

1 **BEFORE THE PUBLIC SERVICE COMMISSION OF NEW YORK**

2 **Case 09-E-0428 Consolidated Edison Company of New York, Inc. Rate Case**

3 **Prefiled Rebuttal Testimony of**

4 **Eugene T. Meehan**

5

6 **I. Qualifications and Purpose of Testimony**

7 Q. Please state your name, title and business address.

8 A. My name is Eugene T. Meehan. I am a Senior Vice President at NERA Economic
9 Consulting (“NERA”). My business address is 1255 23rd Street, N.W., Washington, D.C.
10 20037.

11 Q. Please briefly describe the nature of NERA’s business.

12 A. NERA is a firm of over 500 professional economists located in offices throughout the United
13 States, Europe, Australia and Asia. NERA provides consulting advice in litigation and
14 regulatory settings, as well as strategic and planning advice to clients in the energy,
15 telecommunications, television and broadcasting, securities, transportation, health and
16 banking industries.

17 Q. Please summarize your professional qualifications.

18 A. I have over thirty years of experience consulting with electric and gas utilities and have
19 testified as an expert witness before numerous state and federal regulatory agencies, and in
20 federal court and arbitration proceedings.

21 My consulting practice at NERA focuses on the areas of electricity tariff design, electricity
22 procurement, wholesale power market design, electricity costing and pricing, regulatory
23 economics, market power analysis and mitigation, power contract analysis, and power cost
24 risk management.

1 I have worked extensively on the development and regulation of the power sector in New
2 York State. I have provided consulting services for members of the New York Power Pool,
3 and its successor the NY-ISO, on a continuous basis since 1980. This has involved advising
4 the Pool and its members on production cost modeling, transmission expansion, competitive
5 bidding and reliability and marginal generating capacity cost quantification. In 1987, I
6 prepared and sponsored the New York Power Pool's position paper on competitive bidding
7 for IPP supplies.

8 I have provided testimony on behalf of the New York State investor-owned electric utilities
9 concerning the proper methodology to use when analyzing the cost-effectiveness of
10 conservation programs.

11 I have recently completed work with the NY-ISO on the reset of the demand curve and I am
12 currently working with the NY-ISO on forward capacity market issues.

13 I have testified before this Commission on numerous occasions. My Curriculum Vitae is
14 attached as Exhibit 1.

15 Q. Please describe the purpose of your testimony.

16 A. The purpose of my testimony is to address the austerity adjustments that have been proposed
17 by various witnesses, including the panel of Staff witnesses addressing Policy, City of New
18 York and Metropolitan Transit Authority (jointly “the City”) witness Arnett, and County of
19 Westchester witnesses Liberty and Radigan. Specifically, I respond to the following
20 recommendations and assertions made by these witnesses:

21 (1) Staff Policy Panel’s recommendation that the Commission continue the category one
22 (labor and labor-related) and the category two (corporate-wide) austerity measures
23 implemented by Con Edison pursuant to the order issued in Case 08-0539, as well as the

1 O&M reductions identified by the Company in Attachment B of its March 26, 2009
2 filing.¹

3 (2) Staff Policy Panel's assertion that the austerity measures are justified on the grounds of
4 forecast conditions in the New York City economy.

5 (3) Mr. Arnett's recommendation that the Commission impose an austerity or macro
6 adjustment of \$60 million over and above implementation of existing measures.

7 (4) Mr. Arnett's assertion that the austerity measures are justified on the grounds of forecast
8 conditions in the New York City economy.

9 (5) The recommendation by Messrs. Liberty and Radigan that one half of all expenses other
10 than property taxes, pension costs and expiring credits be removed from CECONY's
11 revenue requirement as an austerity measure, and the purported rationale for such
12 removal.

13 Q. How is your rebuttal testimony organized?

14 A. It is organized as follows. In Section II, I provide a summary of my conclusions. In Section
15 III, I put the austerity proposals in the context of the Commission's existing policy on
16 austerity measures and evaluate whether the proposals for austerity measures are consistent
17 with that policy and with legal and regulatory precedent. In Section IV, I describe the harm
18 that could result from implementation of the austerity adjustments. In Section V, I provide
19 information about the current state of the economy in New York City to evaluate whether the
20 assessments of these witnesses are reasonable. In Section VI, I contrast the proposed
21 austerity adjustments with public policy steps that are being taken on a national level and in
22 neighboring jurisdictions with respect to electric rates and investment by regulated utilities in
23 network infrastructure. Finally, in Section VII, I provide a summary of the key rebuttal
24 points.

¹ I note that the Staff testimony refers to a March 26, 2009 filing; it is my understanding, however, that the austerity filing was made by the Company on May 26, 2009.

1 **II. Summary of Conclusions**

2 Q. Please summarize your conclusions with respect to the austerity proposals of the Staff Policy
3 Panel, the City, and the County of Westchester.

4 A. In sum, I conclude that these macro or austerity adjustment proposals are inappropriate for
5 the following reasons:

- 6 ▪ The adjustments are inconsistent with the Commission's long-standing policy
7 statement on the role that economic impact has in determining rates. Arbitrary
8 austerity adjustments, with no nexus to the economic issues at hand, which the
9 recommendations are, are inconsistent with the existing well-established regulatory
10 framework.
- 11 ▪ The economic conditions are not as severe as have been weathered in previous
12 recessions, and the evidence purporting to say so by those proposing an austerity
13 adjustment is narrow and misleading.
- 14 ▪ Such proposed austerity adjustments, below the minimum reasonable cost of service,
15 do not come without consequences—either in reduced service quality, costly deferred
16 maintenance or damage to the Company’s credit quality. Such consequences have not
17 been identified, let alone quantified, by those proposing the austerity adjustment.
18 There is no analysis to review whether these effects are outweighed by a broad and
19 comparatively minor reduction in customer bills.
- 20 ▪ The benefits of these adjustments are likely to be small and unfocused. Under the
21 Staff austerity proposal, the total bill savings will not be material—i. e., less than one
22 half of one percent and spread over the entire customer base. The economic impact is
23 not spread as widely, but is focused on those most affected by the economic
24 downturn, the unemployed.
- 25 ▪ While Con Edison’s level of uncollectible bills has increased, the increase is not price
26 related. The increase has occurred as prices have dropped and unemployment has
27 risen. This shows that rate levels did not cause the problem and that a cut in rate

1 levels will not solve the problem. There is no nexus between the increased
2 uncollectible bills and the purported solution of an austerity adjustment.

- 3 ▪ Economic conditions, while clearly unfavorable, are not exceptionally severe as
4 compared to other recessions, during which austerity measures were not imposed.
5 Further, electric bills for Con Edison's customers are down in real terms. Further,
6 unlike the recession of the early 1980s consumers are not facing both unemployment
7 and record high inflation. The nexus between economic conditions and rate impacts
8 on customers insinuated by those proposing the austerity adjustment is nonexistent.
9 The adjustments may well backfire by continuing to depress the local economy. They
10 run counter to the federal stimulus package and to the approach taken in New Jersey
11 to accelerate spending on utility infrastructure.

12 **III. The Proposed Austerity Adjustments Fail to Track Existing** 13 **Commission Policy**

14 Q. Does the Commission have an established policy on considering evidence of economic
15 impact in rate cases?

16 A. Yes, that policy was articulated in the Economic Impact Policy Statement issued January 14,
17 1980. (See Exhibit 2) Economic impact is the term used to describe how rate increases may
18 affect customers and is examined closely during difficult economic times to determine if
19 economic impact requires some type of mitigation of rates.

20 Q. Please describe the policy articulated in this policy statement.

21 A. The Commission's policy is well articulated and explicitly not limited to "only the difficulty
22 or hardship imposed on the customer as a direct result of the consumer's monthly bill for
23 electric service."² The policy understands the term more broadly and recognizes the
24 "potentially harmful and beneficial multiplier effects on the overall financial and economic
25 health of the territory."³ Further, the policy identifies specific examples of how the rate

² Statement of Policy Concerning Evidence of Economic Impact in Rate Cases, issued January 14, 1980 by the New York Public Service Commission, page 2.

³ Ibid, page 2.

1 equation can accommodate economic impacts. These examples are: 1) setting an expense
2 allowance at the lower end of a range of reasonableness; 2) postponing the effective date of
3 an amortization provision; and, 3) altering rate designs to consider the impact on various
4 groups of customers. The policy recognizes that it may be appropriate to moderate a rate
5 increase in these ways when persuasive testimony is presented that higher rates at a time of
6 economic distress would adversely affect the public by precipitating or aggravating economic
7 dislocations and problems such as unemployment, dependence on public assistance, and
8 departure of industries.⁴ The policy is also clear that there must be nexus between the
9 evidence presented concerning economic impact and the issue in the rate case. The policy
10 does not contemplate adjustments that are arbitrary or that are not balanced by actual costs
11 reductions or deferrals.

12 The Commission's policy does not use economic conditions as an excuse to set allowed
13 revenues below the reasonable cost of service. Expense allowances may be reduced, but not
14 below the lower end of the range of reasonableness. The timing of recognizing expenditures,
15 including uncertain depreciation expenses, can be adjusted, but the expenses are not
16 disallowed. Service quality can be reduced if customers are unable to pay for the higher
17 quality. Additionally, inter and intra class allocations may be adjusted. The adjustments are
18 not arbitrary and clearly contemplate that specific cost or service quality adjustments are
19 associated with such revenue reductions or deferrals. In other words, the adjustments are not
20 expected to be funded by the shareholder out of funds that would otherwise allow the
21 Company to maintain its credit. Rather, it is recognized that if expenses are cut because
22 economic conditions are such that the customer base can not afford the impact of higher
23 rates, there would be a concomitant reduction in service quality.⁵ The policy respects the well
24 established principle that utilities are entitled to the recovery of prudent expenses and to the
25 recovery of the return on and return of capital prudently dedicated to providing public
26 service. In fact, the Policy Statement states "we cannot legally set revenues lower than the

⁴ Ibid, 1-6.

⁵ It is necessary to recognize that these types of adjustments, while if properly structured can stay within legal bounds by providing for recovery of prudently incurred costs and a return on prudently invested capital, may not be cost minimizing in the long run, as prolonged reliance on these type of measures would be expected to increase the cost of debt and equity capital.

1 company's legitimate cost of service."⁶ This is a well accepted aspect of the economic and
2 legal foundation for regulating utility service.

3 The austerity adjustments proposed by Staff, the City and the County of Westchester –
4 including for that matter, the adjustment ordered in Case 08-E-0539 – contravene the
5 Commission's policy. Specifically, the proposed austerity adjustments are arbitrary and
6 would come at shareholder expense in the form of lowered earnings. The Commission has
7 recognized that it “cannot legally set revenues lower than the company’s legitimate cost of
8 service.” None of the proposed austerity adjustments challenge the level of the legitimate
9 cost of service, none of the proposed austerity adjustments allow for decreases in service
10 level or reliability, none of the proposed austerity adjustments shift revenue on an inter or
11 intra class basis and none of the proposed austerity adjustments defer recognition of costs.
12 The proposed adjustments are of an entirely different type than contemplated in the policy
13 statement and unlike the type of possible adjustments described in the policy statement, the
14 austerity adjustments proposed in this case are adjustments that are intended to take revenues
15 below the legitimate cost of service.

16 Q. Please explain why there is no nexus between the proposed austerity adjustments and
17 economic conditions?

18 A. While unemployment has increased and economic conditions are difficult, leading among
19 other things to increased uncollectible expense, it is not the level of electric bills that has
20 primarily caused these problems. Even with the recently allowed revenue increases, the
21 majority of which relate to property taxes and PSL assessments, and the increases proposed
22 in this case, electric rates should be comparable in the rate year to rates in 2008. Commodity
23 and capacity price decreases will mitigate delivery service increases. This is the case because
24 electric market prices have declined as fuel prices have declined. Job losses and reduced
25 income, not bill levels, are the culprits for unpaid bills. Lowering revenues by the proposed
26 austerity adjustment will not enable the unemployed to pay bills nor will it have a positive
27 impact on job retention and creation. The adjustments are not material relative to the total
28 cost of electricity, despite being material relative to the level of earnings and level of non-

⁶ Statement of Policy, page 3.

