

- (viii) when the ISO assumes control of energy dispatch in the state, the parties will cooperate in revising the framework of the fuel adjustment and its incentive mechanism as may be necessary to reflect the spot market purchase price and other applicable costs resulting from the establishment of the ISO (e.g., transmission-related costs). Con Edison will submit a proposed revised framework within 180 days after the point at which the ISO assumes control of energy dispatch in the state.
- (ix) Nothing in this settlement agreement is intended to affect the process or the mechanism for determining the SC No. 11 Buy-Back rates (energy and capacity) for RY1 and beyond.
- (x) The Company will amortize over RY1 the deferred fuel and purchased power costs resulting from the transfers to base rates specified in paragraph (vi) above. At the end of RY1, the Company will reconcile the actual costs and the amounts collected, with appropriate credits or charges for overcollections or undercollections at the time of this reconciliation.

33. Customer Service and Electric Service Reliability Incentives

To address the importance of a satisfactory level of service to its customers over the term of this agreement, a customer service and electric service reliability incentive program will be implemented. This mechanism is set forth in Appendix G herein.

III. RETAIL ACCESS PROGRAM

Objectives and Phase-in Target Dates

1. A capacity and energy retail access program for up to 500 MW will begin no later than twelve months following Commission approval of this settlement agreement.
 - (i) Con Edison will make best efforts to initiate a retail access program for 10 to 15 large TOU customers within six months following Commission approval of this settlement agreement, (i.e., by October 1, 1997, assuming approval is obtained on or before April 1, 1997), and to implement the program set forth below within twelve months following Commission approval of this settlement agreement.
 - (ii) A total of up to 300 MW will be made available to up to approximately 100 customers who have real time metering (i.e., large TOU customers), including the customers already in the program.

- (iii) A total of up to 200 MW will be made available to up to approximately 160 groups of non-TOU customers from all service classifications, totaling about 60,000 customers subject to aggregation rules, to test the use of load shapes instead of real time metering. A group is a number of customers in a single service classification with homogenous load characteristics served by a single LSE. Low income aggregation in multi-family buildings (five or more units) in low-income neighborhoods and low-income small home residential aggregation will be targeted.
- (iv) The number of non-TOU customers in each service classification will be set to bring the minimum group size to approximately 1 MW.
- (v) Hourly energy usage for customers in the aggregated groups will be derived from the monthly energy usage through the use of customer load shapes to be determined by Con Edison from its load research data subject to Staff review.

The parties recognize that this schedule is contingent on timely approval of this settlement agreement and on the timely establishment of the aggregation, eligibility and other rules applicable to retail access. The parties will fully cooperate in this development. Within 90 days of approval of this settlement agreement, the Company will file with Staff a plan outlining the manner in which the Company will carry out this initial phase (first twelve months) of the retail access plan. The Company will collaborate with Staff and other parties prior to filing the plan and develop procedures for periodic evaluation. Otherwise eligible utilities may participate along with other LSEs in the retail access program except that, if Con Edison or its affiliates are restricted from participating in retail access programs being conducted by utilities, participation by such other utilities in Con Edison's programs will be similarly restricted.

2. The retail access program will be expanded by 500 MW beginning with the later of the establishment of a fully operational ISO or April 1, 1999. The ISO will be "fully operational" when energy is being provided via a competitive wholesale market facilitated by the ISO and capacity is being provided pursuant to a statewide (*i.e.*, including Con Edison service area) capacity auction or capacity rules, or it has been determined that there is to be no separate statewide capacity program. Assuming resolution of administrative and operational problems that are likely to be encountered in implementing the first 500 MW of retail access, participation will be encouraged from all customer classes, subject to aggregation and eligibility requirements and other applicable rules.
3. In April 2000 and in each April thereafter, retail access will be expanded by 1000 MW or more. The Company would target the phase-in of retail access to make it available to all customers by the earlier of 24 months after a fully operational ISO is implemented, or year-end 2002.
4. The parties recognize that even with widespread discussion of retail access, there has been little actual experience with retail access to date, particularly on a large scale, and that industry experience to date indicates that approximately one-half the customers eligible for similar

programs would choose to participate in such programs in the initial period that retail access is made available. The parties also recognize the need for customer input and a gradual and orderly phase-in of retail access to allow for the proper resolution of unexpected, but inevitable, operational difficulties and customer-related issues. Accordingly, the parties acknowledge that the retail access objectives and phase-in dates specified herein are targets and that flexibility to change the program schedule indicated herein as issues and obstacles are addressed more slowly (or more rapidly) than anticipated is essential. The schedule, therefore, will (with appropriate Commission oversight) be subject to adjustment (e.g., via queuing, phasing, or similar procedures) to address these developments.

5. The parties also acknowledge that the transition to a competitive market, which is desirable, needs to address the Company's statutory service obligation. Specifically, the parties acknowledge the Company's concern that it may be acting in a manner inconsistent with its statutory duty to serve if it were to make irrevocable commitments toward a competitive capacity market, such as divesting generation or shutting down generating stations, without recognizing that Con Edison's ability to carry out its service obligation reliably may be threatened by such commitments. Con Edison will not be required to make irrevocable commitments that are inconsistent with its obligations at the time.

Retail Access Prior to A Fully Operational ISO

It is the intent of the parties that the rates charged to LSEs for energy and/or capacity and the rates charged to retail access customers for transportation/delivery service would not result in subsidization of such LSEs and retail access customers by the Company or its full service customers and that stranded costs resulting from retail access be allocated consistent with this no-subsidy principle. Subject to this principle, the method of determining the capacity charges to LSEs and the related Generation Capacity Adjustments set forth below will be re-evaluated prior to the second year of the retail access program.

6. Energy: LSEs, including Con Edison's ESCO, providing service to retail access customers will have the option of purchasing energy directly from suppliers through bilateral arrangements (subject to operational requirements), or from Con Edison at FERC-filed energy tariff rates. These rates, expressed on a cents/kWh basis, will be equivalent to the unbundled energy costs in the corresponding PSC No. 9 tariff, including any fuel adjustment thereto, less the reliability-related and other unavoidable energy costs. As to bilateral arrangements:
 - Deliveries will be scheduled through the NYPP and/or Con Edison and must be curtailable for reasons such as in-City generation requirements for the purpose of reliability.
 - LSEs will be required to provide to Con Edison with any necessary data needed to evaluate this program.
 - LSEs will be responsible for delivery to Con Edison's franchise area border.
 - LSEs will be responsible for delivery of sufficient energy to cover all losses in delivery to customers' premises, with such loss factors reflected in applicable tariffs.
 - Con Edison will verify LSEs' deliveries and will provide balancing services for LSEs at a charge to be filed with FERC.

