

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 25, 2003

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal N. Galvin

CASE 00-E-1208 - Proceeding on Motion of the Commission in the
Matter of Consolidated Edison Company of New
York, Inc.'s Plans for Electric Restructuring
With Respect to Service Provided in Westchester
County.

ORDER ADOPTING STAFF PROPOSAL

(Issued and Effective November 25, 2003)

BY THE COMMISSION:

INTRODUCTION

This case concerns electric delivery rates for Consolidated Edison Company of New York (Con Edison) and a proposal to reduce those rates in Westchester County by equalizing them throughout Con Edison's territory. It arises from the Commission's decision in 1996 to assist the development of competitive markets for electric services.¹ Previously, the Commission addressed Westchester's electric rate structure in the early 1980's. Legislation at the time required the Commission to consider whether any separate electric rates should be established in Westchester County; however, from its evaluation of a cost of service study, the Commission found no

¹ Case 94-E-0952 et al., Competitive Opportunities, Opinion No. 96-12 (issued May 20, 1996).

substantial cost differences to warrant the formation of any separate customer classes in Westchester.²

Subsequently, in 1996, the Commission began its competitive market opportunity efforts in the electric industry and the electric utilities throughout the State began to divest their generation facilities. For its part, Consolidated Edison sold most of the electric generation stations it owned, including a nuclear generation station in Westchester, though it retained a few generation stations in New York City to provide steam service. Consolidated Edison now has a portfolio of supply contracts with various generators, and depends on the wholesale electric market operated by the New York Independent System Operator (NYISO) for the electric supplies it needs to provide full service (both delivery and commodity services) to customers who request such service. The company does not provide electric supplies to delivery customers who choose to purchase electricity from others.

In 2000, to increase the service options available to electric customers, Consolidated Edison unbundled its prices and established a Monthly Supply Charge (MSC) and a Monthly Adjustment Charge (MAC). The MSC collects from customers the commodity costs the company could incur to provide full service if it purchased its commodity supplies from the NYISO. Delivery service customers who do not obtain electricity from Consolidated Edison do not pay a MSC. Often, the MSC is greater in New York City than it is in Westchester due to the higher location-based energy and capacity prices that typically apply in the City.

² Public Service Law §66(14-a). Case 28157, Consolidated Edison Company of New York, Inc., Order Determining That a Geographical Classification of Customers is Unnecessary, 22 NYPSC 1428 (1982).

The MAC is an element of Consolidated Edison's delivery charges and it applies to all customers. The delivery charges collect the company's costs to transport and deliver electricity to retail customers. The MAC is used to recover the company's stranded generation costs.³ It is also used to collect other transmission-related charges and to administer an incentive program that encourages the company to keep its costs to a minimum.

The transport elements of Consolidated Edison's delivery rates are the same for customers in the City and Westchester. However, as currently structured, the MAC is higher in Westchester than in the City. Consolidated Edison is thus able to recover its stranded costs, and other costs borne through the MAC, in a manner that offsets the higher New York City commodity prices and applies equivalent bundled electricity prices to all full service customers, no matter where they reside. Given that the company's actual commodity charges are reconciled with forecasted charges, it was necessary to make the MAC subject to a reconciliation mechanism to assure equal bundled rates. Had this approach not been adopted in 2000, electric rates for full service customers in New York City would have increased, contrary to the Commission's 1997 rate plan objectives for Consolidated Edison. Consequently, the Commission retained equal full service rates throughout the Consolidated Edison service area over the objections made by Westchester County. The Commission's decision observed that "additional market price data will provide valuable information

³ Before the move to a competitive market, Consolidated Edison constructed and operated generation facilities and it entered into long-term contracts with non-utility generators. To the extent the company's embedded generation costs exceed market prices it has strandable costs that may be recovered from ratepayers.

for the future consideration of rates for delivery service. It is preferable, therefore, to proceed with caution after additional study is completed."⁴

In 2000, the Commission decided, nonetheless, to examine Westchester's concerns, differences in New York City and Westchester market prices, and other delivery rate issues in a new proceeding. Its stated "goal [was] that the movement toward equalized delivery rates will be addressed before the end of the rate plan [then set for March 31, 2002]."⁵ This case was thus initiated to continue to explore the issues pertaining to the establishment of delivery rates in Westchester and the City.⁶ The following matters were specifically identified for consideration here:

1. The recent and projected spreads in electric commodity prices in Westchester and New York City;
2. Whether stranded costs are higher for Westchester customers as a result of lower market values of energy and capacity in Westchester;
3. Whether a cost basis exists for different delivery rates in the two areas;
4. If delivery rates were to be equalized, the start and duration of such equalization; and

⁴ Case 96-E-0897, Consolidated Edison Company of New York, Inc. - Rate Restructuring Proceeding, Order Concerning Retail Access Implementation Plan - Phase 3 (issued February 28, 2000), p. 15.