1 fuel O&M expenses. It is interesting to note that uncollectible expenses have risen as rates
2 have declined as a result of decreases in commodity prices. This is especially relevant as the
3 Economic Impact Policy Statement is very specific that there be a nexus between the
4 evidence presented and specific problems at issue in the rate case. Additionally there are no
5 claims that electric rates are resulting in large scale job loss or business relocations. While
6 economic conditions are generally difficult not one party has presented any evidence that
7 would show how its proposed austerity adjustment would solve a particular problem.

8 Q. The County of Westchester seeks “a reasonable balance between rate levels and service
9 adequacy”⁷ and argues that in “no place in the law does it obligate the utility to provide
10 perfect service.”⁸ Are they being consistent with the Commission Policy by recognizing that
11 there will have to be a reduction in service quality if expenses are cut?

12 A. It may seem so, but in practice their proposal is inconsistent with the Commission Policy. To
13 the extent that the proposal is to lower service adequacy and then lower revenue levels by the
14 costs saved as a result of lowering service adequacy, the proposal would not be objectionable
15 from the perspective that it would set revenues below the legitimate cost of service. In
16 practice, the County’s proposal does not identify a particular target service level nor does it
17 identify specific costs savings that would be associated with that level. In practice it is not
18 consistent with the Policy Statement. Further, there is no nexus drawn between current
19 economic conditions and service levels. If the proposal is that service levels should be
20 temporarily cut because of economic conditions, it would need to be established that
21 customers would in fact benefit from such a cut. Further, the savings from temporary cuts
22 would almost certainly be far lower than savings from permanent cuts. If the proposal is for
23 a permanent reduction in service level, it is unrelated to austerity and economic conditions
24 and is properly the subject of a more deliberate review.

25 Q. The County of Westchester suggests that setting the allowed return at levels below the cost of
26 equity capital is permissible during hard economic times. Do you agree?

⁷ P. 22, lines 19-20.

⁸ P. 16, lines 7-8.

1 A. No. It cites as an example the fact the Commission would not permit NYSEG to file a rate
2 case despite earnings of 7% on equity, because the Commission felt that NYSEG could
3 survive financially. What the witnesses fail to mention is that as a merger condition NYSEG
4 could not file a rate case until Sept 17, 2009. The Commission indicated a willingness to
5 make an exception if NYSEG's financial integrity was so weakened as to threaten its ability
6 to provide safe and reliable service. However, the Commission found that was not the case.
7 In no way did the Commission find that absent the merger condition NYSEG would have to
8 accept a 7% return. There is simply no parallel to Con Edison's situation nor anything here
9 to suggest that difficult economic times permit revenues to be set below the legitimate cost of
10 service.

11 **IV. The Proposed Austerity Adjustments Could be Harmful**

12 Q. Please describe the harm that could result from the austerity adjustments.

13 A. If revenue "austerity" is not to affect earnings, it must affect expenditures somehow.
14 Possible ways this could happen involve actions such as deferring maintenance, lowering
15 service quality, cutting research and development and departing from established policies in
16 setting compensation at industry competitive levels. However, there are consequences to
17 these actions. Cutting revenues and expenditures beyond the reasonable level needed to
18 provide service is counterproductive in the long run. Arbitrary austerity-justified revenue
19 reductions to fully examined revenue levels must have consequences.

20 The Con Edison service territory is still growing and its facilities require modernization. To
21 the extent that austerity measures lower service levels or the ability to serve increased load,
22 that growth may be impeded. In a non-growing area, where facilities are not in need of
23 upgrade, it may be easier to defer maintenance or capital expenditures. This is much more
24 likely to lead to service deterioration in an area with significant investment needs.

25 It is necessary to recognize that an austerity adjustment is not a "free lunch." The adjustment
26 comes at a cost. The pre-adjustment expense level will have already been found to be the
27 minimum reasonable level. Additionally that level, in this case, will incorporate a
28 productivity adjustment. If expenses are cut further, there will be costly consequences. These

1 costs could come in the form of lower service quality, in the form of higher long run costs
2 resulting from not maintaining equipment, in the form of a less competent workforce if
3 compensation levels are lowered, or in the form of a higher cost of capital if shareholders are
4 forced to bear the adjustment. As the Commission policy recognizes, there may be times
5 when these costs are worth incurring because the impacts of higher rates on customers would
6 be too severe and customers would temporarily prefer lower service quality and/or higher
7 long run costs to save on electric bills now. However, it is not at all clear that this is the case
8 at the present time. The adjustment proposed by Staff would result in savings of less than one
9 half of one percent on overall bills. The adjustment is not supported by any analysis of the
10 long-run costs or service quality reductions that will result and hence there can be no
11 reasoned basis for assuming that the benefits of the adjustment outweigh the costs. Moreover,
12 an arbitrary adjustment of this type will raise doubts in the minds of investors and will
13 increase the costs of capital. Con Edison currently has a long-term issuer rating of "A-,"
14 "Baa1," and "BBB+" from Standard and Poor's, Moody's and Fitch, respectively, which
15 places Con Edison within the broad "Baa" bond rating category. The difference in yield
16 between seasoned utility bonds in the broad "A" category and the broad "Baa" category
17 averaged about 60 basis points in the first half of September 2009. Electric utilities with
18 credit ratings in the broad "Baa" category face higher costs, relative to utilities rated "A-" or
19 higher, when they raise new debt. In downgrading Con Edison Inc. on June 29, 2009,
20 Moody's cited the "challenging regulatory and operating environment" in which its
21 subsidiaries operate. Applying an arbitrary adjustment will only serve to worsen rating
22 agencies' and investors' opinion of the regulatory environment and the cost savings arising
23 from the adjustment could be negated or overwhelmed by an increase in the cost of capital.

24 In my view the risks of an arbitrary adjustment to non-fuel operating and maintenance cost
25 levels in the range of two percent that will most likely be set at the lowest reasonable level,
26 would seem to outweigh the benefits of a broadly spread reduction in total bill of less than
27 one half of one percent. The bill impacts are unlikely to make a material difference in
28 individual customers' ability to pay or in job growth and maintenance in the service area,
29 while the expense reduction could result in reduced service quality, reliability or higher long

1 run costs, including, as described in the paragraph below, Con Edison's creditworthiness in
2 the eyes of investors and the resulting cost of debt and equity capital.

3 Q. Would the austerity measures necessarily be productive from the perspective of the
4 economy?

5 A. No. They could be counter productive. The impact of the cuts on the economy of the service
6 area should be considered in light of current economic conditions and government stimulus
7 policies. While the austerity program would be intended to help the economy, the effect
8 could well be the opposite. It is possible that the austerity program could not only lower
9 service quality, but could also achieve the opposite of its intended result with respect to
10 economic impact. As explained in further detail below, New Jersey is encouraging utilities to
11 accelerate, not defer, spending in order to stimulate the economy.

12 Q. Would your concerns be mitigated if the Company was permitted an opportunity to reclaim
13 the austerity reduction in the future through a showing that it could not achieve the savings
14 without adverse effects?

15 A. No. The Commission desires that the cuts not affect service quality or reliability. By
16 definition, cuts from the lowest reasonable level of cost will have impacts. The Company is
17 being asked to make decisions without guidance. Further, while a theoretical provision for
18 the company to receive reimbursement if it cannot find suitable cuts despite its best efforts,
19 there is no standard for demonstrating best efforts. The Company would in effect be required
20 to achieve the impossible and prove a negative—that it could not find cuts. This would be
21 very difficult and subject to second guessing based on hindsight. As discussed above, cuts in
22 revenue that go below the lowest reasonable level have a cost in that they reduce reliability or
23 service levels or increase long term cost. While it is clearly illegal to impose such costs on
24 shareholders, it is also counter productive in that doing so will make investors less willing to
25 invest in New York and will drive up the cost of capital.

1 **V. Errors in Conclusions Reached Regarding the Economy**

2 Q. Have the Staff, City and County of Westchester witnesses erred in their interpretation of the
3 economic data and the severity of the economic crisis?

4 A. Yes. While current economic conditions are not good, they are not without precedent and
5 not materially more severe than past recessions. The Commission's policy on considering
6 economic impacts was adopted at a time when economic conditions were more severe than at
7 present. Unemployment was high, oil prices were much higher, interest rates and mortgage
8 rates were over double today's level, personal incomes were lower, economic activity was
9 lower, electric rates were in real terms well above today's level and inflationary expectations
10 were soaring out of control. Yet, despite the fact that the Commission adopted a policy to
11 consider economic impact under such severe conditions that recognized the central tenet of
12 public utility regulation in this country that rates can not arbitrarily be set below the
13 prudently incurred cost of service, Staff, the City and Westchester County are advocating that
14 the Commission depart from that policy at a time when conditions are less severe. Despite
15 public perception that the current recession presents the worst economic conditions since the
16 Depression, I will show below that the facts indicate otherwise. The New York City area
17 experienced similarly severe downturns in the 1970s and between 1989 and 1992. Economic
18 conditions in 1980, when the policy on economic impact evidence was articulated, were far
19 worse than they presently are. While unemployment has risen to somewhat above January
20 1980 levels it is still below the peak of the 1980 to 1982 recession. Further, during the early
21 1980s unemployment impacts were exacerbated by extreme inflation, energy prices and
22 interest rates. In the current recession commodity prices are dropping. The supply
23 component of electric bills is declining from its 2008 peak and as these energy costs decline,
24 the impact of delivery service rate increases will be mitigated. Further, with new capacity
25 construction and mitigation of capacity markets, capacity costs have declined form historic
26 levels. Rents in Manhattan are declining; a recent report released by Prudential Douglas
27 Elliman Real Estate showed that the average rental price per square foot was down 17.5%

1 year-over-year in the second quarter of 2009.⁹ On an overall basis the impact of this
2 recession on the customer is not as severe as the recession of the early 1980s.

3 I will present a series of Exhibits below to elucidate various economic indicators that
4 demonstrate the points above.

5 In Exhibit 3, I show the Index of Coincident Economic Indicators for New York City from
6 April 1970 to July 2009. This is a broad measure of economic activity that considers nonfarm
7 payroll employment, average weekly hours in manufacturing, the unemployment rate, and
8 real earnings. While it is clear that economic activity is turning down, the drop appears to be
9 less severe than the drop that occurred in the mid 1970s, the drop that occurred between 1989
10 and 1992 and the drop that occurred between late 2000 and early 2002. Further the index has
11 stabilized in recent months. If the stabilization continues, the decline in economic activity,
12 measured by the Index of Coincident Economic Indicators, would be far less than that
13 associated with the downturns in the 1970s, 1989 to 1992 and 2000 to 2002. On the basis of
14 overall economic activity, there is nothing unique about the current downturn that would
15 indicate that having customers bear the costs associated with an austerity adjustment is
16 justified. Despite the decline from its all time peak in February 2008, the data indicate that
17 relative to historic standards the level of economic activity is high, well above even the peaks
18 of the 1970s, 1980s and 1990s.

19 In Exhibit 4, I show New York City's seasonally adjusted unemployment rate from
20 January 1976 to July 2009. Again, while that rate has increased sharply, reaching a 16-year
21 high in August 2009 and reported in the New York Times on September 18, 2009, and is
22 undoubtedly a cause for concern, the rate is still well below peak levels from some past
23 recessions. More to the point, a small reduction in electric rates, which is all the proposed
24 austerity adjustments would provide for, is not likely to have a meaningful impact on the
25 unemployed or on the unemployment rate. As discussed previously, there is no nexus
26 between electricity prices and current economic problems.

