

Experiences In Responding to the Challenges Post 9-11

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Rebuilding Utility Infrastructure: Challenges
and Opportunities
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World Trade Center Attack Related Costs for Con Edison

- Initial estimate at \$400 million in 2001, \$430 million in 2005, mostly capital costs
- Estimate Includes
 - Emergency and temporary service response
 - Permanent restoration and infrastructure improvements
 - Service interference work



Who Pays?

- Don't tax me
- Don't tax thee
- Tax that man behind the tree



Federal Assistance

- **Utilities apply to LMDC for the federal aid in three categories:**
 - Tier One - \$250 million – Emergency and Temporary Service Response. Utilities requested \$404 million, \$154 million granted to date, \$90 million still to be allocated.
 - Tier Two - \$330 million – Permanent Restoration and Infrastructure Improvements. Utility requested \$384 million. As of December 31, 2005, \$30 million allowed and \$300 million remained to be allocated
 - Tier Three - \$60 million – Service Interference. Application deadline is in 2007



Con Edison 10-K Financial Report -2001 Note Q - World Trade Center Attack

- “In December 2001 Con Edison of New York filed a petition with the NYPSC for authorization to defer the costs. *The company expects the NYPSC to permit recovery from customers of the costs, net of any Federal reimbursement, insurance payment and tax savings.*



Note Q, 2001 10-K - Cont'd

- \$54.9 million of costs for emergency response, temporary restoration and permanent replacement of electric, gas and steam transmission and distribution facilities damaged as a result of the WTC attack costs capitalized as utility plant
- *\$32.9 million of such costs deferred as a regulatory asset.*
- \$81.5 million tax refund deferred as a regulatory credit due to a casualty loss deduction



WTC Regulatory Assets Listed In Con Edison Financial Statements

- 2001 - \$32.9 million deferred WTC restoration cost
- 2002 - \$62.9 million deferred WTC restoration cost
- 2003 - \$68 million deferred WTC restoration cost
- 2004 - \$104 million deferred WTC restoration cost
- 2005 - \$123 million deferred WTC restoration cost (3Q 10-K)



FAS 71 - Utility Regulatory Assets

An enterprise shall capitalize all or part of an incurred cost . . . That would otherwise be charged to expense if both of the following criteria are met:

- “*It is probable* . . . That revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.”
- “Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs.”
- “The term probable . . . Refers to that which can reasonably be expected or believed on the basis of available evidence or logic *but is neither certain nor proved.*”



NY PSC Uniform System of Accounts

Deferred Debits § 182 - Extraordinary Property Losses

- *“When authorized or directed by the commission, this account shall include extraordinary losses on property . . . and extraordinary losses, such as unforeseen damages to property, which could not reasonably have been anticipated and which are not covered by insurance or other provisions”*

Application to the commission for permission to use this account shall be accompanied by a statement giving a complete explanation with respect to the items which it is proposed to include herein, the period over which, and the accounts to which it is proposed to write off the charges, and other pertinent information.”

It is not enough for the utility to “expect” recovery or for auditors to believe that future recovery is “probable.”



WTC Cost Deferral Petition NY PSC Case 01-M-1958

Con Edison Petition:

“Under the Commission’s applicable standards, expenses qualify for deferral if they are ‘unusual, could not have been reasonably foreseen, expected or forecasted, and are sufficient in amount to cause a material decrease to the company’s net income, were they charged to expense entirely within one year’

The Commission has recognized that the magnitude of the expense should not be the primary focus in considering a request for deferral accounting, and that petitions for deferral accounting should be considered on a case-by-case basis taking into account specific events giving rise to the deferral request.”



The WTC Cost Deferral Petition NY PSC Case 01-M-1958 - Cont'd

‘In its efforts to obtain [federal] reimbursement, the company has pointed out that Federal reimbursement is fair and equitable in light of the national scope of the terrorist attack and that, *absent reimbursement, area consumers would have to fund the restoration and rebuilding of utility systems - and those consumers already supported in their rates the initial installation of these facilities.*”



Opposition to the Deferral Petition

- It would be premature to assure recovery because “if the federal aid does not materialize, if insurance does not cover the expenses, if state aid is not available, then the Company should be free to petition the commission for recovery of the unreimbursed costs. At that time, a host of issues can be addressed with greater specificity, including:



Opposition to the Deferral Petition - Cont'd

- Adequacy of insurance coverage,
- Purpose for the uncovered expenditures,
- Whether expenditures are for capital items (to be added to rate base) or expense items for the current year,
- The normally expected level of infrastructure improvement and interference costs,
- Materiality, and
- Whether shareholders, currently over earning, should bear or share the residual cost.



Opposition to the Deferral Petition - Cont'd

- For these reasons, the deferral petition should not be approved, and should be denied, without prejudice, as premature.”