- LSEs serving in-City load should have no greater rights (or access) to the available transmission capacity for energy imports into NYC than their pro-rata share of such available capacity if the location based marginal cost transmission congestion contract approach proposed by NYPP is not approved by FERC in time for its implementation herein.
7. Capacity: LSEs, including Con Edison's ESCO, providing service to retail access customers, will have the option of purchasing capacity from Con Edison at FERC-filed capacity tariff rates, expressed on a \$/kW-year basis. Such tariff rates will not, at least for RY1, exceed the PSC No. 9 generation component charge and will be established annually based on an auction to be conducted by the Company for the sale of installed capacity in excess of capacity required for its full service customers. LSEs will also be able to provide capacity from any other available source subject to the following:
- LSEs will be required to contract for capacity equal to 118 percent of the coincident peak load to be supplied.
 - For in-City load, LSEs will be required to contract for capacity from in-City sources equal to 80 percent of the peak load to be supplied.
 - Capacity obtained from sources other than Con Edison will be subject to the same reliability requirements to which Con Edison's resources are subject, such as NYPP rules for capacity reliability/availability, including installed capacity criteria, and disqualification of capacity obtained from generators that have committed the same capacity to another entity.
8. Delivery Service: The transportation/delivery service rate for all retail access customers will be equal to the full service rate in the applicable PSC No. 9 tariff (e.g., large commercial retail access customers will be subject to the rates and charges in the PSC No. 9 tariff rate for large commercial customers), subject to the adjustments to the energy and generation capacity components of the full service rate described below. The transmission and distribution component and customer charge component of the PSC No. 9 rate will not be impacted.
- (i) Energy Adjustment: The applicable PSC No. 9 energy component charge (on a cents/kWh basis, after adjustment to reflect total actual energy costs) will be credited on a monthly basis for all retail access customers by an amount equal to the lesser of the SC No. 11 Buy-Back energy rate and such applicable PSC No. 9 energy component charge. The remaining portion of the energy component charge included in the transportation/delivery service rate (e.g., reliability-related and other unavoidable energy costs) would be subject to adjustment for actual costs as required. To the extent the energy tariff approved by FERC provides for the recovery of less than the full energy costs incurred by the Company other than the reliability-related and other unavoidable energy costs recovered by the Company through the transportation/delivery service charge, such shortfall shall be recovered from all retail access customers through the transportation/delivery service rate.

- (ii) **Generation Capacity Adjustment:** The applicable PSC No. 9 generation capacity component charge (on a \$/kW year basis) will be credited on an annual basis for all retail access customers by an amount equal to the ratio of: (1) the actual revenues to be received by Con Edison in such year from sales of capacity made available at auction, if any, including capacity sales to LSEs serving Con Edison delivery customers, plus estimated identifiable capacity-related savings, if any, resulting to the Company directly from the purchase of capacity by LSEs from third parties (excluding savings associated with contract terminations and reductions in capacity purchases from Hydro Quebec and I.P.3/Polletti), divided by (2) the total amount of capacity made available for sale at auction to LSEs; provided, however, that the total credit cannot exceed the then-current-applicable PSC No. 9 generation capacity component charge. To the extent the capacity tariff rate approved by FERC is less than the filed tariff rate, any resulting revenue shortfalls shall be recovered from all retail access customers through the transportation/delivery service rate.

Retail Access After A Fully Operational ISO

9. **Energy:** Same options and requirements as prior to a fully operational ISO (as described above, paragraph 6), except that:
- LSEs will also have the option of purchasing energy directly through a Power Exchange.
 - ISO will schedule energy deliveries obtained through bilateral arrangements.
 - ISO will provide for any in-City requirements for energy.
 - ISO will provide verification of LSEs' deliveries and balancing services.
10. **Capacity:** Same options and requirements as prior to a fully operational ISO (as described above, paragraph 7), except that ISO reliability rules will govern.
11. **Delivery Service:** Same starting point for determining the transportation/delivery service rate as prior to a fully operational ISO (as described above, paragraph 8), except that:
- (i) The Company would bid its energy into the ISO/Power Exchange ("PE") (at a price which would be expected to reflect the avoidable (i.e., marginal and other "running") energy costs, at a minimum (or at a higher price, up to the expected market clearing price for energy, consistent with the market structure that develops). Under the Energy Adjustment, the applicable PSC No. 9 energy component charge (after adjustment to reflect total actual energy costs) would be credited for all retail access customers by an amount equal to the lesser of the market value of energy and such applicable PSC No. 9 energy component charge. Any remaining portion of the energy component charge included in the transportation/delivery service rate (i.e., unavoidable energy costs not reflected in

the market value of energy) would be subject to adjustment for actual costs as required.

- (ii) To the extent practical and prudent, the Company would bid all of its capacity into the ISO/PE at a price which would be expected to reflect the "to go" (or avoidable) costs (or at a higher price, provided that such price does not exceed total embedded costs, including unrecovered energy costs, until market power concerns have been addressed). Under the Generation Capacity Adjustment, the applicable PSC No. 9 generation capacity component charge would be credited for all retail access customers by the lesser of the market value of capacity and such applicable PSC No. 9 generation capacity component charge.
- (iii) To the extent that the in-City and Westchester market value for capacity varies, the Company will consider reflecting such variation in its respective charges to in-City and Westchester customers.

Disposition of Petitions

In light of the retail access plan set forth herein, the retail access pilot petitions referred to this proceeding in the Commission's Order Concerning Retail Access Proposals in Case 94-E-0385 (issued February 25, 1997) are incorporated solely to the extent consistent with this settlement agreement and denied in all other respects. The petitioners will not be foreclosed from participating in the retail access program set forth herein for which they are otherwise eligible.

IV. DIVESTITURE

Consistent with the objective of developing a fully competitive electric market, the Company commits to divest at least 50 percent of its in-City electric generating fossil-fueled MW capacity (*i.e.*, the in-city fossil plants, either in service or on reserve shutdown owned by Con Edison as of the date of this settlement agreement, net of re-ratings or retirements that occur after the date of this settlement agreement) by year-end 2002. The Company will develop a plan with the objective of divesting and transferring all plants, with the exception of Indian Point No. 2 and its associated gas turbines, to unregulated entities, including third parties and affiliates. This plan will be designed with the objective of developing a fully competitive electric market and maximizing the sales proceeds of divestiture.

1. Requirements for Divestiture

The parties agree that the divestiture program outlined herein will be a major step toward the development of a competitive, deregulated electricity market. The Company will, therefore, implement its divestiture commitment. The only exceptions would be (i) if the Commission found that the level of divestiture should be delayed or reduced (for example, to address factors such as

the need to maximize the sales price or avoid a “fire sale” of assets, to address unforeseen legislative, regulatory, economic, business or other developments, or a force majeure, or to address the electric system integrity) or (ii) pending issuance of a finding by the Commission, upon petition by the Company to which parties will be offered opportunity to comment, that such divestiture commitment by the Company is consistent with the Company’s then-existing obligation to serve the load related to customers whose loads (and associated locational and reserve margin requirements) exceed the Company’s remaining generation and that the extent of the Commission’s then-existing regulation of electricity prices is not inconsistent with the objective of maximizing the sales price of assets to be divested.