⁹ Manhattan Rental Market Overview, 2Q09, Prudential Douglas Elliman Real Estate.

1 In Exhibit 5, I show mortgage rates for the United States and the Northeast for the period
2 from January 1, 1980 through September 10, 2009. These rates are now at their lowest levels
3 over the entire period and are about one third of the peak levels reached in the early 1980s.
4 Lower mortgage rates have a major impact on personal finances and can be far more
5 important than electric bills. When considering economic impacts it is necessary to consider
6 the entire picture confronting the customer. In 1980, the customer was facing mortgage rates
7 of over 12 percent. Yet at that time the Commission adopted a policy with respect to
8 considering economic impact that recognized arbitrary adjustments were inappropriate.
9 Today the consumer faces substantially lower mortgage rates and electricity prices, factors
10 which indicate an increased ability to pay the true cost of service for electricity.

11 In Exhibit 6, I show New York City's seasonally adjusted employment/population ratio for
12 the period from January 1976 to July 2009. This ratio is significant as a higher percent of the
13 population employed increases economic activity and will make the population better off.
14 While this ratio has turned down in the past several months, it has stabilized in July, and the
15 ratio remains near an historic high.

16 In Exhibit 7, I show a bar chart of the 2009 calendar year Zone J forward price for peak
17 electricity as of May 15, 2008 versus the 2010 calendar year Zone J forward price for peak
18 electricity as of May 15, 2009 and September 15, 2009. This indicates the changes in energy
19 prices that have occurred between now and just one year ago. That reduction is 41.05%
20 percent or 5.82 cents per KWh from May 2008 to May 2009 and an additional 8.81% from
21 May 2009 to September 2009.

22 In Exhibit 8, I show real electricity prices for Con Edison in 2008 dollars. They are well
23 below the levels of the early 1980s.

24 Q. Are you intending to imply that the current recession is not severe and not a hardship on
25 many of Con Edison's customers?

26 A. No. The data clearly show that the recession is significant. It is however, less severe, from
27 the perspective of electric ratepayers, than the recession of the early 1980s. In the early
28 1980s customers faced very difficult economic times with unemployment near 9%, mortgage

1 rates over 12%, and real electricity prices well above current levels. Additionally inflation
2 was out of control, whereas inflation today is moderate. As the Commission recognized, it
3 would be clearly illegal to mitigate by setting revenues below cost of service, but other types
4 of mitigation such as lowering service levels or reliability may be necessary to cope with
5 economic conditions. Conditions are much different today. Electric prices are not high in
6 real terms relative to past levels and customers face lower prices now for electricity and
7 mortgages than historically and do not face an inflation threat let alone a stagflation effect.
8 The data do clearly show that there is no nexus between electric rates and the current
9 recession. It remains illegal to set revenues below cost. It just does not seem logical in these
10 conditions to impose extraordinary austerity measures that will have a cost when the totality
11 of current economic conditions are considered and when such measure were not imposed
12 during far more severe conditions. Also, I think it is important to put in to context that the
13 current recession is not unprecedented. The New York City area and the nation have
14 experience several recessions of similar magnitude over the past 40 years.

15 In their totality, the economic data associated with current economic conditions do indicate
16 that economic conditions have deteriorated significantly over the past year. However, they do
17 not indicate that the New York City economy is at levels worse than it has experienced in the
18 past or that it would make it necessary to arbitrarily cut Con Edison's revenue levels below
19 the reasonable minimum and bear the associated costs of reduced service quality or higher
20 long run costs. The austerity reductions would be small relative to the total bill and would be
21 spread over all customers. It would do little to help unemployed workers, those most affected
22 by the current economic conditions. When energy and capacity prices declines are
23 considered, the impact on customer bills of delivery service rate increases is mitigated.
24 Further, a large portion of recent rate increase for Con Edison have been driven by taxes and
25 PSL assessments, both of which provide significant revenue to the city and state
26 governments. It is simply illogical to have city and state authorities impose hundreds of
27 millions of dollars of rate increases on customers via taxes on Con Edison and have another
28 government agency, the Commission, conclude that the economic impacts of these tax driven
29 rate increases are too great and require an austerity adjustment.

1 Q. Do you disagree with the Staff Policy Panel, which paints a worse picture of the New York
2 City economy?

3 A. Yes. Staff is relying heavily on a single forecast of New York City Gross Product. It is a
4 forecast and not actual data. Further Staff is relying on anecdotes and the unsupported
5 reasoning that since the crisis is in the financial sector and New York City relies heavily on
6 the financial sector, things are especially bad in New York City. The use of a single forecast
7 of Gross Product is speculative and narrow. The use of anecdotal evidence is misleading. In
8 fact, the financial industry is stabilizing. Exhibit 9, shows the spread between the 3 month
9 Libor and 3 month treasury rate over the past 9 years. This spread, which had been very
10 stable, dislocated during the financial crisis. It is a good indicator of stability in the banking
11 sector because it shows the risks perceived by banks in lending to one another. It has now
12 returned to historic levels, indicating that the financial sector is stabilizing. Equity markets
13 are at yearly highs. Goldman Sachs reported its most profitable quarter ever. The New York
14 City economy is faring better than the nation. I believe that Staff's testimony based largely
15 on anecdote and a single forecast of gross product paints a distorted picture. We have no idea
16 if the forecast will prove correct and even if it does it is just one measure of economic
17 conditions. I believe the charts I show in this rebuttal testimony account for a broader variety
18 of relevant indicators. There is no established connection made between New York City
19 gross product and electric rates. In fact if Staff is correct and the economy is dominated by
20 the financial services industry, one would think that highly reliable electric service not
21 electric price was the key to industry performance. New York City does not have energy
22 intensive industry where electric price would be expected to have a large impact on gross
23 product. Again there is no nexus between this economic measure presented by Staff and the
24 proposed austerity adjustment.

25 Q. Are there indications that the economy is turning around?

26 A. Yes. I provide some examples below.

1 1. The OECD recently noted that its composite leading indicators (CLIs) demonstrated
2 that, “Clear signals of recovery are now visible in all major seven economies.”¹⁰

3 2. Federal Reserve Chairman Ben Bernanke remarked on September 15, 2009, that the
4 recession was "very likely over." He also said that forecasters agree, "at this point that we
5 are in a recovery."¹¹

6 3. Industrial production increased in July and August 2009 by 1.0 and 0.8 percent
7 respectively, according to the St. Louis Fed.¹²

8 4. The majority of economists surveyed by the Wall Street Journal in August 2009 said
9 that “the recession that began in December 2007 is now over.” They also expected GDP
10 to grow at 2.4% over the third quarter.¹³

11 **VI. The Austerity Adjustments Contradict Prevailing Public Policy at** 12 **the National Level and in Neighboring Jurisdictions**

13 Q. Are the proposed austerity adjustments consistent with federal government policy and actions
14 in neighboring states?

15 A. No. They are not. The austerity adjustment goes in the opposite direction of what is
16 generally acknowledged to be the necessary response to current economic conditions. The
17 federal government has enacted stimulus on a magnitude never before seen. The current
18 economic problem is widely perceived to result from a lack of credit capacity leading to
19 unwillingness or inability to invest or spend leading to a downward spiral in economic
20 activity. While unnecessary or wasteful spending is not the solution, the reduction of
21 productive spending or the deferral of required investment by entities such as Con Edison
22 that still have the capability to invest and spend will aggravate, not improve, economic
23 conditions. New Jersey is going in the opposite direction. The regulatory commission in
24 New Jersey has approved accelerated distribution infrastructure spending by utilities,

¹⁰ OECD Composite Leading Indicators News Release, September 11, 2009.

¹¹ “Bernanke: Recession ‘Likely Over’”, WSJ.com, September 16, 2009.

¹² Federal Reserve Statistical Release G.17, September 16, 2009.

¹³ “Economic Forecasting Survey Shows Recession Over”, WSJ.com, August 11, 2009.

1 recognizing that such expenditures are ultimately needed and that spending now will help,
2 not hurt, economic conditions. The acceleration of necessary expenditures may be especially
3 important at this time to help stimulate the service area economy. Of course, this will only be
4 feasible if Con Edison is able to maintain its credit rating.

5 The New Jersey BPU Order in Docket Nos. E009010049 and G009010050 approved \$ 694
6 million in incremental spending for Public Service Electric & Gas Company and made the
7 following observations.

- 8 ▪ Public Service has recently determined to increase its electric and gas capital
9 spending at this time to enhance the reliability of its system and to support economic
10 development and job growth in New Jersey.
- 11 ▪ The company anticipates that the design and construction work associated with
12 Qualifying Projects will generate approximately 933 jobs in its service territory.
- 13 ▪ The maximum impact to overall electric and gas rates is expected to occur in the third
14 annual period of the Infrastructure Program, with 0.82% for both electric and gas.
- 15 ▪ The parties have agreed that job creation is an integral part of the Economic Stimulus
16 Plan underlying the Qualified Projects.
- 17 ▪ The estimate of jobs to be created includes only the direct impact of the proposed
18 projects on employment ... ripple effects are difficult to quantify but they clearly
19 exist. Rate Counsel's consultants estimated that an additional 14,100 direct, indirect
20 and induced jobs will be created by the accelerated infrastructure program. The
21 multiplier calculation is based on the RIMS II Regional Input-Output Model.
- 22 ▪ The Board therefore FINDS that the overall estimate of 1302 direct jobs to be created
23 is a small fraction of the total jobs to be created.
- 24 ▪ The Board also notes that current economic conditions have reduced commodity and
25 other input costs making it a propitious time to pursue capital investment on cost
26 effective terms.

1 ▪ In summary the Board FINDS that the overall infrastructure improvement programs,
2 and the projects proposed by the utilities under them, are reasonable and in the public
3 interest because of the positive impact they are expected to have on the reliability,
4 safety and security of utility service. These infrastructure investment programs are
5 timely given the drop in commodity prices, the attractive cost of capital, and the
6 impact on both direct employment and the positive ripple effect on the New Jersey
7 economy. All of these factors make this an appropriate time to proceed with these
8 programs, which enhance and support Governor Corzine's Economic Stimulus
9 Program.

10 I am not suggesting that Con Edison should spend more than is necessary to continue to
11 provide safe, reliable and adequate service. However, I think that to arbitrarily cut spending
12 that is required to provide such service will have the perverse effect of aggravating as
13 opposed to improving economic conditions.

14 **VII. Summary**

15 Q. Please briefly summarize your rebuttal testimony.

16 A. The austerity adjustments proposed by Staff, the City, and Westchester County are arbitrary,
17 contrary to established Commission policy, have no nexus to any issue raised with respect to
18 current economic conditions and would illegally set revenues below the legitimate cost of
19 service. While economic conditions are severe, they are no more severe than past recessions
20 and in fact New York City is holding up better than the nation. The nature of this recession
21 is much more benign for the average customer than the 1980 recession which saw rampant
22 inflation, high interest rates and rapidly escalating energy prices. The proposed austerity
23 measures would have costs, including potentially large impacts on the costs of capital and in
24 the long run would raise electricity prices.

25 Q. Does this conclude your testimony?

26 A. Yes.

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EUGENE T. MEEHAN **SENIOR VICE PRESIDENT**

Mr. Meehan is a Senior Vice President at NERA. He has over thirty years of experience consulting with electric and gas utilities and has testified as an expert witness before numerous state and federal regulatory agencies, as well as appeared in federal court and arbitration proceedings.

At NERA, Mr. Meehan's practice concentrates on serving energy industry clients, with a focus on helping clients manage the transition from regulatory to more competitive environments. He has performed consulting assignments for over fifty large electric, gas, and combination utilities in the areas of retail access, regulatory strategy, strategic planning, financial and economic analysis, merger and acquisition advisory services, power contract analysis, market power and market definition, stranded cost analysis, power pooling, power markets and risk management, ISO and PX development, and costing and pricing. In addition, he has advised numerous utilities on power procurement issues and administered power procurements on behalf of utilities and regulators.