⁵ Id.

⁶ Case 00-E-1208, Consolidated Edison Company of New York, Inc. - Electric Rates, Order Instituting Proceeding (issued July 20, 2000).

5. The mitigation measures needed to ameliorate any harsh impacts on customers.⁷

At the core of this case is a Department of Public Service Staff (Staff) proposal supporting the establishment of an equal MAC and equal delivery rates in Westchester and New York City. Staff's proposal would permit customers in Westchester to realize the benefit of any lower wholesale commodity prices that may be available through the NYISO and would let customers in the City be responsible for any higher wholesale prices that may prevail there.

Expectedly, Staff's proposal is somewhat favored by Westchester County and entirely opposed by the New York City interests that participated in this proceeding. The County has urged us to implement Staff's proposal promptly and it disagrees with Staff's recommendation to implement this rate change gradually over a three-year period to avoid adverse customer impacts. For their part, the NYC interests have urged us to either reject Staff's proposal or to put it off until greater competition and more market opportunities exist for City customers.

In all, four parties submitted testimony in this case: Staff, Westchester County, the City of New York and the Owners' Committee on Electric Rates.⁸ Evidentiary hearings were held in New York City in November 2001. The parties submitted briefs on December 18, 2001 and reply briefs on January 4, 2002. Consolidated Edison also filed a reply brief and the New York

⁷ Id., p. 3.

⁸ The Owners' Committee is a group of New York City commercial real estate owners and managers.

Energy Buyers Forum submitted comments.⁹ While very few public comments were received when this case was heard, after the record closed we received numerous letters from electric customers in Westchester who support the County's position.

Also after the hearings, we solicited comments on certain matters that arose in this case.¹⁰ We asked the public to address the implications of the parties' positions for the electric utility companies throughout the State. In particular, we asked interested persons to address the statewide ramifications were we to deaverage other electric companies' bundled retail rates above a minimum wholesale price differential; whether such action could affect the siting of power plants and transmission facilities; would encourage innovations in the pricing or metering of electricity services; and, the potential revenue impacts for an electric utility company and its customer classes.

We received comments from Westchester County, the City of New York, the Owners' Committee, Consolidated Edison, Staff, Multiple Intervenors, and jointly from the Utility Workers of America, AFL-CIO, Local 1-2 and the International Brotherhood of Electrical Workers, Local 97.

The comments received here have not assuaged our concerns about a statewide policy of deaveraging commodity costs. We note that this case presents a unique situation where the utility company straddles two ISO zones that have substantially different commodity costs. Balancing the competing factors presented in this case leads to our decision to reflect the significantly different commodity costs in retail rates by

⁹ The Energy Buyers Forum is an association of 60 commercial and non-profit organizations that take service from Consolidated Edison.

¹⁰ Case 00-E-1208, Notice Soliciting Comments (issued April 17, 2002).

equalizing the MAC over a three-year period.¹¹ This will end the equalization of Consolidated Edison's full service rates and it will further economic efficiency goals by reflecting any substantial differences that exist in wholesale costs between Westchester and New York City. We have now obtained sufficient experience with market prices in these zones to gauge the rate impacts and consequences of taking this action. Accordingly, we are phasing in the equalization of the delivery rates to minimize any adverse customer impacts. In sum, we conclude that there is nothing on this record that convinces us that it would be necessary at this time to abandon the general use of equal ("postage stamp") prices within a utility company's service territory, nor do we anticipate any such need to deaverage monopoly delivery rates. Also, the record here does not support any further deaveraging of commodity rates in Westchester and New York City and we reject the City's suggestion to set different delivery rates between Westchester and New York City.