2. Divestiture Parameters and Methodology

The divestiture of plants to third parties and the transfer of plants to the Company's unregulated subsidiary will be carried out through a process that will result in fair and reasonable treatment of all parties, including Company investors and customers. This process will be fully developed in the divestiture plan.

Per Section II.13.vi, after tax gains or losses will reflect the netting out of divestiture costs, i.e., the costs of developing and implementing the plan, including the incremental financial, environmental, transaction and employee costs associated with the plan, and the divestiture carried out to implement the plan, and any tax implications thereof. Employee costs will cover divestiture-related costs, if any, associated with plant and direct-support employees. The use of cash proceeds from the sale of any plants will be at the discretion of the Company subject to the provisions of Section V.8 (iii) of this settlement agreement. Any after-tax gains or losses made on the transfer or sale of divested assets will be reflected in the determination of stranded costs to be collected after RY5 as prescribed in Section II.13-15 of this settlement agreement.

The divestiture plan will identify the units to be divested consistent with the objective of developing a competitive electric market in the service area without the need for continuing regulation. This includes the objective of addressing market power issues in the in-city area including the “sub-load pockets.” Resolution of market power issues will not include mitigation measures such as price controls, revenue caps or other means which could limit the revenues of the future owner of the generating unit. Con Edison’s affiliates, consistent with the objective of achieving workable competition, will be included among the transferees in the Company’s divestiture plan, and, at a minimum, Con Edison’s affiliate’s ownership of generation within the in-City load pocket would not be required to be at a level below the amount that may be owned by any other single seller into the market.

3. Divestiture Plan Procedures

The Company will submit its divestiture plan to the Commission within one year of the Commission order approving this settlement agreement. The Company will keep Staff and the parties informed about the development of the plan and submit to Staff for its comment a draft scope of work for the plan and the Company will brief Staff on the progress of the plan during its

development. These steps are intended to be informal and informational with minimum intrusion on the plan's development. No rights of formal discovery or similar procedural requirements are intended to be provided although the Company will cooperate with reasonable inquiries during the plan's development and participate in collaborative efforts requested by Staff. The Company will submit the plan to the Commission following its completion. If the Company requests an exception from its divestiture commitment, the Commission will rule on the request expeditiously. If the Commission otherwise comments on the plan or recommends that to address market power or other concerns the plan should be modified, the Commission will either initiate a proceeding to consider such comments or recommendations or request Con Edison to respond to such comments or recommendations. Thereafter, the Commission will approve the plan or modify it in a manner consistent with the terms and conditions prescribed by this Section IV. The Company will not challenge the Commission's authority to implement this subparagraph. Nothing in this subparagraph precludes the Company from petitioning the Commission separately at any time for authorization to transfer generation or other plant pursuant to Section 70 of the Public Service Law.

4. Post-Rate Plan Period

Any residual unrecovered costs for fossil generation will be recovered through charges established as prescribed in Section II.15 of this settlement agreement.

V. CORPORATE STRUCTURE

1. Formation of Holding Company

- (i) The Company is permitted to reorganize into a holding company form through the mechanism of a binding share exchange, after which Con Edison (referred to in this Section as "the RegCo") will be a subsidiary of the Holding Company ("the HoldCo").^{*} In addition to Commission and shareholder approval, the approval of the Federal Energy Regulatory Commission ("FERC") and the consent of the Nuclear Regulatory Commission ("NRC") will be required to form the holding company structure.
- (ii) Upon the formation of the HoldCo, Con Edison's existing unregulated subsidiaries, Promark Energy, Inc. (established pursuant to the Commission's order dated May 13, 1993 in Case 92-G-0841, as amended by order dated January 7, 1994 in Case 92-G-0841, order dated October 12, 1994 in Case 93-G-0996, and order dated November 16, 1994 in Case 94-G-0294) (the "ESCO"), and Gramercy Development, Inc., (established pursuant to the Commission's order dated July

^{*} In the other Sections of this settlement agreement, "Con Edison" and "the Company" refer to the corporation existing as of the date of the settlement agreement and, where the settlement agreement applies to periods after formation of HoldCo, to the RegCo.

12, 1996 in Case 95-M-0418), will be transferred to and become direct or indirect subsidiaries of the HoldCo.

- (iii) The HoldCo may form other subsidiaries from time to time, including an Energy Supply Company. To the extent that the RegCo's existing fossil-fueled generating stations are retained within the holding company structure, they will be transferred during the transition period from the RegCo to the Energy Supply Company in accordance with the RegCo's divestiture plan, where they will compete in the unregulated generation market. NUG contracts that are not securitized would remain with the RegCo.
- (iv) An initial organization chart is attached as Appendix H. The subsidiaries other than the RegCo are referred to collectively as "the unregulated subsidiaries" or "unregulated affiliates."

2. Functional Unbundling

- (i) Within the RegCo, the operations of its generating system, including fuel and power purchases, will be functionally unbundled from its transmission and distribution systems in a "business unit" structure.
- (ii) Common services (including administrative, accounting, legal, purchasing, etc.) will continue to be provided within the RegCo to all of the RegCo business units.
- (iii) The business unit structure contemplates realignment of existing organizations along functional lines. The latest step in the realignment was effective on December 1, 1996. The wholesale electricity purchasing function for franchise area customers was aligned with the purchase of fuel for fossil generation within the generation organization. The transmission pricing and planning functions were aligned within the transmission organization, increasing the separation of the generation and transmission functions. Future changes include realignment of the transmission organization with the distribution organization within the RegCo. Also the maintenance and construction organization will be realigned to provide functional separation between transmission and generation.

3. The RegCo

- (i) At the inception of the holding company structure, the RegCo will continue to own all generation, transmission, electric and gas distribution and steam systems.
- (ii) To the extent the RegCo continues to own generation assets or NUG contracts, it would be permitted to make wholesale electric energy sales outside its service territory, retail and wholesale electric energy sales within its service territory, and retail electric energy sales outside its service territory until the RegCo has an unregulated affiliate with all necessary approvals to make retail sales outside the

RegCo's service territory. The RegCo will be permitted to provide service for the remaining terms of any contracts for retail sales outside the service territory in effect on the date the RegCo's authority to make additional sales otherwise terminates or assign its rights and obligations, under one or more of such contracts to its affiliates if permitted by the contract(s).

