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Vice President  
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July 9, 2012  

Hon. Jaclyn A. Brilling  
Secretary to the Commission  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, NY  12223  

Re: Consolidated Edison Company of New York, Inc. -  
Monthly Adjustment Clause as Vehicle for  
Recovery of PJM OATT Charges  

Dear Secretary Brilling:  

Consolidated Edison Company of New York, Inc. (“Con Edison” or the “Company”) hereby requests that the Commission (1) find that the Monthly Adjustment Clause (“MAC”) in the Company's Commission-approved electric tariff provides for the recovery of charges\(^1\) incurred by the Company for new firm transmission service under the PJM Open Access Transmission Tariff (“PJM OATT”) and (2) enable the Company to mitigate these charges by authorizing an average monthly credit of approximately $1.2 million until base electric delivery rates are reset.

**Purpose of This Filing**

As described in more detail below, the Company entered into a firm point-to-point transmission service for 1,000 MW under the PJM OATT, effective May 1, 2012, in order to maintain reliability of service to customers in Con Edison's service territory.

The Company commenced recovery of these PJM charges in June 2012 pursuant to a filing made in accordance with the Company’s Monthly Adjustment Clause, as set forth in the Company’s Schedule for Electricity Service, P.S.C. No. 10 - Electricity (“Tariff”). At various times during the past several months, including at the time of the Company's June filing pursuant to the MAC, the Company communicated to various members of Department of Public Service Staff (“Staff”) the Company's reasons for commencing recovery of the PJM charges through the MAC mechanism.

\(^1\) References to PJM charges in this letter are to charges net of credits.
After considering the Company's rationale, Staff advised the Company that the recovery of these charges through the MAC should be presented to the Commission for the following reasons:

1. The MAC does not expressly list PJM OATT charges among the transmission-related charges to be recovered through the MAC and the Commission should therefore have the opportunity to consider the recovery of these charges through the MAC.

2. Interested parties should have the opportunity to comment on the allocation of these charges, since charges recovered through the MAC are allocable only to Con Edison full service and retail access customers.

3. The credit to be deferred for customer benefit should instead be applied for customer benefit contemporaneously with the Company's recovery of PJM OATT charges so that current customers pay only the net amount.

In deference to Staff’s request, the Company is hereby advising the Commission and interested parties of the Company’s action and the basis for that action, in order to facilitate resolution of this matter, including obtaining Commission authorization to apply a credit that would reduce the impact of these new charges on a current basis.

**Background**

In the early 1970s, Con Edison planned to build transmission lines from Ramapo to New York City ("NYC") to provide additional transmission capacity into the Company’s service territory from generating sources to the north. As an alternative, Public Service Electric & Gas Company ("PSE&G") proposed that Con Edison and PSE&G jointly resolve their respective supply needs in both northern New Jersey and NYC by entering into a “wheeling” arrangement, i.e., an energy exchange agreement whereby Con Edison would supply PSE&G’s customers in northern New Jersey from Con Edison’s upstate generating sources and PSE&G’s generators would supply Con Edison’s customers in NYC. As a result, the parties entered into two agreements: (1) a 400 MW Transmission Service Agreement ("TSA") in 1975, under which Con Edison would supply PSE&G with 400 MW from the Ramapo Substation for use in Northern NJ, and PSE&G would return the same amount of power to Con Edison at its Farragut and/or Goethals Substations ("1975 TSA"), and (2) a 600 MW TSA in 1978, under which PSE&G would transfer up to an additional 600 MW to Con Edison, subject to certain curtailment rights in case of bulk-power system outages of specified facilities ("1978 TSA"). To implement the required power flows physically, the TSAs called for the construction or utilization of specific transmission lines between the utilities’ service territories. As a result, Con Edison discontinued its plans to build additional transmission capacity from upstate New York to its service territory.
Following the issuance of FERC’s Order No. 888, which provided for open access transmission service and the grandfathering of the bilateral 1975 and 1978 TSAs, Con Edison and PSE&G transferred control of their transmission facilities to the NYISO and PJM, respectively. In 2002, Con Edison filed a complaint with FERC, explaining that PSE&G and PJM were not fully honoring the firm service requirements of the TSAs. In 2004, following extensive litigation, FERC determined that although both grandfathered TSAs provided for “essentially firm” service, the 1975 TSA was not as firm as the 1978 TSA, and the wheeling services were, in fact, subordinated to the needs of PSE&G’s native load customers. FERC also ordered the parties to negotiate an operating protocol pursuant to which the bilateral agreements between Con Edison and PSE&G could be fulfilled through NYISO and PJM operations. The operating protocol was negotiated by PJM, the NYISO, PSE&G, and Con Edison; established by agreement between PJM and the NYISO; and implemented effective July 1, 2005.