Mr. Meehan has experience leading NERA's advisory work on several major restructuring and unbundling assignments. These assignments were multi-year projects that involved integration of regulatory and business strategy, as well as development of regulatory filings associated with the recovery of stranded cost and rate unbundling.

Education

Boston College, BA, Economics, *cum laude*

New York University (NYU), Graduate School of Business, completed core courses for the doctoral program.

Professional Experience

1999-	NERA Economic Consulting Senior Vice President
1996-1999	Vice President
1973-1980	Senior Economic Analyst; Research Assistant
1994-1996	Deloitte & Touche Consulting Group Principal
1980-1994	Energy Management Associates, Inc. Vice President

Areas of Expertise

Restructuring/Stranded Cost Recovery

Mr. Meehan has directed several multi-year projects associated with restructuring and stranded cost recovery. These projects involved facilitating the development of an integrated regulatory and business strategy and formulating regulatory filings to accomplish strategy. As part of these assignments, Mr. Meehan facilitated sessions with senior management to set and track filing strategy. Clients include Public Service Gas & Electric and Baltimore Gas and Electric.

Unbundling/Generation Pricing

Mr. Meehan has formulated unbundling strategies, with a specialization in generation pricing. He has advised several utilities in standard offer pricing and has testified on shopping credits on behalf of First Energy and Baltimore Gas and Electric.

Power Procurement

Mr. Meehan has been involved in power procurement activities for a variety of utilities and regulatory agencies. He has advised utilities in developing and implementing evaluation processes for new generation, with the objective of achieving the best portfolio evaluation. He has helped regulators in Ireland and Canada design and implement portfolio evaluation processes. He has testified before FERC and state regulatory agencies on competitive power procurement. In addition, Mr. Meehan helped to design and implement the New Jersey BGS auction process.

Power Contracts

Mr. Meehan has extensive experience with power contracts and power contract issues. He has reviewed and testified on the three principal types of power contracts: integrated utility to integrated utility contracts, IPP to utility contract, and integrated or wholesale utility to distribution utility contracts. He has testified in power contracts disputes on behalf of Carolina Power and Light, Duke Power Company, Southern Company, Orange and Rockland Utilities, and Tucson Electric Power. He has also advised Oglethorpe Power Corporation in the reform of its wholesale contracts with its distributor cooperative members.

Retail and Wholesale Settlements

In addition to his expertise on power pooling issues, Mr. Meehan has significant experience with assignments related to the settlement process. He has focused on the issues of credit management as new entrants appear in retail and wholesale markets and has designed efficient specifications for retail settlement systems, including the use of load profiling, and examined the risk and cost allocation issues of alternative settlement systems.

Risk Management

Mr. Meehan has advised several large utilities on price risk management. These assignments have included evaluation of price management service offers solicited from power marketers in association with management of assets and entitlements, as well as provision of price managed service for various terms.

Marginal Costs

Mr. Meehan has provided comprehensive marginal cost analyses for over 25 North American Utilities. These assignments required detailed knowledge of utility operations and planning.

Power Supply and Transmission Planning

Mr. Meehan has advised electric utilities on economic evaluations of generation and transmission expansion. He has testified on the economics of particular investments, the prudence of planning processes, and the prudence of particular investment decisions.

Generation Strategy

Mr. Meehan has led NERA efforts on a client task force charged with developing an integrated generation asset/power marketing strategy.

Power Pooling

Mr. Meehan has in-depth working knowledge of the operating, accounting, and settlement processes of all United States power pools and representative international power pools. He has provided consulting services for New York Power Pool members on a continuous basis since

1980, advising the Pool and its members on production cost modeling, transmission expansion, competitive bidding and reliability, and marginal generating capacity cost quantification. In NEPOOL, he has quantified the benefits of continued utility membership in the Pool and the impact of the Pool settlement process on marginal cost. He has worked with a major PJM utility to explore the impact of PJM restructuring proposals upon generating asset valuation and examine the implications of alternative restructuring proposals. He has consulted for Central and Southwest Corporation, Entergy, and Southern Company on issues that involved the internal pooling arrangements of the utility operating companies of those holding companies, as well as for various utilities on the impact of pooling arrangements on strategic alternatives.

Representative Assignments

Worked with Public Service Electric & Gas Company (PSE&G) to direct a three year NERA advisory effort on restructuring. Facilitated a two-day senior management meeting to set regulatory strategy in 1997. Throughout 1997 and 1998, worked over half time at PSE&G to help implement that strategy and advised on testimony preparation, cross-examination, and briefing. Also advised PSE&G on business issues related to securitization, energy settlement and credit requirements for third party suppliers. During 1999, advised PSE&G during settlement negotiations and litigation of the settlement. PSE&G achieved a restructuring outcome that involved continued ownership of generation by an affiliate and the securitization of \$2.5 billion in stranded costs.

Worked on separate assignments for a large utility in the Northeast and a large utility in the Southeast, advising on the evaluation of risk management offers from power marketers. The assignments included reviewing proposals, attending interviews with marketers and providing advice on these, and the developing analytical software to evaluate offers.

Worked with government of Ontario beginning in 2004 to help design the RFP and economic evaluation process for the solicitation of 2500 Mw of new generating capacity. Supervising NERA's portfolio-based economic evaluation on behalf of the Ontario Ministry of Energy.

Testified on behalf of Pacific Gas & Electric Company before the FERC in a case benchmarking the PSA between the distribution utility and a soon-to-be-created generating company. This effort involved developing detailed expertise in applying the Edgar standard and a detailed review of DWR procurement during the western power crisis. In addition, this effort involved the review of more than 100 power contracts in the WECC.

Directed NERA's efforts, on behalf of the electricity regulator in Ireland, to design an RFP and implementation process for the purchase of 500 Mw of new generating capacity in 2003. NERA advised on the RFP, the portfolio evaluation method, and the power contract and also conducted the economic evaluation.

Reviewed the economic evaluation conducted by Southern Company Service for affiliated operating companies in connection with an RFP for over 2000 Mw of new generating capacity. Submitted testimony before FERC on behalf of Southern Company Service.

Worked with Baltimore Gas and Electric (BG&E) to conduct a one and one-half year consulting assignment that involved providing restructuring advice. The project began in March/April 1998 with senior management discussions and workshops on plan development and filing strategy. Advised BG&E in the development of testimony, rebuttal testimony, and public information dissemination. Worked to review and coordinate testimony from all witnesses and offered testimony on shopping credits and in defense of the case settlement. BG&E achieved a restructuring outcome enabling it to retain generation ownership. As part of this assignment, advised BG&E on generation valuation and unregulated generation business strategy.

Directed the efforts of a large Southeastern utility to develop a short-term power contract portfolio and to evaluate the relative value of power options, forwards, and unit contracts to determine the optimal mix of instruments to manage price risk.

Testified for XCEL Energy on the use of competitive bids for new generation needs. Examined whether XCEL was prudent not to explore a self-build plan and the reasonableness of relying on ten-year or shorter contracts as opposed to life-of-facility contracts, in order to meet needs and facilitate a possible future transition to competition. This project addressed the comparability of fixed bids to rate base plant additions.

Advised and testified on behalf of First Energy in the Ohio restructuring proceeding on the issues of generation unbundling and stranded cost. Defended the First Energy shopping credit proposal.

Advised Consolidated Edison and Northeast Utilities on merger issues and testified in Connecticut and New Hampshire merger proceedings. Testimony focused on retail competition in gas and electric commodity markets.

Directed NERA's effort to train selected representatives of a major European power company in American power marketing and risk management practices. The project involved numerous meetings and interviews with power marketing firms.

Led NERA's effort to advise the New England ISO on the development of an RTO filing. Examined performance-based ratemaking for transmission and market operator functions.

Examined ERCOT power market conditions during the period of time from 1997 to 1999 and testified on behalf of Texas New Mexico Power Company for the prudence of its power purchase activity.

Advised a Midwestern utility on restructuring of a wholesale contract with an affiliate. Involved forecasting of the unbundled wholesale cost-of-service and market prices, as well as development of a regulatory strategy for gaining approval of contract restructuring and the transfer of generation from regulated to EWG states.

Performed market price forecasts for numerous utility clients. These forecasts have employed both traditional modeling and newly developed statistical approaches.

Examined the credit issues associated with the entry of new entities into retail and wholesale settlement market. These assignments involved a review of current Pool credit procedures, examination of commodity and security trading credit requirements, coordination with financial institutions, and recommendations concerning credit exposure monitoring, credit evaluation processes, and credit requirements.

Oversight of EMA's consulting and software team in designing and implementing the LOLP capacity payment, a portion of the UK wholesale settlement system.

Advised Oglethorpe Power Corporation in the reform of its contracts with its distribution cooperative members and the evolution of full requirement power wholesale power contracts into contracts that preserve Oglethorpe's financial integrity and are suitable for a competitive environment.

Developed long run marginal and avoided costs of natural gas service, as well as avoided cost methods and procedures. These costs have been used primarily for the analysis of gas DSM opportunities. Clients include Consolidated Edison Company, Southern California Edison Company, Niagara Mohawk Power Corporation, and Elizabethtown Gas Company.

Review of power contracts and testimony in numerous power contract disputes.

Development of long run avoided costs of electricity service and avoided cost methods and procedures. These costs have been used to assess DSM and cogeneration, as well as to develop integrated resource plans. Clients include Public Service Company of Oklahoma, Central Maine Power Company, Duquesne Light Company, and the New York investor-owned utilities.

Advised Central Maine Power Company (CMP) on the development of a competitive bidding framework. This framework was implemented in 1984 and was the first of its kind in the nation. CMP adopted the framework outlined in EMA's report and won prompt regulatory approval.

Advised a utility in the development of an incentive ratemaking plan for a new nuclear facility. This assignment involved strategic analysis of alternate proposals and quantification of the financial impact of various ratemaking alternatives. Presented strategic and financial results in order to convince senior management to initiate negotiations for the incentive plan.

Advised and testified on behalf of the New York Power Pool utilities on the methodology for measuring pool marginal capacity costs. This work included development of the methodology and implementation of the system for quantifying LOLP-based marginal capacity costs.

Provided testimony on behalf of the investor-owned electric utilities in New York State, concerning the proper methodology to use when analyzing the cost-effectiveness of conservation programs. This methodology was adopted by the Commission and used as the basis for DSM evaluation in New York from 1982 through 1988.

Developed the functional design of a retail access settlement system and business processes for a major PJM combination utility. This design is being used to construct a software system and develop business procedures that will be used for retail settlements beginning January 1999.

Reviewed the power pool operating and interchange accounting procedure of the New York Power Pool, the Pennsylvania, New Jersey, Maryland Interconnection, Allegheny Power System, Southern Company, and the New England Power Pool as part of various consulting assignments and in connection with the development of production simulation software.

Summarized and analyzed the operational NEPOOL to examine the feasibility of incorporating NEPOOL interchange impacts with Central Maine and accounting procedure of the New England Power Pool Power Company's buy-back tariffs.

Developed and presented a two-day seminar delivered to electric industry participants in the UK (prior to privatization), outlining the structure and operation of power pools and bulk power market transactions in North America.

Benchmark analysis and FERC testimony of PGE's proposed twelve-year contract between PG&E and Electric Gen LLC (contract value in excess of \$15 billion).

Responsible for NERA's overall efforts in advising New Jersey's Electric Distribution Companies on the structuring and conduct of the Basic Generation Service auctions (the 2002 auction involved \$3.5 billion, and the 2003 and 2004 auctions involved over \$4.0 billion).