- (iii) The RegCo may also continue to provide certain services, *i.e.*, advisory services and maintenance and repair shop services provided by the Van Nest maintenance facility (until transferred to an unregulated subsidiary), both within and outside the service territory. After RY5, Van Nest, if still owned by RegCo, may not provide any service that the RegCo will stop providing pursuant to Section V.3(iv).
- (iv) Through RY5, to the extent that the RegCo continues to have sales customers, the RegCo would be permitted to provide the full range of energy products and services to those sales customers, including "behind the meter" products and services, except for any behind the meter service that the Commission determines generically that the utilities should not provide, in which case the RegCo would terminate any such existing service(s) by the later of the date provided in the generic order or three (3) years from the effective date of the order approving this settlement. RegCo may, however, elect to provide only basic commodity service and advise customers to seek energy-related services from competitive energy service companies that offer such products and services. After RY5, the RegCo will, unless otherwise authorized by the Commission, not provide any separately offered and separately priced behind-the-meter gas or electric services that are available from unregulated providers, except: (a) those services that were part of its historical bundled service and (b) those reasonably necessary to provide transmission and distribution service (*e.g.*, services necessary to ensure the safety and adequacy of service; incidental environmental work).

4. Affiliate Relations - In General

- (i) The RegCo and the HoldCo's other subsidiaries will be operated as separate entities. No unregulated affiliate will be located in the same building as the RegCo beyond 180 days after its formation. The RegCo and the HoldCo may occupy the same building.
- (ii) Any transfer of assets or the provision of goods or services, other than tariffed services and corporate services (such as corporate governance, administrative, legal and accounting services), by the RegCo to an unregulated subsidiary or an unregulated subsidiary to the RegCo, will be pursuant to written contracts that will be filed with the PSC.
- (iii) Cost allocation guidelines are attached as Appendix I. These guidelines will be amended and/or supplemented, if necessary, to reflect affiliate transactions not

contemplated by the initial guidelines set forth in Appendix I. The Company will file with the Director of the Office of Accounting and Finance of the Department of Public Service all amendments and supplements to the guidelines thirty days prior to making such change(s).

5. Transfer of Assets

- (i) Transfers of assets from the RegCo to an affiliate or from an affiliate to the RegCo will not require prior Commission approval except for the transfer of generating stations and other assets from the RegCo whose transfer requires Commission approval under PSL Sec. 70.
- (ii) For all assets other than generating stations (whose value will be determined in the section 70 proceeding), transfers of assets from the RegCo to an affiliate shall be at the higher of net book value or fair market value and transfers of assets from an affiliate to the RegCo shall be on a basis not to exceed fair market value except that the RegCo may, as part of its reorganization, transfer to the HoldCo (at no charge) title to office furniture, equipment and other assets having an aggregate net book value not to exceed \$5 million.
- (iii) Fair market value shall be determined in accordance with the cost allocation guidelines (Appendix I). For example, the RegCo may transfer to an affiliate any computer software system that the RegCo is authorized to transfer, without data, at a price at which the RegCo would sell such software to an unaffiliated third party.
- (iv) In general, the transfer of generating assets will be consistent with the divestiture plan.

6. Personnel

- (i) The RegCo and the unregulated subsidiaries will have separate operating employees.
- (ii) Non-administrative operating officers of the RegCo will not be operating officers of any of the unregulated subsidiaries.
- (iii) Officers of the HoldCo may be officers of the RegCo.
- (iv) Employees may be transferred between the RegCo and an unregulated subsidiary upon mutual agreement. Transferred employees may not be reemployed by the RegCo for a minimum of one year from the transfer date. Employees returning to the RegCo may not be transferred to an unregulated subsidiary for a minimum of 18 months from the date of return.

- (v) For employees transferred from the RegCo to an unregulated subsidiary, the unregulated subsidiary shall compensate the RegCo with an amount equal to 25 percent of the employee's prior year's annual salary on a one-time basis, except that there shall be no compensation (i) for employees transferred to an unregulated subsidiary not later than six months from the date the HoldCo becomes the parent of the RegCo or the unregulated subsidiary to which the employee is transferred is formed, whichever is later; (ii) for the transfer of employees covered by a collective bargaining agreement; or (iii) where the employee's transfer is attributable to the transfer or reduction of a RegCo function or major asset (e.g., a generating station).
 - (vi) The foregoing provisions in no way restrict any affiliate from loaning employees to RegCo to respond to an emergency that threatens the safety or reliability of service to consumers.
 - (vii) The compensation of RegCo employees may not be tied to the performance of any of the unregulated subsidiaries, provided, however, that stock of the HoldCo may be used as an element of compensation and the compensation of common officers of the HoldCo and RegCo may be based upon the operations of the HoldCo and RegCo.
 - (viii) The employees of HoldCo, RegCo and the unregulated subsidiaries may participate in common pension and benefit plans.
7. Provision of Services and Goods
- (i) The RegCo may provide corporate services (such as corporate governance, administrative, legal and accounting) for the HoldCo and the HoldCo's unregulated subsidiaries may purchase such services from the RegCo. The services would be provided on a fully-loaded cost basis.
 - (ii) The RegCo may provide other services to an unregulated affiliate, except that the RegCo may not use any of its marketing or sales employees to provide services to an unregulated affiliate for business within the RegCo's service territory. The unregulated affiliate shall compensate the RegCo for the services of employees performing such services at the higher of the employees' fully-loaded cost plus 10 percent or the price that the RegCo charged a third party for such employees' services.
 - (iii) The unregulated affiliates may provide services to the HoldCo and the RegCo. Any management, construction, engineering or similar contract between the RegCo and an affiliate and any contract for the purchase by the RegCo from an affiliate of electric energy or gas shall be governed by PSL §110, subject to any applicable FERC requirements. All other goods and services will be provided to

the RegCo at a price that shall not be greater than fair market value, determined in accordance with the cost allocation guidelines (Appendix I).

- (iv) The RegCo, the HoldCo, and the unregulated affiliates may be covered by common property/casualty and other business insurance policies. The costs of such policies shall be allocated among the RegCo, the HoldCo and the unregulated affiliates in an equitable manner.

8. Maintaining Financial Integrity

- (i) The debt of RegCo would be raised directly by the RegCo and would not be derived from the HoldCo.
- (ii) Without the prior permission of the Commission, the RegCo will not (i) make loans to the HoldCo or any of the unregulated subsidiaries, (ii) guarantee the obligations of either the HoldCo or any of the unregulated subsidiaries; (iii) pledge its assets as security for the indebtedness of the HoldCo or any affiliate.
- (iii) The RegCo will not pay out more than 100% of income available for dividends calculated on a two-year rolling average basis. Excluded from the calculation of "income available for dividends" for the purposes of this provision will be non-cash charges to income resulting from accounting changes or charges to income resulting from significant unanticipated events. The foregoing restriction will also not apply to dividends necessary to transfer to the HoldCo revenues from major transactions, such as asset sales, divestiture or securitization or to dividends reducing the RegCo's equity capital ratio to a level appropriate to the RegCo's business risk. Senior management personnel of the RegCo will discuss with senior Commission Staff personnel, on a confidential basis, the possibility of the payment of a dividend that would exceed the foregoing restriction at least 10 business days before declaration of such dividend.
- (iv) The RegCo will be required to certify annually to the Commission that the RegCo has retained or otherwise has access to sufficient capital to maintain and upgrade its plant, works and system in order to continue the provision of safe and reliable service.
- (v) Senior management personnel of the RegCo and the HoldCo will meet annually with senior Commission Staff personnel to discuss, on a confidential basis, the RegCo's and the HoldCo's activities, including plans related to capital attraction and financial performance.

