year	Target
2005	63%
2006	63%
2007	65%
2008	66%
2009	80%
Avg	67.40%

## CONSOLIDATED EDISON COMPANY OF NEW YORK Inc.

### Arbitration Statistics

Project	Location	Contractor	Contractor Demand	Con Ed Offer	Settlement	Savings	Year
HWK-701	Manhattan Avenue, Bky	Trocom	\$ 6,000,000	\$ 1,026,825	\$ 1,026,825	\$ 4,973,175	1999
HWQ-800	Hoffman Drive, Qns	Diamond Asphalt	\$ 4,426,890	\$ 127,307	\$ 127,307	\$ 4,299,583	1999
SEQ-2424	41st Street, Qns	Deboe	\$ 1,070,000	\$ 450,057	\$ 450,057	\$ 619,943	2000
HWK-720	Benson Avenue, Bky	JLJ	\$ 200,475	\$ 38,033	\$ 38,033	\$ 162,442	2000
HWK-701	Manhattan Avenue, Bky	Trocom	\$ 251,369	\$ 84,665	\$ 84,665	\$ 166,704	2003
SER-002263	Dalton Avenue, SI	Briar Constr	\$ 944,635	\$ 68,848	\$ 68,848	\$ 875,787	2004*
EDC-1900011/HWQ-662A	Springfield Gardens, Qns	EIC Assoc	\$ 9,441,030	\$ 782,271	\$ 782,271	\$ 8,658,759	2004*
HBM1094	W37th Street Bridge over Amtrak	North Star	\$ 120,850	\$ 12,123	\$ 63,000	\$ 57,850	2005*
HWKC-056	Ralph Avenue, Brooklyn	Diamond Asphalt	\$149,000	\$ 64,100	\$ 64,100	\$ 84,900	2005*
WP-169A	Alley Creek, Brooklyn	Karp	\$265,000	\$85,000	\$85,000	\$ 180,000	2006*
HWO1161	99/110Ave, Queens	CAC Industries	\$2,200,000	\$1,200,000	\$1,200,000	\$ 1,000,000	2009
HWCSCH1	Brooklyn School Safety	JLJ	\$192,000	\$8,000	\$8,000	\$ 184,000	2009

**Total Savings** **\$21,263,143**

\* Arbitrations during bilateral reconciliation rate years.

Exhibit (MSP-7)

**CONSOLIDATED EDISON COMPANY OF NEW YORK Inc.**

**LOWER MANHATTAN PROJECT TIME LINE**

<b>Project Name</b>	<b>Project No:</b>	<b>Scheduled start</b>	<b>Current Status</b>	<b>Commenced Work</b>
Broadway Phase 1	HWMWTCA6A	2006	In Bid Cycle	
Chamber Street	HWMWTCA6B	2006	In Bid Cycle	
Liberty Street	HWMWTCA6C	2006	Working	Apr-08
Beekman Street	HWMWTCA6E	2006	Working	Oct-07
Fulton Street Phase B	HWMWTCA8B	2007	Working	Feb-09
Harrison Street	HWMWTCA7A	2008	Working	Sep-08
Frankfort Street	HWMWTCA8D	2009	Engineering	
John Street	HWMWTCA7G	2009	Engineering	
Peck Slip	HMMWCA7D	2008	Engineering	