

Attachment 1

Consolidated Edison Company of New York, Inc.
Response to Deficiency Letter Dated August 18, 2023
Docket No. ER23-2212

Formula Rate Template

1. Consolidated Edison proposes to include depreciation rates in Workpaper 8: Electric and Common Depreciation and Amortization Rates.¹ Consolidated Edison notes that the depreciation rates were approved by the NYPSC,² but Consolidated Edison did not submit a depreciation study with the filing in support of the proposed depreciation rates for the CLCPA Eligible Projects. Please provide the depreciation studies, including all supporting documentation and workpapers, to support the proposed depreciation rates for the CLCPA Eligible Projects as just and reasonable.

Response: Attachment 4 to this filing contains the depreciation rate testimony along with the depreciation study and other related exhibits filed by Con Edison in its most recently completed rate case proceedings before the New York State Public Service Commission (“NYPSC”) (Exhibit DP-1). Attachment 5 to this filing contains five Excel worksheets that support the depreciation rates (Exhibit DP-2, Exhibit DP-3, Exhibit DP-4, Exhibit DP-5 and Depreciation Rates).³ Attachment 6 to this filing includes Appendix 14 from the Joint Proposal that shows the depreciation rates to which the parties in the above-referenced NYPSC rate case agreed and which became effective January 1, 2023. These depreciation rates were approved by the NYPSC on July 20, 2023 in Case Nos. 22-E-0064 and 22-G-0065. The NYPSC Order approving the above-mentioned Joint Proposal is provided in Attachment 7 to this filing (see page 27 for a discussion of depreciation rates).

Upon further examination, Con Edison recognizes that the depreciation rates set forth in in the proposed formula rate template included as part of the initial filing on June 22, 2023 (set forth in proposed Section 6.19.8.2.2 of Attachment 3 to Rate Schedule 19 of the New York Independent System Operator, Inc. (“NYISO”) Open

¹ Dumais Testimony, Exh. CECONY-001, at 34.

² *Id.*

³ Exhibit DP-2 through DP-5 are also included in PDF within Attachment 4 to this filing.

Access Transmission Tariff (“OATT”)) are not the latest depreciation rates approved by the NYPSC. Included as Attachment 8 and Attachment 9 to this filing are clean and redlined version of the proposed formula rate template (as set forth in proposed Section 6.19.8.2.2 of Attachment 3 to Rate Schedule 19 of the NYISO OATT), respectively, that reflect the depreciation rates approved by the NYPSC and are effective January 1, 2023.⁴

Protocols

The Commission established its policy regarding transmission formula rate protocols in a series of cases involving Midcontinent Independent System Operator, Inc.’s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff.⁵ The resulting MISO Protocol Orders have served as the benchmark for proceedings involving the justness and reasonableness of formula rate protocols.⁶

2. The Commission required that if there is a delay in the publication date, formula rate protocols should provide an equivalent extension of time for the submission of information requests.⁷ The Commission also required that formula rate protocols provide that if a deadline for interested parties falls on a weekend or holiday recognized by the Commission, that deadline will be moved to the next business day.⁸ Consolidated Edison’s proposed Protocols do not appear to provide these

⁴ The redline version of Section 6.19.8.2.2 depicts in redline format only the proposed incremental changes to the tariff revisions submitted as part of the initial June 22, 2023 filing in this proceeding.

⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012), *order on investigation*, 143 FERC ¶ 61,149 (2013) (MISO Investigation Order), *order on reh’g*, 146 FERC ¶ 61,209, *order on compliance*, 146 FERC ¶ 61,212 (2014) (MISO Compliance Order), *order on reh’g*, 150 FERC ¶ 61,024, *order on compliance*, 150 FERC ¶ 61,025 (2015) (MISO Compliance Order II) (collectively, MISO Protocol Orders).

⁶ *See, e.g., Black Hills Power, Inc.*, 150 FERC ¶ 61,198 (2015); *UNS Elec., Inc.*, 153 FERC ¶ 61,132 (2015); *The Empire Dist. Elec. Co.*, 153 FERC ¶ 61,127 (2015); *Kansas City Power & Light Co.*, 153 FERC ¶ 61,150 (2015); *Louisville Gas & Elec. Co.*, 153 FERC ¶ 61,126 (2015); *Westar Energy, Inc.*, 153 FERC ¶ 61,143 (2015); *Alabama Power Company*, 182 FERC ¶ 61,015 (2023).