9. Standards of Competitive Conduct

The following standards of competitive conduct shall govern the RegCo's relationship with any energy supply and energy service affiliates:

- (i) There are no restrictions on affiliates using the same name, trade names, trademarks, service name, service mark or a derivative of a name, of the HoldCo or the RegCo, or in identifying itself as being affiliated with the HoldCo or the RegCo. However, the RegCo will not provide sales leads for customers in its service territory to any affiliate, including the ESCO, and will refrain from giving any appearance that the RegCo speaks on behalf of an affiliate or that an affiliate speaks on behalf of the RegCo. If a customer requests information about securing any service or product offered within the service territory by an affiliate, the RegCo may provide a list of all companies known to RegCo operating in the service territory who provide the service or product, which may include an affiliate, but the RegCo will not promote its affiliate.
- (ii) The RegCo will not represent to any customer, supplier, or third party that an advantage may accrue to such customer, supplier, or third party in the use of the RegCo's services as a result of that customer, supplier or third party dealing with any affiliate. This standard does not prohibit two or more of the unregulated subsidiaries from lawfully packaging their services.
- (iii) All similarly situated customers, including energy services companies and customers of energy service companies, whether affiliated or unaffiliated, will pay the same rates for the RegCo's utility services and the RegCo shall apply any tariff provision in the same manner if there is discretion in the application of the provision.
- (iv) Transactions subject to FERC's jurisdiction will be governed by FERC's orders or standards as applicable.
- (v) Release of proprietary customer information relating to customers within the RegCo's service territory shall be subject to prior authorization by the customer and subject to the customer's direction regarding the person(s) to whom the information may be released. If a customer authorizes the release of information to a RegCo affiliate and one or more of the affiliate's competitors, the RegCo shall make that information available to the affiliate and such competitors on an equal basis.
- (vi) The RegCo will not disclose to its affiliate any customer or marketer information relative to its service territory that it receives from a marketer, customer or potential customer, which is not available from sources other than the RegCo,

unless it discloses such information to its affiliate's competitors contemporaneously on an equal basis to the extent practicable.

- (vii) If any competitor or customer of the RegCo believes that the RegCo has violated the standards of conduct established in this section of the agreement, such competitor or customer may file a complaint in writing with the RegCo. The RegCo will respond to the complaint in writing within twenty (20) business days after receipt of the complaint. Within fifteen (15) business days after the filing of such response, the RegCo and the complaining party will meet in an attempt to resolve the matter informally. If the RegCo and the complaining party are not able to resolve the matter informally, the matter will be referred promptly to the Commission for disposition.
- (viii) The Commission may impose on the RegCo remedial action (including redress or penalties, as applicable) for the RegCo's violations of the standards of competitive conduct. If the Commission finds that the RegCo has engaged in a consistent pattern of material violations of the standards of competitive conduct during the course of this Agreement, it shall provide the RegCo notice of a reasonable opportunity to remedy such conduct. If the RegCo fails to remedy such conduct within a reasonable period after receiving such notice, the Commission may take remedial action with respect to the HoldCo to prevent the RegCo from further violating the standard(s) at issue. Such remedial action may include directing the HoldCo to divest the unregulated subsidiary, or some portion of the assets of the unregulated subsidiary, that is the subject of the RegCo's consistent pattern of material violations but exclude directing the HoldCo to divest the RegCo or imposing a service territory restriction on the unregulated subsidiary. If the HoldCo is directed to divest an unregulated subsidiary, it may not thereafter, without prior Commission approval, use a new or existing subsidiary of the HoldCo to conduct within its service territory the same business activities as the divested subsidiary (e.g., energy services). The RegCo and the HoldCo may exercise any or all of their administrative and judicial rights to seek a reversal or modification of remedial actions ordered by the Commission and may seek to obtain any and all legal and/or equitable relief from such remedial actions, including but not limited to injunctive relief. Con Edison will not challenge the Commission's authority to implement this subparagraph.

10. Access to Books and Records and Reports

- (i) Staff will have access, on reasonable notice and subject to appropriate resolution of confidentiality and privilege concerns, to the books and records of the HoldCo and the HoldCo's majority-owned subsidiaries.

Staff will have access, on reasonable notice and subject to appropriate resolution of confidentiality and privilege concerns, to the books and records of all other HoldCo subsidiaries to the extent necessary to audit and monitor any transactions

which have occurred between the RegCo and such subsidiaries, to the extent the HoldCo has access to such books and records.

- (ii) The RegCo will supplement the information that the Commission's regulations require it to report annually with the following information: Transfers of assets to and from an affiliate, cost allocations relative to affiliate transactions, identification of RegCo employees transferred to an affiliate, and a listing of affiliate employees participating in common benefit plans.
 - (iii) The HoldCo will provide a list on a quarterly basis to the Commission of all filings made with the Securities and Exchange Commission by the HoldCo and any subsidiary of the HoldCo, including the RegCo.
 - (iv) A senior officer of the HoldCo and the RegCo will each designate a company employee, as well as an alternate to act in the absence of such designee, to act as liaison between the HoldCo, the RegCo and Staff ("Company Liaisons"). The Company Liaisons will be responsible for ensuring adherence to the established procedures and production of information for Staff, and will be authorized to provide Staff access to any requested information to be provided in accordance with this Agreement.
 - (v) Access to books and records shall be subject to claims of privilege and confidentiality concerns as set forth in Appendix J hereto.
11. Independent Auditor
- (i) The Commission may, during the term of this agreement, require that an independent auditor review the compliance of the HoldCo, the RegCo and the unregulated subsidiaries with the terms of this agreement. The identity of the independent auditor will be determined by the Commission. The cost of such audit and review shall be reasonable under the circumstances and shall be recorded by RegCo as a deferred debit and be recoverable from ratepayers.
12. Royalty
- (i) The rate plan covers all royalties that otherwise would be credited to RegCo's customers, at any time, including after the expiration of the agreement.
13. Miscellaneous
- (i) If Con Edison has not received shareholder or other regulatory approvals necessary to form HoldCo prior to issuance of the order approving the settlement, Con Edison is permitted to use up to 5% of its consolidated capital to fund unregulated subsidiaries that currently exist or that it may form and the relationships among and restrictions on affiliates shall be governed by this settlement agreement. Accordingly, upon the date of the Commission's order

approving this settlement, the existing limitations on the services that ProMark may provide are eliminated. ProMark, which will likely become the ESCO, will be permitted to offer all the retail and wholesale energy services and related services and products, both within and outside Con Edison's service territory, that other unregulated energy service companies are permitted to offer. Affiliate transactions between Con Edison and its subsidiaries, including the transfer of assets and employees and provision of goods and services, shall be governed in accordance with the terms of this agreement. Con Edison may, in its sole discretion, continue to seek the necessary approvals to reorganize into a holding company structure.