THE PARTIES' POSITIONS

DPS Staff

As noted above, Staff proposed changes in the operation of the MAC. After a three-year transition period, all Consolidated Edison delivery charges, including the MAC, would be set without any geographic distinctions. Staff is unaware of any significant cost differences in the provision of delivery services that warrant any separate retail rate districts in Consolidated Edison's service area. Staff recounts the results of the cost study performed in the early 1980's and states that any potential delivery cost differences are not large enough to

¹¹ We are also adopting the uncontested Staff proposal presented here to reconcile the MAC and the MSC separately for New York City and Westchester coincident with the adoption of the phase-in period.

establish any geographic customer classes in Westchester.¹² As to Consolidated Edison's strandable embedded generation costs, Staff proposes that any such costs remaining on the company's books after a three-year transition period be recovered equally from all customers.

Westchester County

Westchester supports MAC equalization but opposes Staff's proposal to do so gradually. Westchester generally states that it supports the Commission's efforts to restructure the electric industry and introduce competitive opportunities that benefit customers. It also believes a complete transition to a competitive market in New York City and Westchester can be accomplished much faster than Staff believes is possible. Consequently, Westchester would prefer to see the NYISO prices for the County fully reflected in retail rates as soon as possible.

Westchester also believes the MAC is imposing too much of Consolidated Edison's stranded costs on County residents. It argues that the company should not recover over half the stranded costs from Westchester customers when they account for only twelve percent of total electric system usage. It notes that Consolidated Edison acquired its generation assets to serve the entire service territory and none were obtained for any particular location. The County, therefore, believes it is improper to allocate stranded costs in any greater proportion to Westchester customers and thereby provide New York City customers an unfair advantage. It also asserts that the current MAC is contrary to a regulatory preference for uniform delivery rates when no significant factors support the establishment of a

¹² Tr. 20-21. The cost study separated delivery charges (subtransmission, distribution and customer costs) for Westchester and New York City but, Staff states, it did not reveal any substantial cost differences in these categories.

separate rate district. Thus, Westchester urges us to uniformly collect stranded costs from all customers on a per kilowatt-hour basis.

The County also claims the current MAC deprives Westchester customers of a portion of the rate reductions that were touted in 1997. It believes, as well, that the MAC is flawed and has improperly applied positive charges to Westchester customers when negative MAC charges applied in New York City, and at times when Consolidated Edison has no strandable costs to recover. In sum, the County claims that New York City customers are obtaining a \$100 million annual benefit at the expense of Westchester customers.¹³

The County agrees with Staff that there is no need to apply any different delivery rates in the City and Westchester given the results of the last cost study and absent any more recent results. Contrary to assertions made by the New York City interests, Westchester believes the tragic events of September 11, 2001 require no postponement of Staff's proposal. Were the City to qualify for a postponement due to the September 11 events, the County claims it too would qualify for comparable relief. Westchester challenges the probative value of the evidence the New York City interests offered to show a decline in the City's economic output following the destruction of the World Trade Center. According to Westchester, the tragedy has no bearing on the electric rate design issues presented here given the small change in electric rates were we to adopt Westchester's position.

¹³ To demonstrate the current MAC's different impacts on customers, the County states that a typical New York City residential customer obtains a 90 cents per month reduction but a Westchester customer who uses the same amount of electricity experiences a \$5 per month bill increase. A uniform MAC would eliminate this difference.

The New York City Interests¹⁴

The NYC parties state that Staff and Westchester, the proponents of certain rate changes, bear the burden of proof in this proceeding. They claim, however, that neither has fulfilled its burden and their proposals should not prevail. The NYC interests claim that the County only examined the market value of electric energy and capacity and did not examine other relevant factors. They assert that Westchester should have addressed the early 1980's cost study. They also claim that Staff should have provided a new cost study with current cost data obtained from Consolidated Edison. They also fault Staff for not addressing various other factors that might bear on rate design, including the events of September 11, 2001. In contrast, the NYC interests claim that they have amply shown that the Staff and Westchester proposals should be rejected and that the current MAC should be retained.