⁷ MISO Compliance Order, 146 FERC ¶ 61,212 at P 61.

⁸ *Id.*

extensions of time. Please explain how Consolidated Edison's proposed Protocols comply with these requirements.

Response:

Delay in Publication Date: As described in the proposed formula rate implementation protocols (as set forth in proposed Section 6.19.8.2.1 of Attachment 3 to Rate Schedule 19 of the NYISO OATT), the Review Period, during which an Interested Party may make information requests, begins with the Publication Date (June 15) and ends on the following January 31. During that period, Interested Parties can submit information requests through December 1 (see Section 1 of proposed formula rate implementation protocols for definitions of "Review Period," "Interested Parties," and "Publication Date," as well as Section 6 thereof as it relates to the deadline for information requests). Con Edison agrees to extend the information request deadline for any delays in the Publication Date, including when the Publication Date falls on a holiday or weekend. In addition, Con Edison agrees to move the deadline for information requests and the end of the Review Period to the next business day, in the event these dates fall on a weekend or holiday. Con Edison provides, as Attachments 2 and 3 to this filing, clean and redlined versions, respectively, of Section 6.19.8.2.1 of Attachment 3 to Rate Schedule 19 of the NYISO OATT which contains Con Edison's proposed formula rate protocols ("Protocols") incorporating these changes.⁹

Other Protocol Deadlines: As for Informal Challenges, the Protocols provide for extending the due date if the deadline falls on a holiday or weekend (see Section 8.a of the proposed Protocols). Con Edison agrees to make a comparable extension for the due date for Formal Challenges. Con Edison provides, as Attachments 2 and 3 to this filing, clean and redlined versions, respectively, of the Protocols incorporating this change.

3. Commission precedent requires that formula rate protocols include certain provisions for the disclosure of information. Consolidated Edison's proposed Protocols require Consolidated Edison to disclose this information in its Actual

⁹ The redline version of Section 6.19.8.2.1 depicts in redline format only the proposed incremental changes to the tariff revisions submitted as part of the initial June 22, 2023 filing in this proceeding.

Annual Revenue Requirements (ATTR)¹⁰ and Annual True Up Adjustments¹¹ posting, but do not require the disclosure of the information in its Annual Update posting for its “Projected ATTRs.”¹² While Consolidated Edison’s Annual Update posting for its “Projected ATTRs” provides for information exchange and challenge procedures for its “Projected ATTRs,” it does not appear to specifically provide the necessary disclosures.¹³ For example, the Commission has found that formula rate protocols must require transmission owners to disclose any change in accounting during the rate period that affects inputs to the formula rate or the resulting charges billed under the formula rate. Specifically, a change in accounting may involve: (1) the initial implementation of an accounting standard or policy; (2) the initial implementation of accounting practices for unusual or unconventional items where the Commission has not provided specific accounting direction; (3) corrections of errors and prior period adjustments; (4) the implementation of new estimation methods or policies that change prior estimates; and (5) changes to income tax elections. The formula rate protocols must also provide for identification of items included in the formula rate at an amount other than on a historical cost basis (e.g., fair value adjustments).¹⁴ Please explain how Consolidated Edison’s proposed Protocols comply with these requirements.

¹⁰ Consolidated Edison’s Protocols Section 1.d. define Actual ATTRs as “the actual annual revenue requirement of Con Edison’s Schedule 19 Projects for a Rate Year and the actual annual revenue requirement for each of Con Edison’s Schedule 10 Projects for a Rate Year calculated in accordance with the Formula Rate and posted on the ISO website no later than June 15 following the end of such Rate Year.”

¹¹ Consolidated Edison’s Protocols Section 1.e. define Annual True-Up Adjustments as “determined separately for Schedule 19 Projects and Schedule 10 Projects, the difference between the revenues collected for that Rate Year under the Formula Rate based upon a Projected ATRR (not including the True-up Adjustment or Corrections) and an Actual ATRR for the same Rate Year. The Annual True-up Adjustment is included in the applicable Annual Update for the next Rate Year.”

¹² For example, *see* Consolidated Edison’s Protocols, Section 3.c, 3.g (Actual ATRR Requirements), 3.h (Projected ATRR Requirements).

¹³ Consolidated Edison’s Protocols, Sections 3.h, 6.a, 8.a. Consolidated Edison’s Protocols, Section 1.q. defines Projected ATTRs as “the projected annual revenue requirement of Con Edison’s CLCPA Eligible Projects for the upcoming Rate Year and the projected annual revenue requirement for each of Con Edison’s Schedule 10 Projects for the upcoming Rate Year, calculated in accordance with the Formula.”