- (ii) Upon the date of the Commission's order approving this settlement agreement, Con Edison's relationships with its existing and future affiliates will be governed prospectively by this settlement agreement. Accordingly, the following Commission orders will not apply to Con Edison:
- Order Approving Use Of Up To \$50 Million To Invest In Unregulated Subsidiaries, issued July 12, 1996, in Case No. 95-M-0418;
 - Order Approving Use Of Utility Revenue To Establish A Gas Marketing Subsidiary, issued May 13, 1993, and Order Denying Petition For Reconsideration, issued January 7, 1994, in Case No. 92-G-0841; and
 - order approving use up to an additional \$26,000,000 of utility revenue to invest in Con Edison Gas Marketing, Inc., filed in 92-G-0841, issued November 16, 1994, in Case No. 94-G-0294.

Similarly, Section 1.A.v of the June 7, 1994 Agreement and Settlement Concerning Gas Rates of Consolidated Edison of New York, Inc. in Case 93-G-0996 and Section L.7 of the October 24, 1996 Settlement Agreement in Case 96-G-0548, which address royalty and other affiliate issues, will have no prospective effect.

- (iii) The standards of conduct set forth in this Agreement will apply in lieu of any existing generic standards of conduct (e.g., the interim gas standards established in Case 93-G-0932) and in lieu of any future generic standards of conduct established by the Commission through RY5 and will continue to apply after RY5 given the Company's need for stability in rules governing the HoldCo structure. Thereafter, before the Commission makes any changes to these standards, it will consider the Company's specific circumstances, including its performance under the existing standards.

VI. RESTRUCTURING-RELATED ACTIONS

1. Con Edison has an issue of Cumulative Preference Stock 6% Convertible Series B. At

December 31, 1996, 46,305 shares remained outstanding. Each share of stock is convertible at the option of the holder into 13 shares of common stock and is also redeemable by the Company at a redemption price of \$100. Following the formation of HoldCo, all of Con Edison's common stock will be held by HoldCo. Con Edison's preferred stock will remain outstanding stock of Con Edison. To avoid having an issue of preferred stock that would be convertible into a minority common stock interest of Con Edison, Con Edison is authorized, subject to Commission approval of this settlement agreement, to call for redemption the remaining shares of the 6% Convertible Series B Cumulative Preference Stock.

2. The transition to competition envisioned by the Commission's May 20, 1996 order and this settlement agreement could have an impact on Company employees other than as a result of divestiture measures addressed in Section IV of this settlement agreement. To address this prospect, incremental retraining costs and severance payment, outplacement and related costs, if any, incurred in the RY1 through RY5 period and not covered in Section IV will be deferred and reflected in the Statement of Case 96-E-0897 Adjustments per Section II.11 herein. The cost of any pension modification intended to promote early retirement will be amortized to pension expense over a period approximating the remaining service period for the Company's employees, and unamortized costs will be reflected in rates after RY5. The programs covered by this subparagraph will be subject to review to assure that they are related to the transition to competition and reasonable compared to the cost and scope of similar programs implemented by other companies.

The parties recognize that the Company and Local 1-2 Utility Workers' Union of America, AFL-CIO, are subject to a collective bargaining agreement effective through June 24, 2000, which includes a provision entitled "Successor Clause and Notice," but nothing in this settlement adds to, subtracts from or otherwise modifies any rights, duties or obligations set forth in said collective bargaining agreement.

3. Nothing in this settlement agreement is intended to preclude the Commission, at the time it exercises its authority over such actions under Sections 70 and 108 of the Public Service Law, from allocating to ratepayers appropriate savings resulting from a merger that takes place between Con Edison and another electric or gas utility or a purchase of another gas or electric utility by Con Edison or a purchase of Con Edison by any other utility.

VII. CUSTOMER EDUCATION PROGRAM

Con Edison will continue to develop and implement programs and materials that will aid its customers in understanding the changes in the electricity market that are coming and the nature of the services that customers can expect to receive from the Company in the future. Con Edison's overall goals in conducting these programs are to enable customers, particularly small customers, to make informed choices about utility service while understanding their rights and

responsibilities as a utility customer and to get customer input into the design of the retail access program. For retail access and energy services choices in the competitive energy market, the Company's efforts would be complemented by those of the participating providers of competitive services, who can be expected to provide prospective retail access customers with information about the energy choices becoming available to consumers. The program will also attempt to reach out to customers eligible for the industrial employment growth program.

Con Edison will seek to achieve its goals through outreach and education activities. The outreach and education program will utilize the core outreach and education tools currently in use: communication through the Customer Handbook provided to new residential customers; customer information packages; "Customer News," which is mailed four or five times each year to all three million customers; and in-person presentations to groups, including the Company's Advisory Councils, social services providers' groups, and different segments of the Company's customer base. The Company will supplement this core program with a message on the Company's voice response unit telephone service, which will be available to more than 600,000 callers who contact the Company each month.

The Company will provide annually to Staff on June 30 of each year beginning 1998 a summary of its customer education efforts. This submission will include an assessment of the progress made by these efforts.

VIII. MISCELLANEOUS

1. Provisions Not Separable: Effect of Commission Modifications

The parties have negotiated and accepted this agreement in toto with each provision in consideration for, in support of, and dependent on the others. If the Commission does not approve this agreement in its entirety, without modification, any signatory may withdraw its acceptance of this agreement by serving written notice on the other parties, and shall be free to pursue its position in this proceeding without prejudice.

If the Commission approves this settlement agreement or modifies it in a manner acceptable to the parties, the parties intend that this settlement thereafter be implemented in accordance with its terms. If a material modification is thereafter authorized or required by the Commission that is unacceptable to any party to this settlement agreement adversely affected by such modification, then, in addition to any other remedies a party may have, such party may withdraw from the agreement and will not be bound thereafter to its provisions.

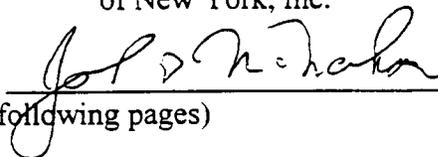
2. Provisions Not Precedent

The terms and provisions of this agreement apply solely to and are binding only in the context of the purposes and results of this agreement. None of the terms and provisions of this agreement and none of the positions taken herein by any party may be referred to, cited or relied

upon by any other party in any fashion as precedent in any other proceeding before this Commission or any other regulatory agency or before any court of law except in furtherance of the purposes and results of this agreement.