Testimony

Forums

Arkansas Public Service Commission

Federal Energy Regulatory Commission

Florida Public Service Commission

Maine Public Utilities Commission

Minnesota Public Service Commission

Nevada Public Service Commission

New York Public Service Commission

Nuclear Regulatory Commission – Atomic Safety and Licensing Board

Oklahoma Public Service Commission

Public Service Commission of Indiana

Public Utilities Commission of Ohio

Public Utilities Commission of Nevada

Public Utilities Commission of Texas

Public Utilities Commission of New Hampshire

United States District Court

United States Senate Committee on Energy and Natural Resources

Various arbitration proceedings

Clients

Arkansas Power & Light Company

Baltimore Gas & Electric

Carolina Power & Light Company

Central Maine Power

Consolidated Edison Company of New York, Inc.

Dayton Power and Light Company

Florida Coordinating Group

Houston Lighting & Power Company

Minnesota Power and Light Company

Nevada Power Company

Niagara Mohawk Power Corporation

Northern Indiana Public Service Company

Oglethorpe Power Corporation

Pacific Gas and Electric Company

Power Authority of the State of New York

Public Service and Electric Company

Public Service Company of Oklahoma

Sierra Pacific Power Company

Southern Company Services, Inc.

Tucson Electric Power Company

Texas-New Mexico Power Company

Recent Expert Testimony and Expert Reports

Supplemental Testimony on behalf of Texas-New Mexico Power Company, Docket No. 15660, September 5, 1996.

Direct Testimony on behalf of Long Island Lighting Company before the Federal Energy Regulatory Commission, September 29, 1997.

Rebuttal Testimony on behalf of Texas-New Mexico Power Company, SOAH Docket No. 473-97-1561, PUC Docket No. 17751, March 2, 1998.

Prepared Testimony and deposition testimony on behalf of Central Maine Power Company, United States District Court Southern District of New York, 98-civ-8162 (JSM), March 5, 1999.

Prepared Direct Testimony Before the Public Service Commission of Maryland on behalf of Baltimore Gas & Electric Company, PSC Case Nos. 8794/8804, June 1999.

Rebuttal Testimony Before the Maryland Public Service Commission, on behalf of Baltimore Gas & Electric Company, PSC Case Nos. 8794/8804, March 22, 1999.

NORCON Power Partners LP v. Niagara Mohawk Energy Marketing, before the United States District Court, Southern District of New York, June 1999.

Prepared Supplemental Testimony Before the Maryland Public Service Commission, on behalf of Baltimore Gas & Electric Company, PSC Case Nos. 8794/8804, July 23, 1999.

Prepared Supplemental Reply Testimony Before the Maryland Public Service Commission, on behalf of Baltimore Gas & Electric Company, PSC Case Nos. 8794/8804, August 3, 1999.

Direct Testimony on behalf of Niagara Mohawk, Before the New York State Public Service Commission, PSC Case No. 99-E-0681, September 3, 1999.

Rebuttal Testimony on behalf of Niagara Mohawk, PSC Case No. 99-E-0681 Before the New York State Public Service Commission, November 10, 1999.

Arbitration deposition on behalf of Oglethorpe Power Corporation, last quarter of 1999.

Direct Testimony Before the Public Utilities Commission of Ohio on behalf of FirstEnergy Corporation, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company, Case No. 99-1212-EL-ETP re: Shopping Credits.

Direct Testimony on behalf of Niagara Mohawk, Before the New York State Public Service Commission, PSC Case No. 99-E-0990, February 25, 2000.

Testimony on behalf of Consolidated Edison Company of New York, Inc., State of Connecticut, Department of Public Utility Control, Docket No.: 00-01-11, April 28, 2000 and June 30, 2000.

Testimony on behalf of Texas-New Mexico Power Company, Fuel Reconciliation Proceeding before the Texas PUC, June 30, 2000.

Testimony on behalf of Consolidated Edison Company of New York, Inc., Before the New Hampshire Public Service Commission, Docket No.: DE 00-009, June 30, 2000.

Rebuttal Testimony Before the Public Utilities Commission of the State of Colorado, Docket No. 99A-549E, November 22, 2000.

Testimony Before the Public Utilities Commission of the State of Colorado, Docket No. 99A-549E, January 19, 2001.

DETM Management, Inc. Duke Energy Services Canada Ltd., And DTMSI Management Ltd., Claimants vs. Mobil Natural Gas Inc., And Mobil Canada Products, Ltd., Respondents. American Arbitration Association Cause No. 50 T 198 00485 00, August 27, 2001.

State of New Jersey Board of Public Utilities, In the Matter of the Provision of Basic Generation Service Pursuant to the Electric Discount and Energy Competition Act of 1999, Before President Connie O. Hughes, Commissioner Carol Murphy on Behalf of the Electric Distribution Companies (Public Service Electric and Gas Company, GPU Energy, Consolidate Edison Company and Conectiv) Docket No.: EX01050303, October 4, 2001.

Direct Testimony Before the Federal Energy Regulatory Commission on behalf of Pacific Gas and Electric Company, Docket No.: ER02-456-000, November 30, 2001.

Fourth Branch Associates/Mechanicville vs. Niagara Mohawk Power Corporation, January 2002 (Expert Report).

Arbitration Deposition on behalf of Oglethorpe Power Corporation, March 2002.

Direct Testimony and Deposition Testimony Before the Federal Energy Regulatory Commission on behalf of Electric Generation LLC in Response to June 12 Commission Order, Docket No.: ER02-456-000, July 16, 2002.

Rebuttal Testimony Before the Federal Energy Regulatory Commission on behalf of Electric Generation LLC in Response to June 12 Commission Order, Docket No.: ER02-456-000, August 13, 2002.

Direct Testimony Before the Public Utilities Commission of Nevada on behalf of Nevada Power Company, in the matter of the Application of Nevada Power Company to Reduce Fuel and Purchased Power Rates, PUCN Docket No. 02-11021, November 8, 2002 and subsequent Deposition Testimony.

Direct Testimony Before the Public Utilities Commission of Nevada on behalf of Sierra Pacific Power Company's Deferred Energy Case, Docket No. 03-1014, January 10, 2003.

Direct Testimony Before the Public Utility Commission Of Texas on behalf of Texas-New Mexico Power Company, Application Of Texas-New Mexico Power Company For Reconciliation Of Fuel Costs, April 1, 2003.

Rebuttal Testimony Before the Public Utilities Commission of Nevada on behalf of Nevada Power Company, PUCN Docket No. 02-11021, April 1, 2003.

Rebuttal Testimony Before the Public Utilities Commission of Nevada on behalf of Sierra Pacific Power Company, Docket No. 03-1014, May 5, 2003.

Testimony on behalf of Consolidated Edison Company of New York, Inc., Before the Public Service Commission of New York, Case No.: 00-E-0612, September 19, 2003.

State of New Jersey Board of Public Utilities, In the Matter of the Provision of Basic Generation Service Pursuant to the Electric Discount and Energy Competition Act of 1999, Before President Connie O. Hughes, Commissioner Carol Murphy on Behalf of the Electric Distribution Companies (Public Service Electric and Gas Company, GPU Energy, Consolidate Edison Company and Conectiv), September 2003.

Direct Testimony Before the Public Utilities Commission of Nevada on behalf of Nevada Power Company's Deferred Energy Case, November 12, 2003.

Direct Testimony Before the Public Utilities Commission of Nevada on behalf of Sierra Pacific Power Company's Deferred Energy Case, January 12, 2004.

Rebuttal Testimony Before the Public Utilities Commission of Nevada on behalf of Sierra Pacific Power Company's Deferred Energy Case, May 28, 2004.

Direct Testimony on behalf of Texas-New Mexico Power Company, First Choice Power Inc. and Texas Generating Company LP to Finalize Stranded Cost under PURA § 39.262, January 22, 2004.

Rebuttal Testimony on behalf of Texas-New Mexico Power Company, First Choice Power Inc. and Texas Generating Company LP to Finalize Stranded Cost under PURA § 39.262, April, 2004.

State of New Jersey Board of Public Utilities, In the Matter of the Provision of Basic Generation Service Pursuant to the Electric Discount and Energy Competition Act of 1999, Before President Connie O. Hughes, Commissioner Carol Murphy on Behalf of the Electric Distribution Companies (Public Service Electric and Gas Company, GPU Energy, Consolidate Edison Company and Conectiv), September 2004.

Direct Testimony Before the Public Utilities Commission of Nevada on behalf of Nevada Power Company's Deferred Energy Case, November 9, 2004.

Direct Testimony Before the Public Utilities Commission of Nevada on behalf of Sierra Pacific Power Company's Deferred Energy Case, January 7, 2005.

Expert Report on behalf of Oglethorpe Power Corporation, March 23, 2005.

Arbitration deposition on behalf of Oglethorpe Power Corporation, April 1, 2005.

Direct Testimony Before the Public Utilities Commission of Nevada on behalf of Sierra Pacific Power Company's December 2005 Deferred Energy Case.

Direct Testimony Before the Public Utilities Commission of Nevada on behalf of Nevada Power Company's 2006 Deferred Energy Case, January 13, 2006.

Remand Rebuttal for Public Service Company of Oklahoma before the Corporation Commission of the State of Oklahoma, Cause No. PUD 200200038, **Confidential**, March 17, 2006

Answer Testimony on behalf of the Colorado Independent energy Association, AES Corporation and LS Power Associates, LP, Docket No. 05A-543E, April 18, 2006.

Cross-Answer Testimony on behalf of the Colorado Independent energy Association, AES Corporation and LS Power Associates, LP, Docket No. 05A-543E, May 22, 2006.

Rebuttal Testimony Before the Public Utilities Commission of Nevada on behalf of Nevada Power Company's 2006 Deferred Energy Case, Docket No. 06-01016, June 2006.

Direct Testimony Before the Public Utilities Commission of Nevada on behalf of Sierra Pacific Power Company's Deferred Energy Case, December 2006.

Direct Testimony Before the Public Utilities Commission of Nevada on behalf of Sierra Pacific Power Company's Application for Recovery of Costs of Achieving Final Resolution of Claims Associated with Contracts Executed During the Western Energy Crisis, December 2006.

Direct Testimony Before the Public Utilities Commission of Nevada on behalf of Nevada Power Company's Application for Recovery of Costs of Achieving Final Resolution of Claims Associated with Contracts Executed During the Western Energy Crisis, December 2006.

Direct Testimony Before the Public Utilities Commission of the State of Hawaii, on behalf of Hawaiian Electric Company, Inc., Docket No. 2006-0386, December 22, 2006.

Direct Testimony Before the Public Utilities Commission of the State of Hawaii, on behalf of Hawaiian Electric Company, Inc., Docket No. 05-0315, December 29, 2006.

Rebuttal Testimony Before the Public Utilities Commission of Nevada on behalf of Nevada Power Company's 2007 Deferred Energy Case, January 2007.

Declaration Before the State of New York Public Service Commission, on behalf of Consolidated Edison Company of New York, Inc.'s Long Island City Electric Network, Case 06-E-0894 – Proceeding on Motion of the Commission to Investigate the Electric Power Outage and Case 06-E-1158 – In the Matter of Staff's Investigation of Consolidated Edison Company of New York, Inc.'s Performance During and Following the July and September Electric Utility Outages. July 24, 2007

Direct Testimony Before The Public Utilities Commission of Colorado, In The Matter of the Application of Public Service Company of Colorado for Approval of its 2007 Colorado Resource Plan, April 2008

Answer Testimony Before the Public Utilities Commission of the State of Colorado on behalf of Trans-Elect Development Company, LLC, and The Wyoming Infrastructure Authority, Docket No. 07A-447E, April 28, 2008

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

STATEMENT OF POLICY CONCERNING EVIDENCE
OF ECONOMIC IMPACT IN RATE CASES.