Since the grandfathered TSAs could not be extended beyond April 30, 2012, the Company then considered whether, and if so to what extent, transmission service from New Jersey to New York was necessary to provide reliable service to Con Edison customers following the expiration of the bilateral agreements. The Company concluded that such imports were essential to providing reliable service and took measures to obtain service under the PJM OATT commencing May 1, 2012.

The terms and conditions for the new PJM OATT service, which are applicable to all PJM transmission customers, are established by two new pro forma agreements for long-term, point-to-point transmission service entered into between PJM and Con Edison. The agreements were approved by the FERC, together with the procedures to be followed by PJM and the NYISO in implementing the new OATT service, and became effective May 1, 2012.

I. The MAC authorizes recovery of PJM OATT charges.

The Monthly Adjustment Clause is a vehicle for recovering from Con Edison full service and retail access customers various costs that are incurred by the Company in providing electric delivery service and that are not recovered in base electric delivery rates.

The section of the Company’s tariff setting forth the MAC lists 36 separate MAC components. Some of the components address specific, currently identifiable costs; other components generally describe categories of costs. For purposes of recovering charges under the new PJM OATT transmission service, the Company relies on one of the components that describe a category of costs, component (14), which permits recovery of “certain other transmission-related charges and credits.” The Company submits that the transmission-

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2 FERC Docket Nos. RM95-8-000 and RM94-7-001, Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888 (“Final Rule”) (Issued April 24, 1996).


4 See Tariff, Leaf 339, General Rule 26.1.1 (MAC component (14)).
related charges and credits referred to in component (14) encompass the charges and credits under the new PJM OATT service.

Staff has advised the Company of its view that recovery of transmission-related charges pursuant to component (14) requires prior Commission approval. The Company respectfully disagrees. The Company submits that component (14) authorizes the Company to commence recovery of transmission-related costs and charges on the same basis and to the same extent as other costs described in other MAC components (i.e., subject to the Commission’s authority to thereafter review the Company’s actions).

Component (14) contains no language that makes recovery of transmission-related charges subject to prior Commission review and no such requirement should be inferred. In fact, it is only MAC component (36) that provides for recovery through the MAC of “other appropriate costs as may be approved by the Public Service Commission.”

Such a requirement makes sense where the nature of the costs to be recovered through the MAC is not described in any of the first 35 components, which is not the case for transmission-related charges and credits that are covered by the language in component (14). Accordingly, to ascribe a requirement for prior Commission approval to the type of charges and credits identified in component (14) would render this MAC component meaningless in light of component (36).

Moreover, the Company respectfully submits that the new PJM OATT charges and credits fall squarely in the category of transmission-related charges and credits contemplated by MAC component (14) for the following reasons.

First, the charges and credits at issue are FERC-approved charges and credits incurred pursuant to a FERC-authorized transmission service that the New York Public Service Commission actively supported in proceedings before the Federal Energy Regulatory Commission.

Specifically, the PJM OATT charges to be recovered, and PJM OATT credits to be applied for customer benefit, are comprised of varying system-wide OATT charges and credits, including:

- Firm Point-To-Point Transmission Service Charges;
- Transmission Enhancement Charges (an allocated amount for reliability and economic projects that are selected in PJM's RTEP planning process);
- Transmission Congestion Charges (offset by Financial Transmission Rights (“FTRs”) credits);
- Transmission Loss Charges; and
- Ancillary Service Charges.