Staff of the Department
of Public Service

Consolidated Edison Company
of New York, Inc.



(Signatures continued on the following pages)

upon by any other party in any fashion as precedent in any other proceeding before this Commission or any other regulatory agency or before any court of law except in furtherance of the purposes and results of this agreement.

Staff of the Department
of Public Service

Richard C. King

Consolidated Edison Company
of New York, Inc.

John J. ...

(Signatures continued on the following pages)

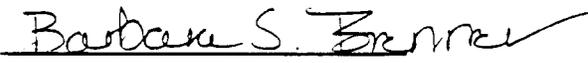
NYS Department of Economic Development

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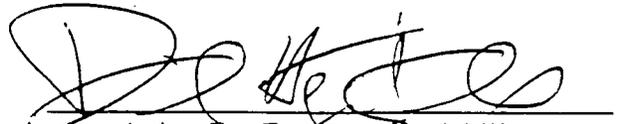
Jeffrey Schnur
Director of Energy Policy

upon by any other party in any fashion as precedent in any other proceeding before this Commission or any other regulatory agency or before any court of law except in furtherance of the purposes and results of this agreement.

Multiple Intervenors


By: Barbara S. Brenner

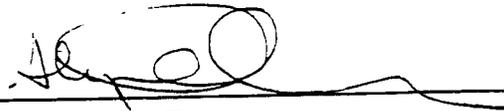
Beth Abth for Irwin Geller
Utility Workers Union of America,
Local 1-2



Association For Energy Affordability

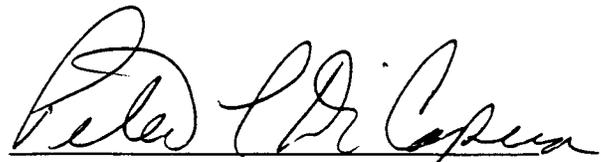
U.S. GENERATING COMPANY

By:

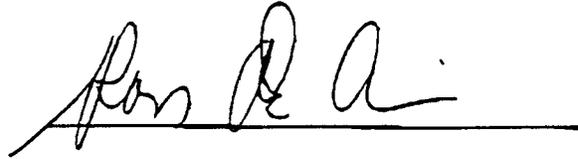


Stephen A. Herman
Senior Vice President & General Counsel

In executing this Settlement Agreement, U.S. Generating Company ("USGen") reserves the right (1) to take appropriate action, including making filings before the PSC, if USGen concludes in good faith at some future time that the terms of the Settlement Agreement are insufficient to provide effective competition in the generation sector; and (2) to take positions in proceedings involving the ISO and other matters involving FERC that may be inconsistent with the terms of the Settlement Agreement.


Owners Committee on Electric Rates, Inc.

Cogen Technologies Linden Venture, L.P.

A handwritten signature in black ink, appearing to read "Ron R. A.", is written over a solid horizontal line.

Taking exception with the provisions of Part II, Paragraph 14 with regard to the Company being at risk for any disallowance of any costs incurred under existing NUG contracts, and reserving the right of Cogen Technologies Linden Venture L.P. to submit statements and testimony and otherwise participate in this proceeding consistent with the above positions.

APPENDIX A

Appendix A

Miscellaneous Tariff Changes

1. Minimum Monthly Charge for Demand-Billed Customers

The Company will implement a minimum monthly charge applicable to all demand-billed customers. This charge will be in lieu of the contract demand charge proposed in the Company's October 1, 1996 plan and is designed to minimize the number of customers impacted by the charge while effectuating the overall objective of a cost-based rate to customers with highly variable loads. The charge is designed to be applicable to all demand-billed classes and follows the rate design principles approved by the Commission in Case 27574, On-Site Generation, Opinion No. 82-10 (May 12, 1982), at pp. 44-45 and Order Concerning Compliance Filing (Feb. 4, 1983), p. 14. The charge will ensure that a customer pays, at least, one-half of the distribution demand costs associated with meeting the customer's maximum demand. The applicability of a minimum monthly charge to all demand-billed classes would ensure that on-site generators taking back-up service from Con Edison under the "firm-rate option" (Special Provision A) will pay for the cost of that service.

Each month, the Company will determine for each customer, (i) the monthly pure base revenue calculated under the rates and charges applicable to such customer without reference to the minimum monthly charge and (ii) the minimum monthly charge. "Pure base revenues" are the total electric charges calculated for the customer each month under the rates and charges applicable to such customer without reference to the minimum monthly charge less the average cost of fuel applicable to the month and less revenue taxes. The minimum monthly charge equals the customer's contract demand multiplied by one-half the distribution demand charge applicable to such customer under the rate schedule. Each month the customer's charge for electric service will be the charge calculated under the rates and charges applicable to the customer's rate classification without reference to the minimum monthly charge unless the minimum monthly charge exceeds the pure base revenue, in which case the customer's charge for electric service will equal the minimum monthly charge plus the base cost of fuel and the applicable fuel adjustment for the month (inclusive of revenue taxes and system benefits charges).

The initial contract demand for a customer will be the customer's highest registered demand, or the predecessor customer's, at the premises in the previous 18 months.* The 18-month

* The following rules would apply to "new customer" situations. When the customer is occupying previously-occupied premises, the contract demand will be the contract demand of the predecessor customer and be subject to adjustment in the same manner as contract demands applicable to other customers are adjusted, *i.e.*, on a going-forward basis. When the "new customer" is taking occupancy of premises that have not previously been occupied, the company will not set a contract demand at the outset, allowing the actual demands of the customer to set the contract level (*e.g.*, in the first month of service, the contract will equal the new customer's actual maximum demand in that month. In the second month, the contract demand will be the higher of the first or second month, etc.)

period will roll forward with the contract demand thereafter being the highest demand billed in the rolling 18-month period.

Any customer could request revision of the contract demand, and the contract demand will be adjusted to a lower level if the customer demonstrates to the Company, in advance, permanent changes in the electrical load in its premises through changes in equipment or changes in the kind of business or activity conducted that make it highly improbable that the contract demand for which the customer is then being billed (highest demand in last 18 months) will be experienced in the future. No such adjustment may be based on expectations of the weather being different in the future than it has been in the past. After being reduced, the contract demand is subject to being increased in the same manner as for all other customers, i.e., at any time the customer's billed demand exceeds the contract demand level.

In order to introduce this new but important billing concept to customers and to reasonably address potential customer impacts, the Company will phase in the minimum monthly charges beginning April 1, 1998. The minimum monthly charge will be phased in as follows: In any month in RY2 in which the minimum monthly charge would otherwise apply, the customer's bill will be equal to the greater of (1) the charge calculated without reference to the minimum monthly bill charge or (2) the minimum monthly charge multiplied by 25%. The 25% amount will be increased in succeeding years as follows: RY3-50%. RY4-75%, RY5-100%.