Issued: January 14, 1980

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

COMMISSIONERS:

Charles A. Zielinski, Chairman
Edward P. Larkin
Carmel Carrington Marr
Harold A. Jerry, Jr.
Anne F. Mead
Karen S. Burstein
Richard S. Bower

STATEMENT OF POLICY CONCERNING EVIDENCE
OF ECONOMIC IMPACT IN RATE CASES

(Issued January 14, 1980)

In a petition filed earlier this year by Andrew J. Stein, Borough President of Manhattan, and Richard M. Kessel, Director of Long Island Consumer Action, we were asked to:

1. Order a proceeding to investigate the feasibility and methodology of requiring a formal economic impact statement in all future rate proceedings;
2. Order a Commission staff study into the various possibilities of an economic impact procedure for rate proceedings; and
3. Order each major electric and telephone utility to devise a plan for the inclusion of an economic impact statement in their future rate filings.^{1/}

We discussed the petition at our session of May 16, 1979 and decided to deny the particular relief sought. Having reviewed staff's suggestions about the types of data one could use to

^{1/}"Petition. . . concerning economic impact [of] utility rate applications," dated February, 1979, pp. 1-2.

measure economic impact in a rate case, we concluded that the complexity of the relationships between such economic indicia and utility rates would make it impractical or impossible to devise a formulaic approach such as the petitioners recommend. In our view, a hearing attempting to explicate such relationships in generic terms would not yield useful results now. Rather, we think the consequences of rate determinations, for the economic circumstances of a utility's territory, are better elaborated and refined through the evidence offered by interested parties in individual cases.

We have kept this matter open in order to clarify our general view of the relevance of economic impact in rate proceedings, and the usefulness of testimony on that subject in helping us reach reasonable conclusions in rate cases. The rest of today's statement is offered as a guide for parties and Administrative Law Judges in future rate cases where testimony about economic impact may be presented.

"Economic impact" sometimes is conceived as connoting only the difficulty or hardship imposed on the consumer as a direct result of the consumer's monthly bills for utility service. But we understand the term more broadly. Utility rates have various potentially harmful and beneficial multiplier effects on the overall financial and economic health of the territory where the rates are imposed. Testimony elucidating these effects, by demonstrating the connection among classes of customers, the socio-economic environment, and the proposed rates, could influence our determination of various elements of the ultimate rate decision.

We have implicitly recognized economic impact in several ways. In fact, concern about potential customer hardship informs the very idea of regulation. Statute and

case law constrain us to examine proposed rates to assure that they do not exceed the minimum that will cover a company's prudently incurred costs, including a reasonable return allowance. Regulation in the public interest assures that prices will be just and reasonable, and not the maximum that a company might exact by reason of its monopoly position. And, with the understanding that we cannot legally set revenues lower than the company's legitimate cost of service, we have identified certain portions of the rate equation that present opportunities to consider economic impact. Indeed, we have taken such opportunities routinely in rate cases decided in recent years. For example, in setting an expense allowance within a range of reasonableness, we have chosen the lower end of the range;^{1/} in determining when to begin making a necessary provision such as an allowance for amortization, we have decided to postpone the effective date of the provision;^{2/} and, in deciding how to alter rate designs, we have considered the specific impact on various groups of customers.^{3/}

These decisions are derived directly from our statutory responsibility to assure safe and adequate service at just and reasonable rates. For that purpose, it may make sense to moderate a rate increase in the ways described above where, for example, there is persuasive testimony that higher rates, at a time of economic distress, would adversely affect the public--including the utility company--by precipitating or aggravating economic dislocations and problems such as unemployment, dependence on public assistance, and departure of industries.

1/Case 26827, Consolidated Edison Company of New York, Inc., 16 NY PSC 65 (1976).

2/Case 27361, New York State Electric & Gas Corporation, 19 NY PSC ___ (Opinion No. 79-11, issued April 20, 1979).

3/Case 27296, National Fuel Gas Distribution Corporation, 18 NY PSC ___ (Opinion No. 78-29, issued December 29, 1978).

While intuition and logic point to the validity of this kind of economic impact analysis in rate cases, parties generally have not given us useful evidence in this regard; and our statements about economic impact seem to have produced confusion among parties instead of encouraging refinement of the necessary data. Even now, we cannot claim to foresee all the contexts where evidence of economic impact may be relevant. Nor can we issue an exhaustive list of the types of data that might illustrate economic impact, although we agree with petitioners that evidence about employment rates, housing starts, income levels and age distribution could be informative if placed in the context of experience in other territories and other time periods. What we consider crucial is not particularly the type of data offered but, again, its tendency to prove the proponent's argument about a particular issue in a rate case. As parties and the Commission become more practiced in the use of economic evidence for ratemaking purposes, it should become easier to assess the usefulness of various types of data.

Despite these present limitations, we can identify at least the following three issues as areas where evidence of economic impact might be useful. We discuss them merely for the purpose of guidance, in the expectation that parties may take a creative view of the problem and develop their own approaches. It should be recognized that the key to a convincing evidentiary demonstration will be the party's ability to identify a nexus between the evidence presented and specific problems at issue in the rate case. It also should be recognized that an evidentiary demonstration will not be convincing or persuasive merely because it follows the guidelines we are offering below; the evidence must tend to prove the proponent's point.

1. Revenue Requirements

In a rate proceeding, a rational revenue forecast for the rate year necessarily incorporates assumptions about how rates affect sales, since the company's application requests a change in rates. In debating the accuracy of sales forecasts, it therefore would be useful to have evidence about the demand elasticity of various customer classes. For example, a party might attempt to show that the sales forecast should incorporate an assumption that demand is relatively inelastic among industrial customers or economically disadvantaged residential customers; and therefore that, in setting the level of rates, relatively little allowance should be made for the effects of elasticity. On a more complex level, the record might explore long-term interrelationships among rates, the risk of shrinkage in the company's revenue base, and the economic position of the company's personal and institutional customers.^{1/}

2. Questions of Timing

In the past, we have considered economic conditions in deciding when to recognize particular expenses. Evidence of economic distress in a utility's service territory might be cited to support arguments for limiting a particular expense allowance to the low end of a range of reasonableness, where such a range exists. And parties may argue that, because of specific considerations of economic impact in a particular case, we should reject any proposed rate of return authorization that would conflict with our usual practice of setting the allowed return on equity at the lowest level within a range of reasonableness (by allowing the minimum reasonable return in view of the nature and risks of the investment and the company's need to compete in the capital

^{1/}See, e.g., Case 27353, Consolidated Edison Company of New York, Inc. (Opinion No. 79-8, issued April 6, 1979).

markets for funds). Evidence of economic impact also might be a factor tending to show when depreciation rates should be changed if a proposed change appears reasonable but reflects relatively uncertain assumptions about service lives; how excess capacity should be treated for ratemaking purposes; whether the company's long-range investment and construction plans are sufficiently ambitious or modest; and whether the quality of service should be sacrificed in order to restrain rates.

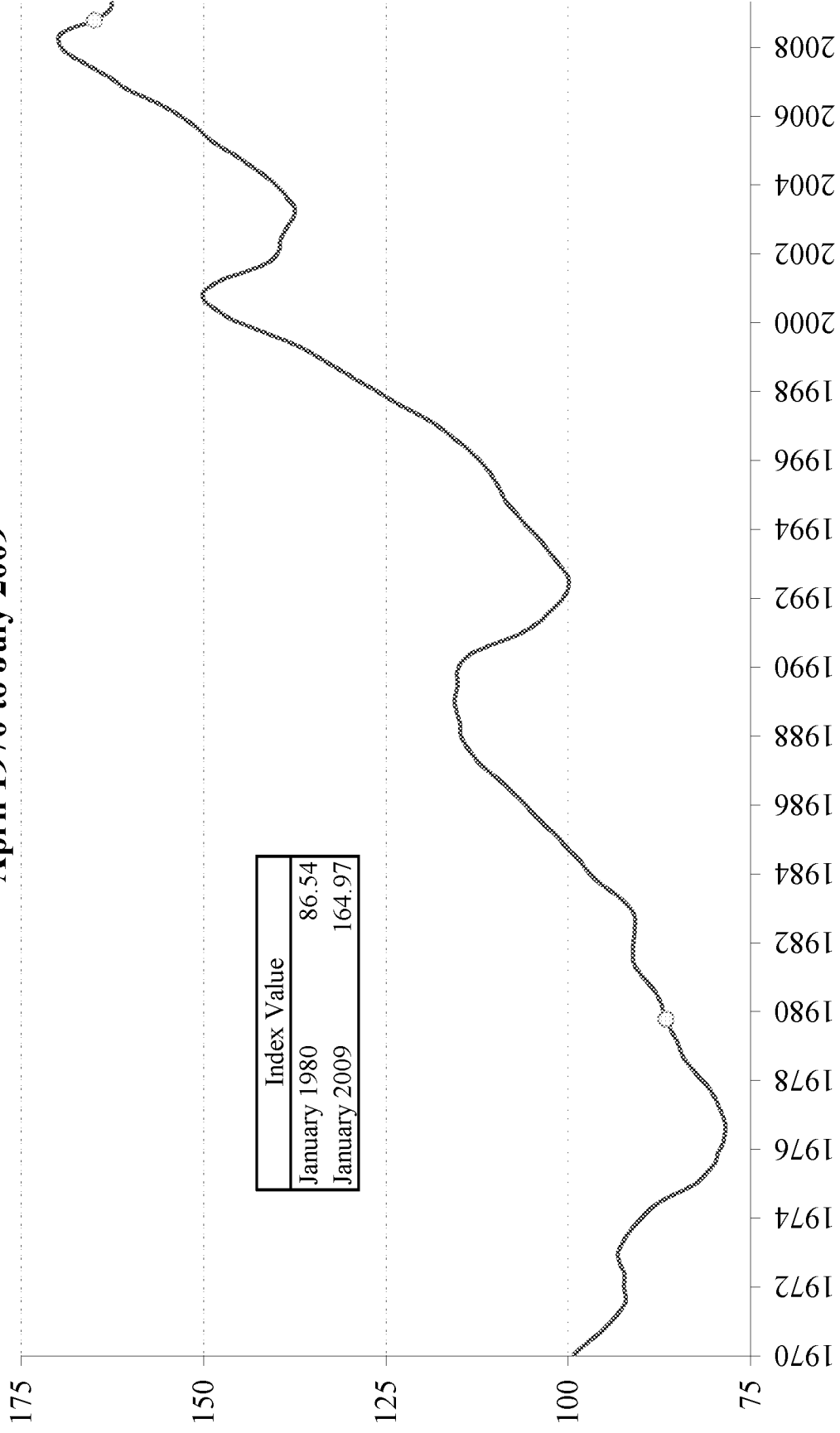
3. Revenue Distribution Among Customers

We have a long-range commitment to achieving cost-based rates; in pursuit of that objective we face many choices. A party might use evidence of economic impact in an effort to deal with issues of revenue distribution, among service classifications, that cost analysis alone cannot resolve. And, within service classifications, there are similar issues that might be analyzed in terms of economic impact. We suspect that this will be an especially fertile field for the use of such testimony.