Not only are the NYC interests opposed to the introduction of equivalent MAC charges any time soon, they urge us to put off consideration of any such changes until market conditions improve in the City, which they believe may be four years or more in the making. They claim that electric market competition is still emerging and any abandonment of equalized, full-service rates would subject City residents to excessive commodity prices.¹⁵

According to the NYC interests, the City's load pockets and transmission constraints contribute largely to its high electric commodity prices. Given these legacies, they believe

¹⁴ The interests reported here are those expressed by the City of New York, the Owners' Committee on Electric Rates, and the New York Energy Buyers Forum.

¹⁵ In support of their position, the NYC parties point to a Staff witness' assessment that competition requires several more years to develop and market mitigation measures are still needed to protect customers. (Tr. 87 and 640).

that it is fair to delay a move to equal MAC charges until workable competition is achieved. Otherwise, they claim, City customers would pay high commodity prices and more for the strandable costs.

Beyond this, the NYC interests assert that the existing equalized, full-service rates best apply the regulatory principle that retail prices be uniform throughout a service area, absent clear support for any rate districts. While they acknowledge that commodity costs are higher in the City, the NYC interests claim that delivery costs are higher in Westchester and, overall, equalized full-service rates remain fair for all customers. The NYC interests also claim that the stranded cost recovery obtained from Westchester customers should match the amount of stranded costs that are contained in the higher commodity prices that City customers pay. Moreover, they believe that Westchester customers should pay for the stranded costs of Consolidated Edison's purchase power contracts to the extent these customers benefit from any low-priced electricity obtained from upstate sources.

The NYC interests suggest that the current rates may be overcharging City customers (and benefiting Westchester customers) given the last cost study results showing that City customers had lower transmission and distribution costs than Westchester customers. According to the NYC interests, this difference might offset as much as one-half the lower commodity costs that Westchester seeks to obtain.

Addressing the potential customer impacts of a \$100 million shift in MAC charges from Westchester to New York City customers, the NYC interests fear it could contribute to the economic slowdown the City has experienced since September 11, 2001. They contend that a \$100 million rate increase could contribute to the loss of 2,000 jobs and \$2.7 billion over ten years. Were we to postpone the implementation of Staff's and

Westchester's proposals for a time and were to gradually implement them thereafter, the NYC interests believe the City's economy could recover.

The NYC interests believe that Westchester's economy was not hit so hard and that the County enjoys good prospects for economic growth. Further, the NYC interests claim that Westchester benefited from the sale of Consolidated Edison's generation facilities and that equalized, full-service rates should be retained if Westchester is to keep its benefits. Were we to adopt the Staff or Westchester proposal, the NYC interests claim the County share of the sale proceeds should be reduced and more of the proceeds should apply to City customers.

As an additional reason for not establishing different retail commodity prices in Westchester and the City, the NYC interests claim that the higher-priced generation facilities in the City improve system reliability for Westchester and provide it bulk power deliveries. Finally, in response to Staff's assertion that economic theory supports its position, the NYC interests doubt that the Staff proposal would improve consumer decisions to use electricity wisely and place their operations in preferable locations. They criticize Staff for providing no facts or analysis to prove its economic efficiency claims. And, as long as strandable costs are being collected, the NYC interests doubt that customers will respond to the price signals Staff seeks to implement.

PUBLIC COMMENTS

As noted above, the proposals made in this case might apply, or not, to other electric utility companies. We provided them, and other interested persons, an opportunity to address the matters raised in this case. The parties to this proceeding used this opportunity to reiterate their positions and address our questions; we also heard from two unions representing electric workers and from Multiple Intervenors.¹⁶

Multiple Intervenors takes no position on the parties' disputes. Nonetheless, it is opposed to any Commission decision emanating from this proceeding to deaverage commodity prices elsewhere in the State. It urges us not to disturb the other companies' electric rates and it believes that no other utility company need establish any new retail rate districts to reflect potential differences in wholesale commodity prices. Were we to consider any such move, MI claims such action could adversely impact individual customers and it would present new issues.

Like MI, the unions do not believe any action in this case should apply elsewhere. They believe each electric company's rates should be individually examined before any action to deaverage or unbundle commodity prices and retail rates were considered. Addressing the Consolidated Edison circumstances, the unions point out that the company obtains its electricity from various sources and uses them throughout its territory. For example, they point out that electricity entering the system in Westchester may or may not be consumed there. Consequently, the unions doubt that any full service customers are subsidizing any other customers' rates and the

¹⁶ Multiple Intervenors is an association of large commercial and industrial customers with facilities located throughout the State.

unions see no need to deaverage the commodity portion of the bundled retail rates.