5 Tariff, Leaf 343, General Rule 26.1.1 (MAC component (36)).
The nature of these OATT charges and credits is the same as, or comparable to, other transmission-related charges (and credits) that are, and have historically been, appropriately recovered through an adjustment clause like the MAC and Market Supply Charge ("MSC"). For example, the components of the MSC include NYISO Ancillary Service Charges and the New York Power Authority ("NYPA") Transmission Adjustment Charge ("NTAC"). The components of the MAC include various NYISO Transmission Owner Charges and NYISO Schedule 1 charges that are not recovered through the MSC. In addition, variations in transmission and wheeling revenues from the amounts imputed in base electric delivery rates are passed back or recovered through the MAC.

Second, as noted above, the Commission was an active participant in the FERC proceedings that led to the Company contracting for the new PJM OATT service, actively supporting the terms and conditions of the new service, and stressing its importance to reliability of service to the Company’s customers. Specifically, this service provides 1000 MW of transmission capacity at all times for importing energy into Con Edison’s service area and is used by the NYISO to schedule energy deliveries to customers in the Con Edison service area. Indeed, the availability of the 1000 MW transmission service not only increases reliability, but will, during many hours, reduce energy prices, thereby further benefitting consumers. And, in approving the new transmission service, FERC noted its importance to Con Edison’s service reliability, as well as the fact that such approval was strongly advocated by the NYPSC, the NJBPU, the NYISO, PJM and the City of New York (the “City”). Indeed, FERC cited to the assertions by the NYPSC and the City that the new agreements “provide critical reliability benefits” to Con Edison’s customers.

Third, it was specifically contemplated that the MAC (and MSC) would also be vehicles for the recovery of out-of-state transmission-related charges. For example, the Commission’s December 9, 1999 Memorandum Order in Case 96-E-0897, accepting on an interim basis revisions to Con Edison’s post-ISO Fuel Adjustment Clause (which was subsequently converted to the MSC/MAC), described Con Edison’s proposed revisions to the Fuel Adjustment Clause as follows:

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8 Tariff, Leaves 338 through 343, General Rule 26.1.1.
9 Case 09-E-0428, et al, Order Establishing Three-Year Electric Rate Plan, issued March 26, 2010 ("2010 Electric Rate Order"), Appendix I, paragraph E.10, p. 24; PSC No. 10, MAC component (4) on Leaf 338, and MAC components (26) and (27) on Leaf 342.
10 In a Reply Brief filed on May 11, 2010, in FERC Docket Nos. ER08-858-000, et al., the Commission argued that the new OATT service would “provide critical reliability and consumer benefits throughout the entire year for New York City,” that FERC’s rejection of the service “could jeopardize reliability in New York City,” and that the “replacement of imports lost would be difficult, and would likely require construction of new resources.” (Reply Brief, pp. 3-4).
11 In approving the new OATT service, FERC found that the service would result “in substantially lower prices to customers in New York in 88 percent of the hours” and that price differentials during the remaining hours are less significant and are offset by competitive considerations. PJM Interconnection, L.L.C., 135 FERC ¶61,018, P 35 (2011); 132 FERC ¶ 61,221, P 71 (2010).
13 Settlement Order, note 33 (“the Settlement is economic in most hours of the day and provides needed power to New York City, thereby assuring reliability”).
The cost of purchased energy and the net benefits from sales to others would reflect ISO transmission-related costs such as Transmission Service Charges (TSCs), Transmission Usage Charges (TUCs), and Transmission Congestion Contracts (TCCs). [footnote omitted] The TSCs, TUCs and TCCs are not limited to in-state transmission costs. [emphasis added]14

**Fourth**, the Commission has explained its use of adjustment mechanisms as a vehicle for recovering transmission charges as follows:

Costs that tend to fluctuate over time, which cannot be reasonably estimated at the time rates are set, or for specific reasons presented in the rate proceeding warrant non-base rate treatment (e.g., lost revenues associated with future demand side management efforts, transmission charges, and commodity costs) are recovered through one or more adjustment clauses.15 [emphasis added]

PJM OATT transmission charges fluctuate from month to month and cannot be forecasted for an extended period with any reasonable degree of certainty.