PSC Decision on 2002 Deferral Petition January 30, 2004

- *“Consideration of WTC-related expenses is premature because of the unsettled nature of such costs. Con Edison and the State of New York continue to pursue multiple avenues for recovery of those extraordinary costs, including, but not limited to, insurance claims, federal aid and other reimbursement programs and possible state and federal tax deductions. Further, the requests by Con Edison and O&R for deferral of incremental costs for security measures are directly related to the WTC incident; therefore, such requests will be considered simultaneously with our review of WTC related expenses.*”



The 2001 Natural Gas Rate Case

- **Proposed Settlement Language:**
 - “The Deferred Rate Reduction ... estimated to be \$36.4 million, ... *will be set aside on the Company’s books of account and applied to recover expenses for gas system security, interference *** and system restoration measures and costs directly related to the September 11, 2001 attack, including emergency response and system restoration costs, net of all reimbursement received by the Company* from its insurers or the federal or state government (“WTC Costs”),



The 2001 Natural Gas Rate Case - Cont'd

- *Pursuant to and consistent with Commission action on the Company's December 21, 2001 Petition for Authorization to Defer the Costs Related to Emergency Response and the Restoration of Service, or in any related proceeding.”*



The 2001 Natural Gas Rate Case - Cont'd

- Opposition:
 - “If there is to be any separate treatment of attack related costs, it should be the subject of a later petition, in which the Company bears its customary burden for special rate making treatment, with no prejudgment of materiality or consumer responsibility

 - If Con Edison cannot recover fully its attack related costs, it naturally raises the issue of underinsurance. There is no reason to hold consumers liable if Con Edison was inadequately insured or if the Company is essence self-insured. Consumers are not the owners or the insurer of Company assets. *Consumers should not be the insurer of last resort for the Company.*



The 2001 Natural Gas Rate Case - Cont'd

PSC Decision:

- “A total of approximately \$36.4 million of revenues that otherwise might be flowed back to customers would be deferred as a source of funds in the event the company’s various gas system costs related to the September 11, 2001 attack on the World Trade Center are not fully recovered from the federal government or insurance carriers. **** *Whether Consolidated Edison would actually be able to use the \$36.4 million to offset World Trade Center costs would be determined by us in the future in another proceeding, Case 01-M-1958.*



The 2003 Natural Gas Rate Case 03-G-1671

“Joint Proposal” for settlement”

- “rate increases are mitigated by three sources of funds:
 - (i) amortization of funds set aside in 2002 to offset World Trade Center (WTC) related costs; [fn]

 - [fn] The company is currently seeking reimbursement of WTC related costs through federal and State programs. Additionally, the Proposal provides in rates a certain level of funding for any costs that remain outstanding after federal and State program have been exhausted.”



The 2003 Natural Gas Rate Case 03-G-1671 - Cont'd

PSC Decision - June 14, 2004

- “World Trade Center Costs Funds set aside in 2002 to offset costs due to the destruction of the World Trade Center will be applied to rates during the term of the gas rate plan. The Joint Proposal allows Consolidated Edison to defer certain WTC capital costs subject to any cost recovery obtained from governmental agencies and insurance carriers.”



The 2004 Electric Rate Case

Joint Proposal for Settlement:

- “The treatment of World Trade Center (“WTC”) capital costs deferred by Con Edison and allocated to its electric business *will be in accordance with the Commission’s determination in Case 01-M-1958* and, as of April 1, 2005, subject to interest at Con Edison’s allowed pre-tax AFUDC rate of return. The Company will continue to seek recovery for all WTC costs from governmental agencies and insurance carriers. All recoveries will be applied to reduce the deferred balance.”



The 2004 Electric Rate Case (Cont'd)

- PSC Decision Adopting Joint Proposal:
 - Among the changes to the delivery service revenue requirement in DPS Staff's original case are: . . . (10) an increase in the amount of deferred World Trade Center recoveries; [fn]
 - [fn] Under the proposal, *this would be the first electric case in which Con Edison would be allowed to collect deferred WTC costs at a rate of \$14 million per year.*"



Summary of PSC Action on WTC Cost Recovery

1. Deferral of incremental non-WTC interference costs was allowed
2. Action has not yet been taken on WTC-related costs in the deferral petition case.
3. Limited recovery allowed in the 2003 gas rate case.
4. Limited recovery allowed in the 2004 electric rate case.
5. Con Edison financial report say it “expects” PSC action to cover expenses after efforts to obtain government aid and insurance are completed.
6. Residual unreimbursed WTC attack-related expenses will be subject to future PSC review.



Summary of PSC Action on WTC Cost Recovery - Cont'd

- **The PSC will decide, regarding recovery of unreimbursed costs:**
 1. Is it incremental, i.e., more than within the range of expenses anticipated when rates were set?
 2. Is the utility earning more than an allowed reasonable rate of return without the recovery?
 3. Is the expense material, in the big picture?
 4. If allowed, over what time will the cost be amortized.



Summary of PSC Action on WTC Cost Recovery - Cont'd

■ Other Factors

- Was the utility prudently insured?
- Was the utility taking the risk of self insuring under “macro” ratemaking?
- Was the allowed rate of return compensating the company for risk of capital losses?
- Has liability of other potentially responsible parties been pursued?
- Was government assistance diligently pursued?
- Does the utility have sufficient reserves, accumulated depreciation, etc. to bear significant increased operating and recovery costs and remain creditworthy?



Download Information

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