Turning to the comments in response to the Commission's specific inquiries, various parties doubt that deaveraged retail rates can be used to improve customer price responsiveness to demand, or to promote economic efficiency. One party, the Owners' Committee, suggests that electric price variability over time is more useful for promoting economic efficiency than any action to vary prices between the two locations being considered here. In contrast, Westchester believes economic efficiency will be enhanced by its proposal. Consolidated Edison considers fully deaveraged distribution rates to be impractical and unmanageable for all the locations it serves.

As to the siting of generation facilities and transmission lines, many of the comments doubt that deaveraged retail electric rates would have direct effects on the siting of these facilities. Staff believes there could be indirect effects on siting decisions; Westchester believes that deaveraged retail rates could provide an impetus for the construction of new transmission facilities or reduced use of transmission bottlenecks.

Addressing the Commission's inquiry concerning the use of deaveraged retail rates to encourage innovative pricing and new metering practices, most comments doubted any such effects would occur. They also doubted that a move to deaveraged retail rates would, by itself, produce lower wholesale prices. To achieve lower wholesale prices, the Owners' Committee suggests that utility companies bear some of the financial consequences attributable to high wholesale prices. Multiple Intervenors suggests that retail customers be exposed to wholesale price

levels by making them pay unhedged prices and not by deaveraging retail rates.

As to the actual prices customers would see with deaveraged commodity prices in retail rates, the comments acknowledged that individual customers at various locations would experience either higher or lower prices depending on the amount by which wholesale prices vary in the utility company's service area. However, for an entire service area, the comments suggest that the rate changes would be revenue neutral.¹⁷

Finally, with respect to the societal implications of moving to deaveraged retail rates, the New York City interests, and the unions, believe that proposals like Westchester's and Staff's can be harmful if they are implemented before workable competition is achieved or without specific consideration given to a utility company's circumstances. Westchester, on the other hand, attributes substantial economic and market benefits to its proposal.¹⁸

DISCUSSION AND CONCLUSION

The issues in this case arise from significant commodity cost differences between Westchester and the City,

¹⁷ With respect to Consolidated Edison, Exhibit 28 shows us that with a 2 cent/kWh differential between the City and Westchester prices (based on Consolidated Edison's 2001 estimates) equalizing delivery rates would amount to \$76 million in a typical year. Staff's response to the April 2002 Notice Soliciting Comments used Consolidated Edison's estimate for the 2002 summer capability period (a 1.6 cents/kWh differential) which indicates an annual shift in revenue recovery of about \$60 million.

¹⁸ The notice also asked for comments addressing the minimum wholesale price threshold for establishing deaveraged commodity prices in retail rates; however, this inquiry did not elicit any useful information. The comments uniformly state that additional study would be needed to develop such information.

demonstrated to exist as a result of the implementation by the New York Independent System Operator (NYISO) of location-based energy and capacity prices. Consolidated Edison's full-service bills reflect the wholesale prices for the electric commodities that are delivered and used in each of these regions. In the end, however, the company's bills apply the same full-service retail rates to all customers. This is achieved by adjustments made to the company's MAC charges that offset commodity price differences and thus alter the bills rendered to full-service customers in Westchester and New York City.

When the NYISO first established the State's wholesale capacity markets, the Commission recognized that the markets would require time to develop. For this reason, it equalized full service bills to maintain the established rate relationships until it could obtain sufficient experience with the workings of the market. In this case, the Commission has considered whether the differences in the NYISO commodity prices should be reflected in the full-service bills rendered in Westchester and New York City. We find that the time is ripe and there is sufficient experience with the wholesale market to address the proposals and issues Westchester and the other parties have presented here. We have decided to move gradually towards equalization of delivery rates in Consolidated Edison's territory on the record and given comments submitted in this

case. They provide us an adequate basis to address all of the issues identified in the order that initiated this proceeding.¹⁹

As discussed below, we have determined that a gradual implementation of equal MAC charges in Westchester and New York City provides the best balance of the competing interests presented by Westchester and New York City interests. We can achieve an estimated eight percent decrease for Westchester, and further economic efficiency goals in New York City, while also minimizing any customer burdens by phasing in an expected 1.2% increase in New York City. It is to the advantage of the Staff proposal that it will help to further the establishment and development of a competitive electric market. Consequently, we are adopting the Staff proposal and implementing it beginning in May 2004 which is the first convenient opportunity for Consolidated Edison to make the necessary adjustments to its rates and charges.