As we already have noted, the above discussion does not exhaust the possibilities for connecting economic impact evidence to rate case issues. Our intention in this statement has been to affirm explicitly our sensitivity to the impact of rates on the general economy of the New York utilities' service territories; and express our belief in the relevance of testimony directed to the connection among rates, rate structures, and that general economy. Rigorous,

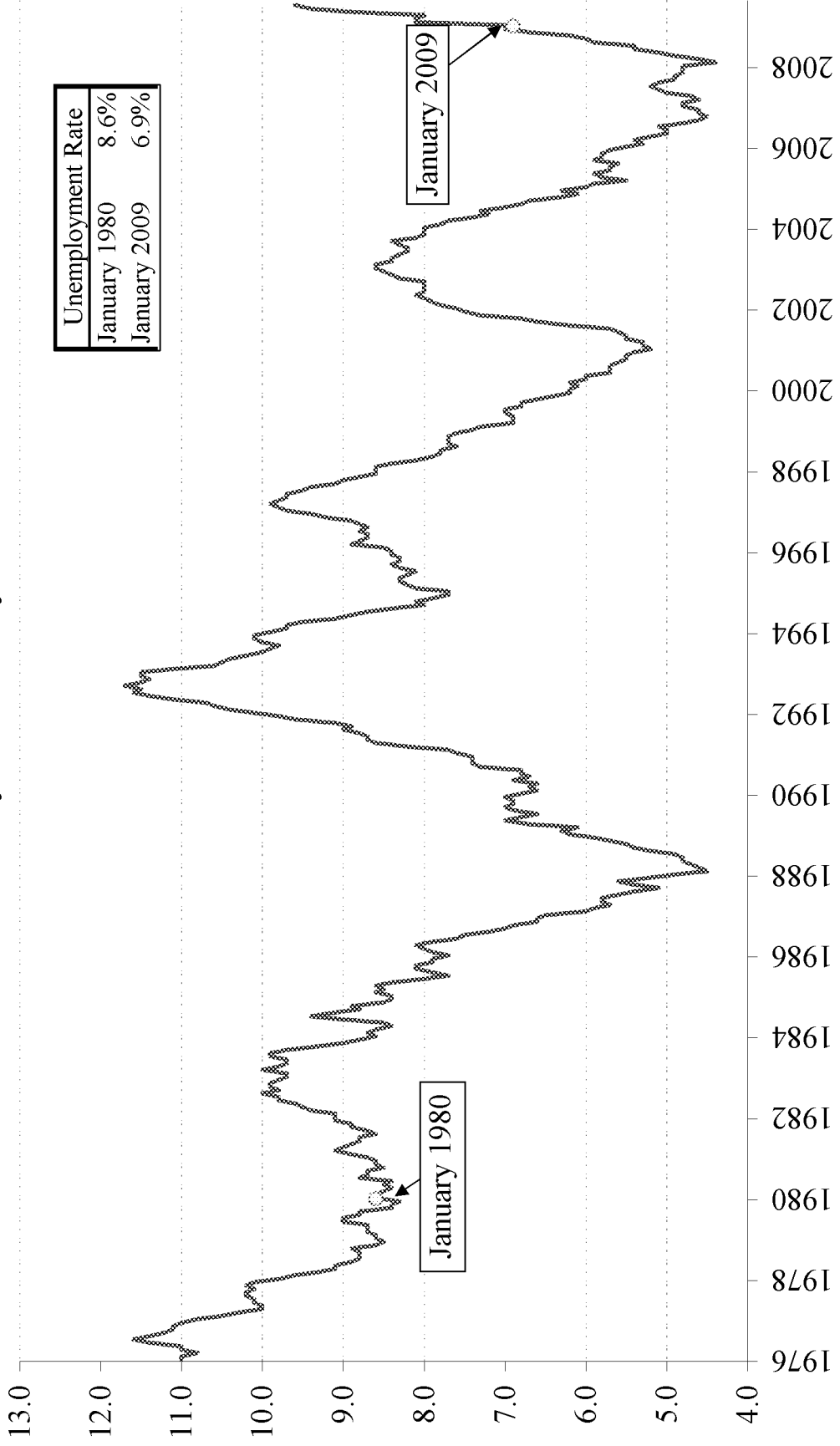
imaginative exploration of the interconnection between the cost of utility services and the financial health of communities can yield positive results for individual consumers, businesses, and utility companies.

Exhibit 3
Index of Coincident Economic Indicators, New York City
April 1970 to July 2009



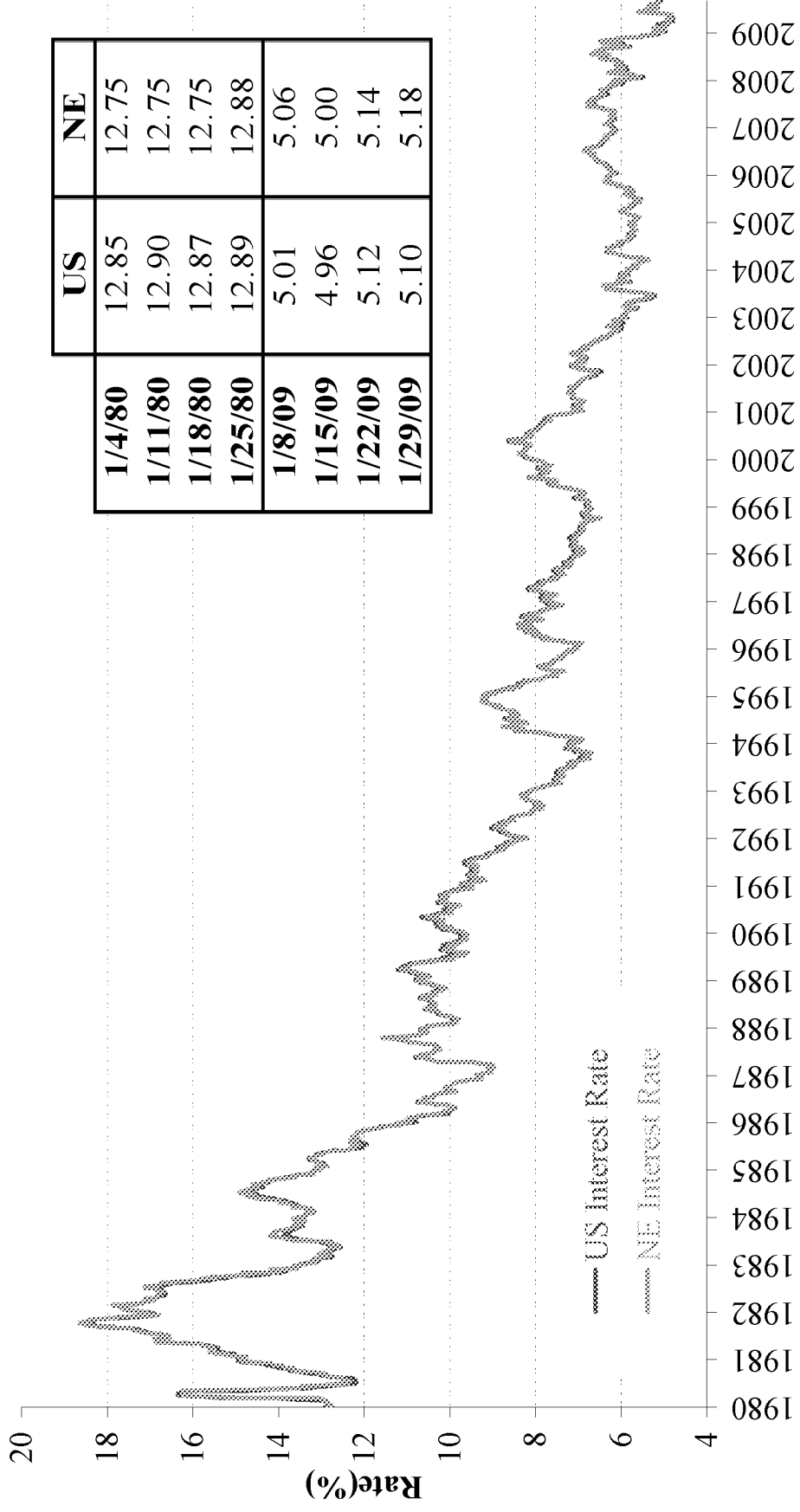
Data from New York Federal Reserve

Exhibit 4
New York City's Seasonally-Adjusted Unemployment Rate
January 1976 to July 2009



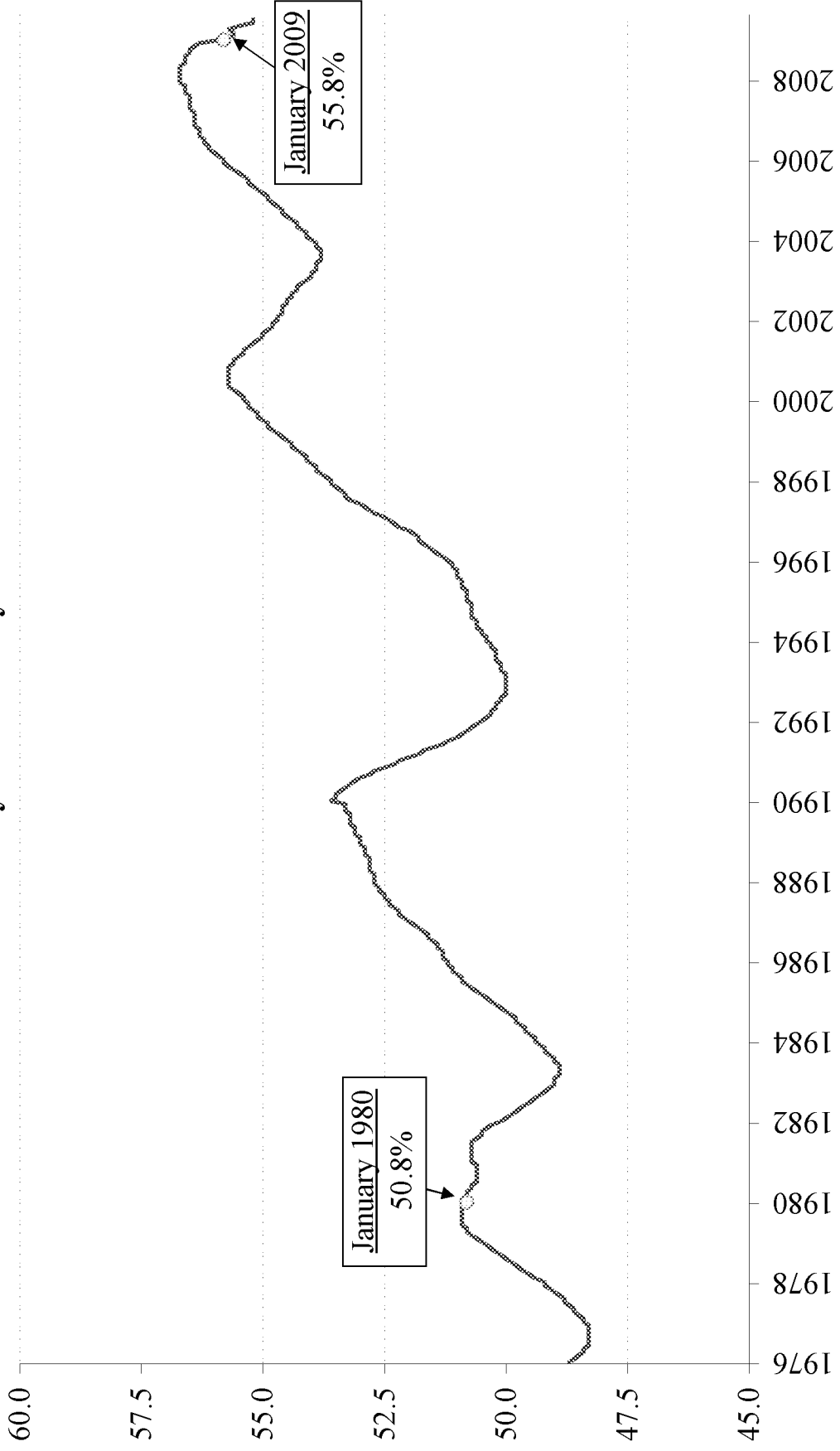
Data from New York Labor Department - <http://www.labor.state.ny.us>

Exhibit 5
Conventional and Conforming 30-Year Fixed Rate Mortgage Rates
Northeast Region and US, Weekly
January 1, 1980 to September 10, 2009