For the reasons described above, the Company submits that recovery of these PJM OATT charges through the MAC is fully in accord with the provisions of the Monthly Adjustment Clause as set forth in the Company’s Commission-approved tariff.16

**II. Recovery of PJM Charges through the MAC, offset by the Company’s proposed credit, effectuates a reasonable allocation of PJM Charges among Customers.**

The Company submits that recovery of the PJM OATT charges through the MAC is (i) correct (for the reasons explained in the prior section of this letter); (ii) reasonable (especially after considering the crediting proposal discussed below); and (iii) consistent with the current use of the MAC as a reconciliation mechanism for transmission-related charges and credits, including those for which estimated amounts are reflected in base delivery rates.

For example, the MAC provides for recovery of various NYISO-related charges and credits17 and certain NYISO Transmission Owners Charges.18

In addition to the transmission-related charges recovered directly through the MAC, the MAC is used to reconcile annual variations between estimated and actual transmission revenues reflected in the Company’s electric base delivery rates for Transmission Congestion

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14 Memorandum Order, pp. 6-7.
16 The Company notes that in Case 12-E-0136, in which the Commission is reviewing local reliability impacts associated with mothballing certain generation units, General Counsel Peter McGowan stated in a June 11, 2012 letter to National Grid and NRG Energy, Inc. (p. 2),
   It is anticipated that any Commission Order setting the terms for payments to NRG during the mothball period would provide prompt cost recovery of such payments by National Grid through a surcharge or similar mechanism.
For Con Edison, the MAC is the vehicle designed to provide prompt recovery of reliability-related transmission charges incurred by Con Edison.
17 See Tariff, Leaf 339, General Rule 26,1,1 (MAC component (8)).
18 See Tariff, Leaf 339, General Rule 26,1,1 (MAC component (12)).
Contracts ("TCCs"), Transmission Service Charges ("TSCs") and grandfathered transmission wheeling contracts ("GTWCs"). The Company notes further that the 2010 Electric Rate Order establishes the MAC as the vehicle to reconcile variations between actual and estimated TSC and GTWC revenues even though the NYPA delivery rates established by the 2010 Electric Rate Order reflect an allocation of a portion of these TSC and GTWC revenues. That is, Con Edison full service and retail access customers may either pay a surcharge or receive a credit for variations between actual and estimated TSC and GTWC revenues while NYPA customers will continue to pay for delivery service based upon their allocated portion of an estimate of these revenues, without adjustment for an annual variation between estimated and actual revenues.

The Company also submits that the allocation of the PSE&G wheeling costs between Con Edison and NYPA customers in developing base delivery rates does not compel a similar allocation of the PJM OATT charges. The determination to allocate to NYPA a portion of the PSE&G costs was made prior to the inception of the NYISO, under facts and circumstances materially different than those that exist in today’s open access, market-oriented industry structure.

Consequently, it is evident that the Company’s current rate structure does not employ a generally-applicable allocation methodology for transmission-related charges and credits. For example,

- estimated TCCs are allocated exclusively to Con Edison customers, with variations allocated exclusively to Con Edison customers through the MAC;

- estimated TSCs and GTWCs are allocated between Con Edison and NYPA customers, with variations allocated exclusively to Con Edison customers through the MAC; and

- PSE&G wheeling charges are allocated between Con Edison and NYPA customers, with no provision for reconciliation upon contract expiration.

As to the latter point, although the 2010 Electric Rate Plan does not provide for reconciliation of the PSE&G wheeling costs reflected in base electric delivery rates upon expiration of the underlying bilateral agreements with PSE&G (as is the case for expiring GTWCs), the Company advised Staff that to avoid even the ‘appearance’ of double recovery, the Company began to defer the equivalent of these PSE&G costs for the benefit of

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19 Case 09-E-0428, et al., Order Establishing Three-Year Electric Rate Plan, issued March 26, 2010 (“2010 Electric Rate Order”), Appendix I, paragraph E.10, p. 24. See also Tariff, Leaf 338 (MAC component (4)); Leaf 342 (MAC component (26)); and Leaf 342 (MAC component (27)).