Our decision in this case does not address, nor does it attempt to resolve, the circumstances of any other electric utility company that serves multiple NYISO zones. The decision here addresses only the real and significant commodity cost

¹⁹ In February 2000, the Commission expected to address the issues in this case by March 2002. This proceeding went beyond that date, however, because of the need to request and consider comments concerning any decision to deaverage commodity costs and the likely effects in other service territories and statewide and then in order to fully consider the complex issues raised by New York City interests. We have found after considering the additional comments solicited that we can properly address the commodity cost differences between Westchester and the City without giving rise to any adverse consequences elsewhere. We fully address the claims raised by the City interests below, but the passage of time has served to weaken the force of many of their arguments. In addition, we did address equalization of delivery rates before the end of the Con Edison rate plan, as contemplated in February of 2000, though only because the end of the rate plan was moved to March of 2005.

difference that exist between Westchester and New York City, reflecting a significant transmission constraint and the higher generation costs that exist in the City. We note, in particular, that the largest part of the cost difference between Westchester and the City (about 75%) is related to the cost of installed capacity (ICAP). At present, no other NYS regulated utility serves a franchise area that covers more than one ICAP market. Thus the commodity cost difference for Consolidated Edison is, by far, the largest such spread within a single utility company throughout the State. As the electric worker unions have suggested, we would need to examine any other company's specific circumstances to determine whether any proposal to deaverage its full-service prices to reflect wholesale commodity price differences by NYISO zones would serve any useful objectives. Nor are we apt to further deaverage commodity costs within New York City or in Westchester County because the commodity deaveraging between the City and the County provides the efficiency gains being sought without unnecessarily going any further.²⁰

While the NYC interests have argued here that Westchester and Staff are the proponents of a rate change and they have a burden of proof, we note that the proponents are proposing a rate decrease for Westchester, which places a burden on the supporters of the existing rate.²¹ Of greater importance here, the NYC interests have not provided any persuasive reasons why the commodity cost difference between Westchester and the

²⁰ The features of the ICAP markets also support there being but one New York City/Westchester split. While there are a number of subload pockets in New York City, there is but a single New York City ICAP market. Also, Westchester is part of an ICAP market with the rest of the state.

²¹ See Public Service Law §66(12)(i) [placing the burden of proof on the utility where it is proposed to reduce a rate.]

New York City should not be reflected in retail rates, though their arguments show that the difference should be phased in gradually. Consequently, we will require Consolidated Edison to move toward equalization of delivery rates, as was originally contemplated in 2000.

Addressing the issues specifically identified for this proceeding, the first required that there be an ongoing examination of the electric commodity prices that apply in Westchester and New York City. Throughout this proceeding, we have remained aware of the historic, current, and projected commodity prices for the markets operating in Westchester, New York City and elsewhere. Thus, we are able to evaluate the cost basis and rate impacts related to the deaveraging of commodity costs in the setting of retail rates. Our review of the available electric commodity price information leads us to conclude that the best way to continue the work begun in 1996 to implement competitive opportunities in the electric industry is to permit the NYISO wholesale commodity prices to be directly reflected in full-service customer bills, by gradually moving to a regime of equal MAC charges for all customers. The achievement of efficient pricing objectives strongly favors the use of a deaveraged commodity rate in this instance. As such, an expected increase in efficiency, on balance, overcomes any otherwise applicable preference for "postage stamp" pricing. The NYC interests' arguments concerning the existence of a transmission constraint only serve to demonstrate the true need to move toward more efficient pricing. As long as there is such a transmission constraint, with higher costs and a need for increased generation in the City, customers should be presented a price that signals the higher costs and encourages demand reductions.

The second issue in this case required an examination of whether stranded costs are higher for customers in Westchester due to the lower market values for the energy and capacity that is provided in the County. Westchester asserted that it was paying a disproportionate share of stranded costs and the Commission therefore gave the parties an opportunity to litigate that issue. The testimony submitted by the NYC interests asserts that relatively more stranded costs should be paid by Westchester customers. According to their witnesses, greater amounts of stranded costs should be included in the Westchester rates to match the potential amount of strandable costs covered by the commodity prices charged in the City. However, we are not persuaded by their arguments.