2. Charges For Services

i. Special Services at Stipulated Rates

To better reflect the economics of the services provided, the charges for high-potential proof tests and for insulating fuel ("dielectric fluid") tests performed by the Company at a customer's request will be increased, effective April 1, 1997,** as follows: (a) The charge for making the first high potential proof test will be \$400 for up to two hours plus \$200 for each additional hour or portion thereof. The charge for each additional test immediately following the first test will be \$100; (b) The charge for taking and testing a sample of dielectric fluid, when the test is incidental to Company work at the premises, will be \$65 per sample. The charge will be \$270 for the first sample taken by the Company when the test is not incidental to Company work at the premises, and \$65 for each additional sample taken by the Company at the same time. There will be a \$65 charge for testing each customer-obtained sample.

ii. Special Services at Cost

To address customers' requests for special metering, which may increase with increased service options, the Company will be permitted, effective April 1, 1997, to install, as a special service at cost, customer-requested metering beyond that which is required to bill the

* For customers taking back-up (SC 3), supplementary (SC 10) or buy-back (SC 11) service, the contract demand will be based on the higher of the contract demand specified in the application for service or on the maximum demand taken by the customer in any previous month.

** In this Appendix A, the changes to become effective on April 1, 1997, will become effective on the date the Company's tariffs implementing RY1 of this settlement agreement become effective.

customer under the rates and charges of the appropriate service classification. Where a metering device has remote communications capabilities, the customer shall furnish and maintain the communications equipment, arrange for the communications service, and pay ongoing costs associated with the communications service.

iii. Excess Distribution Facilities

The tariff provision regarding installation of excess distribution facilities will be modified, effective April 1, 1997, to permit the provision to be applicable to customer requests for additional facilities. The tariff provision will indicate that the Company will provide, at the customer's expense, distribution facilities in excess of those normally provided by the Company. The Company will give customers the option to pay the tax and maintenance charges either in annual charges or in a lump sum on a net present value basis. Additionally, the application form for construction for excess distribution facilities will clarify that, after five years, the Company can withdraw from use only those facilities that are redundant.

iv. Services

During the period of the rate agreement, the Company will file for approval to establish charges for certain services. The revenue levels on which this settlement agreement is based assume that these charges will generate additional revenue, and prompt consideration of the Company's tariff filing, when made, is appropriate. The Company will file, not later than April 1997, tariffs to implement the following services:

- ~ Theft of Service Investigation
- ~ Seasonal Turn On/Off
- ~ Special Meter Reading
- ~ Multi Dwelling Collection Charges
- ~ Collection Fees (non-residential only)
- ~ Dishonored Payments
- ~ Street Disconnect/Reconnect (non-residential only)
- ~ Collection Agency Fees (non-residential only)
- ~ Damaged Meter

Staff will endeavor to process these filings expeditiously so as to obtain Commission approval or other substantive disposition within 90 days of the filing. Similar filings made during the term of this settlement agreement are not precluded.

v. Residential Late Payment Charge

A residential late payment charge for electric, gas and steam service will become effective in RY1 following Commission approval of this settlement agreement. The Company and Staff shall agree on an implementation plan that provides for advance notice to customers of the institution of the charge in the applicable service tariffs and for waiver of the first charge

* The existing tariff language limits the provision to distribution facilities in excess of those normally provided by the Company "for the purpose of supplying equipment the operation of which involves inrush currents above the values otherwise allowed by the Company, or for the purpose of providing a service line in addition to that otherwise provided for supply to the Customer's premises."

imposed on customers. Electric late payment charge revenues will be used to offset rate adjustments and accounting deferrals otherwise prescribed by Section II.21 (Residential Time-of-Use Rates).

vi. Incidental Environmental Remediation Work

Irrespective of other limitations prescribed for the Company by this agreement including limitations on "behind the meter" services, Con Edison will be permitted to perform and be reimbursed at cost for incidental environmental remediation work on customer premises associated with Con Edison's performance of its T&D service obligations. Company employees sent to a customer's premises to perform work in furtherance of the Company's utility operations who identify the area of the premises where work must be performed as potentially environmentally unsafe as a Company workplace would explain to the customer that OSHA imposes on Con Edison a safe-workplace requirement and that the customer has the obligation to prove that the area is safe or to make the area safe. The Company would inform the customer that many qualified contractors could perform the necessary environmental remediation work or, where the work is of an incidental nature that the Company would perform it, that the customer could choose to have the Company's employees perform the work. The Company will seek to perform such work with the customer's consent.

3. Real-Time Pricing Pilot Program

The Company has had an experimental real-time pricing ("RTP") program since 1992.^{*} The Company will institute a pilot RTP program. The program will provide customers with energy prices that vary by hour based on the Company's day-ahead forecasts of marginal fuel costs. This program is expected to help participants begin to adapt to a competitive generation market. Up to 50 customers served under time-of-day rates in SC 4 or SC 9, plus any customers voluntarily transferring from the experimental RTP program in effect as of the date of this settlement agreement, will be eligible for service in this pilot program.

4. Rider J Business Incentive Rate (BIR)

Changes are being made to the Business Incentive Rate (Rider J) to improve the effectiveness of the tariff as a marketing tool to prospective business applications. No material substantive change is intended. The following changes, effective April 1, 1997, would be made:

- customers who qualify for the Rider because they receive both the comprehensive package of economic benefits and real property tax incentives or benefits will, for comprehensive packages negotiated after March 31, 1997, be considered to be eligible based solely on the "comprehensive package" criterion (and not "as of right") but the allocation will, nevertheless, continue to be allocated per Rider J (A)(2)(b).
- governmental agencies will be permitted to designate loads eligible for the Rider and to adjust the load levels; the dates previously governing new and vacant

^{*} The current program termination date was extended until December 31, 1997 by Commission order dated December 23, 1996 (Case 96-E-0837).

premises were deleted; and the minimum aggregate demand provision for vacant premises was deleted.

- the Rider will explicitly state that it is utilized for job attraction in addition to job retention, that separately metered residential usage does not affect the rider's applicability; that application must be submitted 30 days in advance but service need not be taken immediately; that the distribution facilities cost test does not double count Rider J reductions.

In addition, the Company may during the RY1 through RY5 period file to increase the total allocation of BIR power by 20 megawatts over the maximum amount already reflected in Rider J.

5. Other Items

1. The wording relating to installation of demand meters based on kilowatt-hour usage, for Service Classification Nos. 2 and 12, will be clarified effective April 1, 1997, to reflect the longstanding administration of the provisions (Leaf Nos. 213 and 316).
2. On Leaf No. 21, a cross-reference to another tariff leaf will be revised effective April 1, 1997, to state the correct page reference.