20 The expiration of two transmission wheeling contracts for 36 MW of service to NYPA on June 30, 2012, will result in an approximate $492,000 reduction of annual service revenues, but is expected to generate additional TCC auction revenues (estimated annual incremental auction revenues of $4.7 million would be allocated by the NYISO among the transmission owners). Similarly, the expiration of transmission contracts for 72 MW of service to Freeport, Greenport, and Rockville Center on April 30, 2013, will result in a $2.7 million reduction in annual service revenues, and is also expected to generate additional TCC auction revenues (which have not been estimated).
Con Edison full service and retail access customers as an offset to the recovery of the new PJM OATT charges recovered through the MAC.

Staff indicated a preference that recovery of PJM OATT charges be currently offset through a credit equivalent to the PSE&G wheeling costs reflected in base rates, rather than a deferral for the future benefit of customers. The Company concurs. While the Company is of the opinion that it does not have the authority to unilaterally apply such a credit (ergo, the Company’s decision to institute a deferral), in accordance with Staff’s preference, the Company hereby requests that the Commission establish a credit as outlined below.

**Calculation of Customer Credit**

The Company commenced recovery of PJM OATT charges for the new service on June 12, 2012, through the Statement of Adjustment Factor - MAC (“MAC Adjustor”), for service provided in the first month of the new agreement, May 2012. Because the date for filing the June MAC Adjustor preceded the Company’s receipt of all invoiced charges by PJM for service in May 2012, the balance of the May 2012 charges will be recovered through the July MAC Adjustor. Total invoiced PJM OATT charges for May 2012 are $4.2 million.

The July MAC Adjustor will also include invoiced charges for service in June 2012 received by the Company in time to be included in the July MAC Adjustor. The estimated charges for June 2012 are approximately $2.9 million.

On July 1, 2012, the Company will commence recovery of estimated PJM OATT charges for July through the Statement of Monthly Adjustment Clause (“MAC Statement”). The estimated charges for the month of July are approximately $3.4 million.

The Company currently forecasts that total charges net of credits (i.e., FTRs) for the twelve months ending March 31, 2013 (the third rate year (“RY3”) of the 2010 Electric Rate Plan) will be approximately $34 million, or an average monthly amount of approximately $2.8 million.

Base electric delivery rates for RY3 include $14,737,457 of carrying charges for the PSE&G wheeling service, or an average monthly amount of approximately $1.2 million.

The Company proposes that this $1.2 million be applied as a monthly credit against the amounts recoverable by the Company through the MAC Statement until base electric delivery rates are reset. Since the Company estimates that average monthly PJM OATT charges (net of PJM OATT credits, i.e., FTRs) for the 12-month period ending April 30, 2013 will be approximately $2.8 million, the net incremental amount payable by Con Edison customers would be approximately $1.6 million per month.

In addition, the Company proposes to increase the monthly credit to reflect the monthly amounts that the Company is currently deferring for the benefit of Con Edison full service and retail access customers, pending Commission action on this proposal. Specifically, the Company proposes to amortize the deferred amounts over the remaining months of RY3. For example, if the Commission were to adopt this proposal effective

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21 Tariff, Leaf 345, General Rule 26.1.3.
October 1, 2012, the Company would have deferred $6 million (i.e., $1.2 million times five months). Increasing the monthly offset from $1.2 million to $2.2 million for the MAC Statement effective October 2012, would reduce the incremental monthly amount payable by Con Edison customers to approximately $600,000 for the balance of RY3. For the period commencing with the MAC Statement for April 2013, the monthly offset would revert to $1.2 million until base electric delivery rates are reset.

**Conclusion**

The new PJM OATT service is currently providing critical reliability and significant economic benefits to Con Edison customers. The Company submits that its proposed allocation of cost responsibility strikes a fair and reasonable balance among Con Edison and NYPA customers. Accordingly, the Company respectfully requests the Commission to adopt the Company’s proposal to continue recovery of the PJM OATT charges through the MAC, offset by a monthly credit calculated as set forth in this letter.

Respectfully submitted,

[Signature]

Cc: Steven Kramer, Staff counsel
Marco Padula, Staff
Active Parties in Case 09-E-0428