While the parties litigated much of this case as a matter of arguments and counter-arguments on stranded costs, our review of the record suggests this focus may be misplaced because there are a variety of costs being recovered through the MAC. None of these costs appear to be more or less assignable to any particular group of customers. The true issue here is whether Westchester residents should any longer pay a higher MAC and we find that none of the arguments the NYC interests provide offer a sufficient basis for the differential to continue. No principle of fairness, nor any suggested by economic theory, requires the Commission to allocate and assign any specific amount of strandable costs either to Westchester or to New York City customers in the circumstances presented here. In this instance, the electric generation facilities that Consolidated Edison constructed, and the purchase power contracts it executed, were not acquired for any particular group of customers nor with regards to any customer location on the distribution grid. Historically, this utility company made no such distinctions for the generation assets it acquired.

Consequently, there is no basis here for any specific assignment of the strandable costs to any particular group of customers, nor is there any reason why we should not move toward eliminating the higher MAC for Westchester residents.

Moreover, the ratemaking treatment of the costs at issue here cuts decisively against any argument by the NYC interests that they are making a greater contribution to stranded costs. The obvious reason why New York City customers pay more commodity costs is that it costs more to meet the needs of New York City energy users than it does to supply Westchester customers. We also note that some of the stranded cost elements now in the MAC will be removed when the Indian Point 2 contract expires in 2005. At that time, there will be fewer stranded costs in the MAC; nonetheless, commodity prices in New York City may remain higher than those in Westchester, leading to continued higher MAC charges for Westchester customers. Consequently, the NYC interests' arguments collapse of their own weight.

Their arguments also fail to the extent these parties claim that (1) the City's higher commodity prices caused the in-City plants to have a higher auction price, and (2) the City's higher commodity costs contribute more towards the cost recovery of the MAC items. With respect to the first claim, the units were sold at auction and they fetched a market price that reflected the present value of the future net revenues they were expected to produce. It appears those higher net revenues largely reflected the higher costs of running the existing in-City facilities or building new ones. With respect to the second claim, the assets retained in the City presumably have higher running costs than those outside the City. Consequently, for both divested and retained assets, the higher in-City commodity prices support the higher costs to operate these

plants. The prices are thus not used to reduce the stranded costs.

Further, the arguments of the New York City interests with respect to stranded costs assume that the equal pre-divestiture sharing of commodity costs between Westchester and New York City was entirely fair. On this point, we credit Staff's argument that, in retrospect, the higher in-City plant costs could have been assigned to customers in the City had the production allocation principles developed after the last cost study been applied to Consolidated Edison and two geographic regions been formed.

In any event, with the passage of time, Consolidated Edison's strandable costs are no longer as sizeable as they once were, nor are they the primary concern that need be addressed in this proceeding about the proper rate design to apply to Westchester County. Given the current levels of potential strandable costs that are fast becoming a far less salient element of the company's basic rate design, we find that the time is ripe to begin to use a more uniform method of stranded cost recovery. Ultimately, the company should apply equal MAC charges throughout its service area. In May 2004, Consolidated Edison should take the first of the six steps needed for a gradual transition to be completed by November 2006.

The third issue on the July 2000 list asked the parties to consider the cost bases for establishing different delivery rates in Westchester and New York City. While some parties have suggested that a new cost study might provide a useful reevaluation of the company's delivery costs, none of them submit any current cost data (nor any new rate analyses) on the record developed here. Instead, various parties recited their knowledge of the last cost study performed in the early 1980's that was used to satisfy the requirements of Public

Service Law (PSL) §66(14-a) and they related it to Consolidated Edison's present circumstances. We note that the July 2000 order neither mandated a new study nor did it obligate Consolidated Edison to gather any new data for us to consider here.