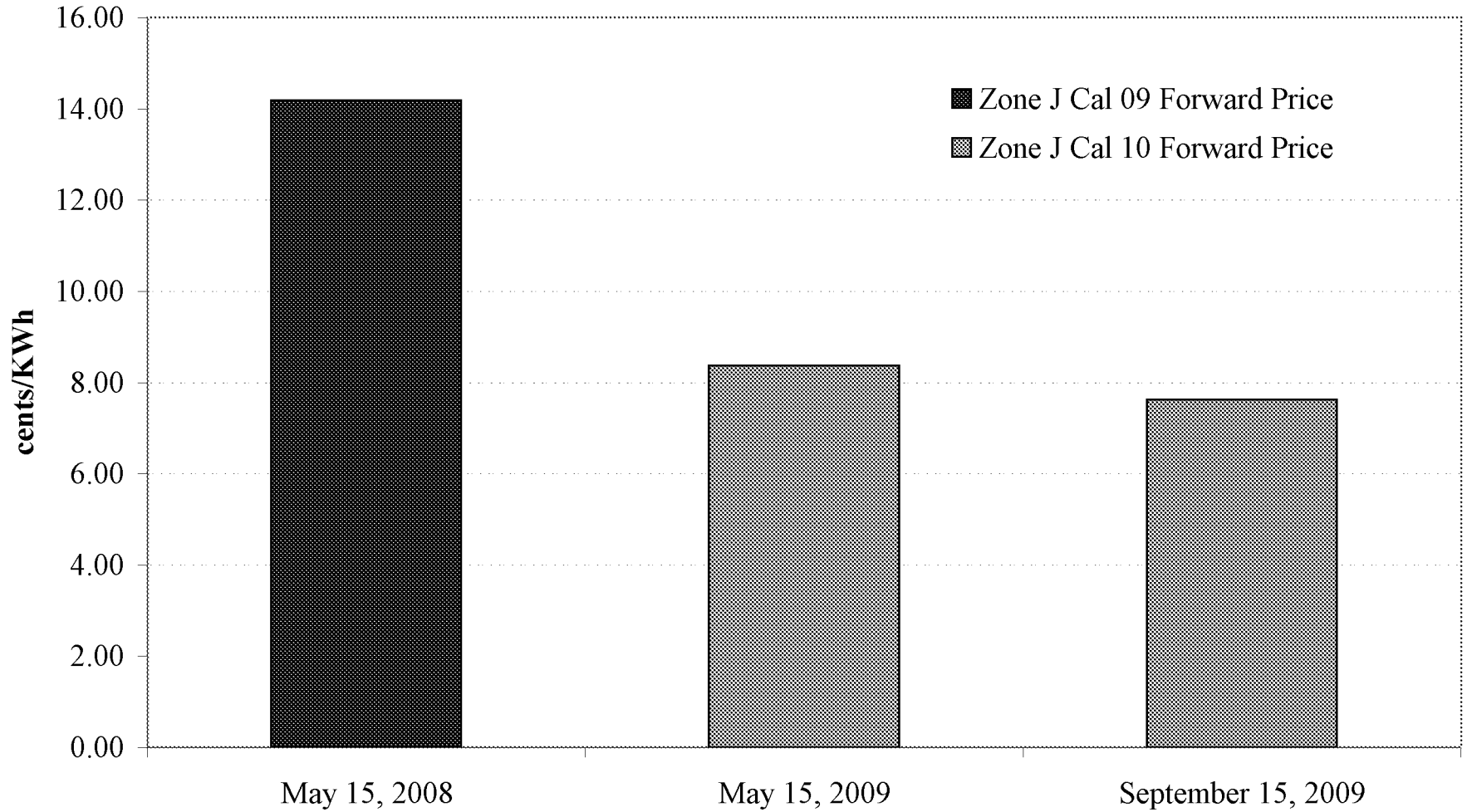
Data from Freddie Mac

Exhibit 6
New York City's Seasonally-Adjusted Employment/Population Ratio
January 1976 to July 2009



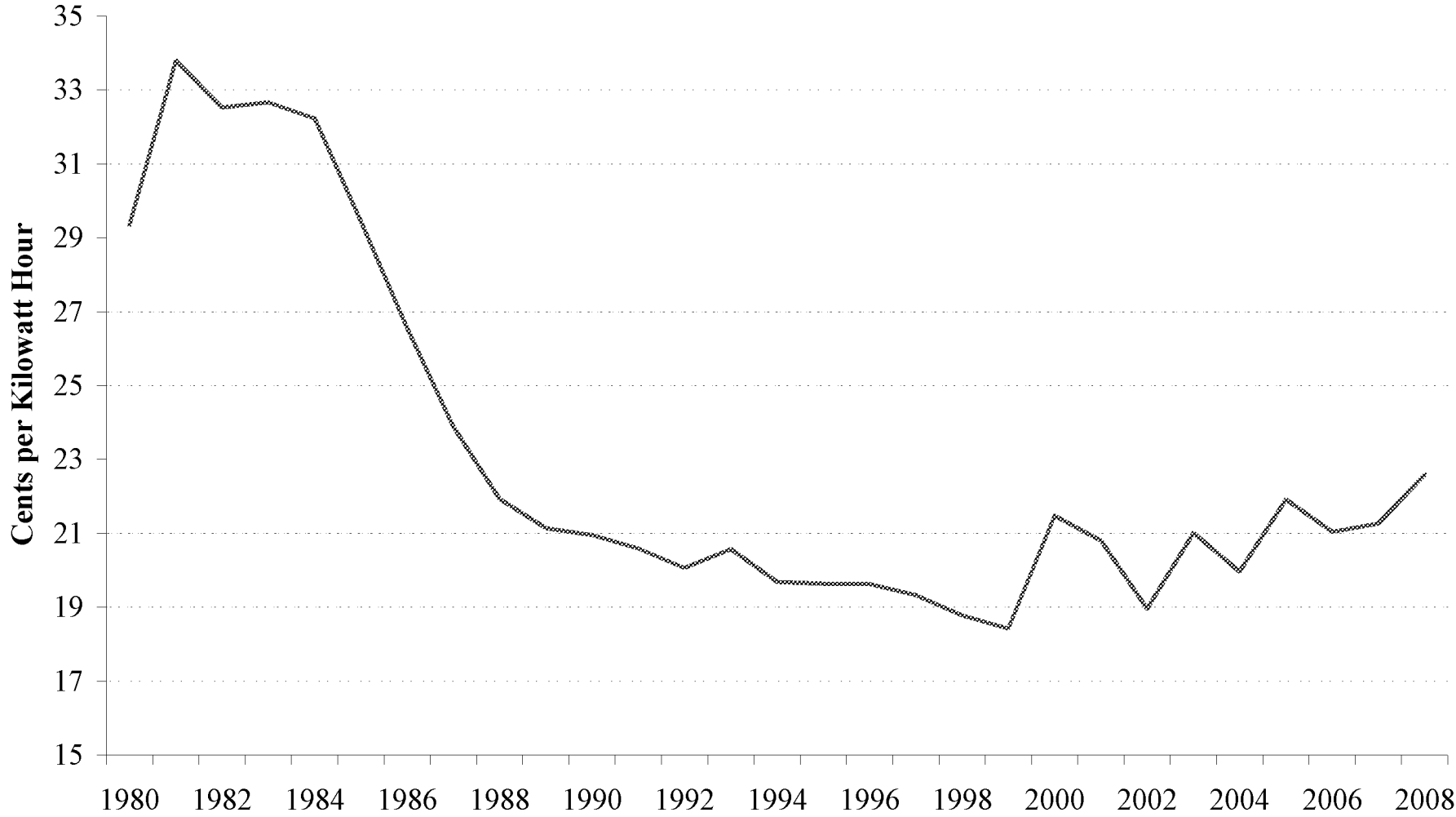
Data from New York Labor Department - <http://www.labor.state.ny.us>

Exhibit 7
Comparison of Zone J Peak Forward Prices from 2008 to 2009



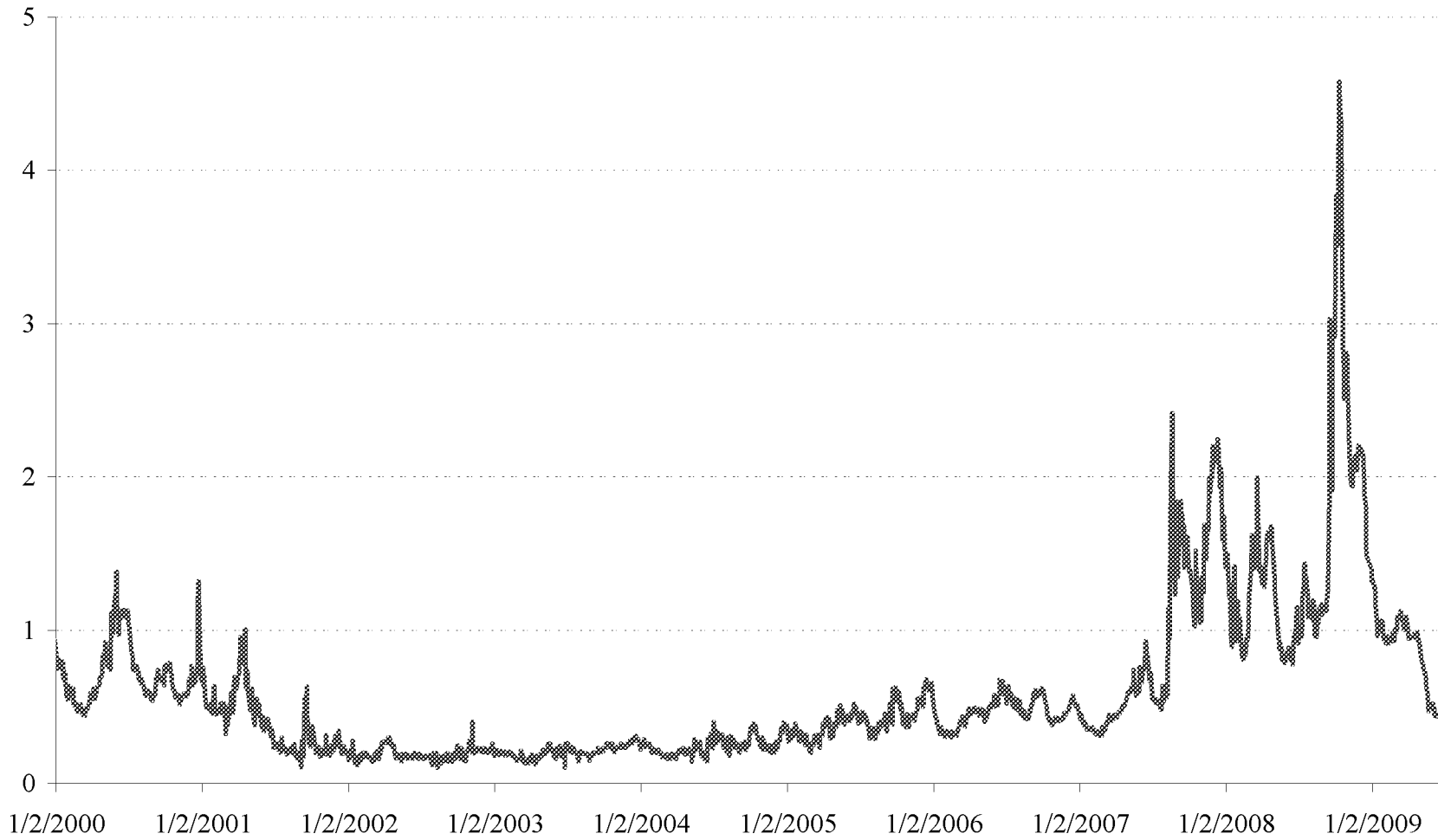
Data from brokers: ICAP, Amerex, and TFS.

Exhibit 8
Electric Rates in Real 2008 Dollars
1980 to 2008



Data from Client

Exhibit 9
TED Spread between 3M Libor and 3M Treasuries, Daily
January 2, 2000 to June 30, 2009



Data from British Banker's Association and St. Louis Federal Reserve.