From our continual monitoring and knowledge of the Consolidated Edison electric system, we know of no significant changes to the basic system design since the 1980's that would be of decisional significance here. Consolidated Edison has retained essentially the same distribution network over the last two decades. The NYC interests have not shown that there is any reason for us to believe that delivery costs have changed in a way that disadvantages them. Absent any indication of a material change, there does not appear to be any need for a new study, nor is there any basis for us to assign delivery costs any differently than they were assigned before. Further, there is no current need for Consolidated Edison to incur the effort of gathering and the cost of recording the cost data that might be used for a study that could serve the purposes of this proceeding. In contrast to our decision finding it appropriate to deaverage competitive commodity rates, we see no reason here to deaverage Consolidated Edison's monopoly distribution rates. Moreover, contrary to the NYC interests' arguments, any claimed differences in delivery costs do not provide a basis to forgo the expected efficiency gains to be obtained by reflecting the commodity cost differences that exist between Westchester and the City, particularly since there is no evidence that any significant delivery cost differences exist.

In effect, the NYC interests have argued that the alleged delivery cost differences (which might be reflected in an embedded cost study if we were to order one) support our ignoring the real commodity cost differences which favor

changing rates to obtain more efficient pricing. Significantly, however, no party has advocated the establishment of any separate distribution charges in Westchester and New York City. Indeed, the County has urged us to change the MAC and equalize it throughout Consolidated Edison's service area but has not presented any other rate design changes.

Even the New York City interests have urged us to retain the existing rate design in its entirety and have argued for a differential MAC, rather than different distribution charges. Only were the Commission to adopt Staff's or Westchester's proposal, have the NYC interests urged, in the alternative, that City customers be credited for allegedly having proportionately lower delivery charges than Westchester customers due to the underground facilities that are used in the City and its dense population.²²

However, we find no basis on the record in this case to overturn the decision made in 1982 not to establish an entirely separate Westchester rate district.²³ As stated above, there are no cost data nor any study results here establishing any sufficiently changed circumstances. Thus, we have no basis to find any material cost differences that would now warrant the formation of any geographic classifications in contrast to the data available in the 1980's that showed no such cost differences existed.

The fourth and fifth issues specifically identified in this proceeding asked the parties to consider the amount of time needed to equalize the MAC charges and ameliorate any harsh impacts on customers. Staff adequately addressed these matters

²² In contrast, overhead facilities are used to serve a less dense customer population in Westchester.

²³ Case 28157, supra, Order Determining That A Geographic Classification of Customers is Unnecessary.

in its proposal calling for the gradual implementation of equal delivery rates over a three-year period. The NYC interests have urged an even longer transition period if such action cannot be avoided entirely, and Westchester called for an immediate change.

If, as the NYC interests claim, the tragic events of September 11, 2001 required the postponement of Staff's proposal, we find that there already has been a sufficient delay by the time Consolidated Edison will modify the operation of the MAC beginning in May 2004. In addition to this, we are also adopting the Staff proposal to make the MAC changes gradually over a three-year period. This will provide additional time for the electricity market in New York City to develop and for the City's economy to improve. In any event, we note that the electric rates in New York City are estimated to increase by only about \$60 million as a result of the action being adopted in this case. This is expected to amount to a 1.2% increase for New York City and an eight percent decrease for Westchester customers. To ensure that even a slight increase of this magnitude does not adversely impact customers, it will not be fully implemented until November 2006.

The NYC interests attempt to raise a point beyond the scope of this proceeding. They contend that the New York City commodity market is not workably competitive. In so arguing, they confuse the question of whether the market is workably competitive with the issue of whether there are any real commodity cost differences that should be considered in the setting of retail rates. Any conclusion that the New York City market is not workably competitive gives rise to the need for mitigation mechanisms to constrain the exercise of market power. We observe that such mitigation is in place. Consequently, we cannot conclude that the commodity price spread between New York

City and Westchester is attributable to the degree of competition in the City's generation market. Rather, all the evidence points to a real and higher cost to own and operate electric generation in the City as being the reason for the commodity price differences that exist between New York City and Westchester.

Finally, we observe that several new generation projects are planned for the City to be in service by mid-2006. The NYC Westchester commodity cost differential may, or may not, decrease because of these additions. However, it is unlikely that it would be eliminated. Therefore, the phase-in approach would have the advantage of gradually reflecting the actual costs in NYC and Westchester.

The Commission orders:

1. Consolidated Edison of New York, Inc. is directed to modify its electric rates and the operation of the Monthly Adjustment Clause in accordance with the requirements specified in this order.

2. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Acting Secretary