¹⁴ MISO Investigation Order, 143 FERC ¶ 61,149 at P 87.

Response: As the question states, Con Edison’s Protocols require it to provide the above-described information for accounting changes and for any item at an amount other than original cost as part of its posting of its Actual ATRR and filing of the related Informational Filing. Though Con Edison believes providing this information at the time of posting its Actual ATRR provides adequate transparency to stakeholders, Con Edison agrees to revise its Protocols to require this information also be provided with the posting of its Projected ATRR. To be clear, Con Edison will provide with the posting of its Projected ATRR information required for accounting changes and for any item which amount differs from original cost and for any reorganization or merger transactions and will also provide a narrative explanation of the individual impact of such changes on the Projected Annual Transmission Revenue Requirement. Con Edison provides, as Attachments 2 and 3 to this filing, clean and redlined versions, respectively, of the Protocols incorporating these changes.

4. The Commission found that all interested parties should be able to identify and understand all accounting changes that affect inputs to the formula rate or the resulting charges billed under the formula rate.¹⁵ The Commission found that provisions that limit utility disclosure of accounting changes to only those that are “material” are insufficient to ensure just and reasonable rates and that the word “material” must be removed from the description of the accounting changes that will be disclosed.¹⁶ The Commission noted that “by adding the concept of materiality to the accounting changes that must be disclosed, the MISO Transmission Owners reduced the transparency of financial information used in formula rate billings without sufficient support.”¹⁷ Consolidated Edison’s proposed Protocols state that, with respect to Accounting Changes that Consolidated Edison will disclose, such disclosures are limited to “correction of *material* errors and *material* prior period adjustments that impact an Annual True-up Adjustment calculation or prior Annual True-up Adjustments.”¹⁸ It appears that Consolidated Edison’s proposed Protocols also do not require Consolidated

¹⁵ MISO Compliance Order, 146 FERC ¶ 61,212 at P 66.

¹⁶ *Id.* P 65.

¹⁷ *Id.*

¹⁸ Consolidated Edison’s Protocols, Section 3.g.vi.C.

Edison to disclose this information in its Annual Update posting.¹⁹ Please demonstrate how Consolidated Edison's proposed Protocols comply with these requirements.

Response: Con Edison agrees to eliminate the materiality threshold from accounting change disclosures provided in both the Actual ATRR and Projected ATRR provisions of its Protocols and to include this information with the posting of its Projected ATRR (Annual Update) (see the response to Item 3 above). Con Edison provides, as Attachments 2 and 3 to this filing, clean and redlined versions, respectively, of the Protocols incorporating these changes.

5. The Commission has previously found that the formula rate protocols must provide that the informational filing include the information that is reasonably necessary to determine, among other things, the reasonableness of projected costs included in the projected capital addition expenditures (for forward-looking formula rates).²⁰ The Commission required that the forward-looking formula rate protocols apply to the projected revenue requirement, in addition to the true-up revenue requirements.²¹ Please explain whether Consolidated Edison's proposed Protocols, especially section 3.g with respect to the "Annual Update" and section 3.h with respect to "Projected ATRRs," comply with these requirements.

Response: Subparagraph ii. in Section 3.g of the Protocols addresses actual information, not projected, so the above requirement regarding providing information on projected capital additions does not apply to this section. Subparagraph ii. in Section 3.h of the Protocols requires Con Edison to "[p]rovide supporting documentation and workpapers for all Schedule 19 Projects and Schedule 10 Projects being added to operating property in the upcoming Rate Year that are used in the respective Projected ATRRs, including projected costs of each project, expected construction schedule and in-service dates." Con Edison believes that this satisfies the requirement to include "...the information that is reasonably necessary to determine, among other things, the reasonableness of projected costs included in the projected capital addition expenditures." Con Edison will be posting such information with its Projected ATRR. Con Edison agrees to add the requirement to provide this information in its Informational Filing. Con Edison provides, as Attachments 2 and 3 to this filing, clean and redlined versions, respectively, of the Protocols incorporating this change.

¹⁹ Consolidated Edison's Protocols, Section 3.c, 3.g.

²⁰ MISO Compliance Order, 146 FERC ¶ 61,212 at P 22.

²¹ *Id.* P 62.

6. The Commission has found that “formula rate protocols must require a transmission owner to provide: (1) a detailed description of the methodologies used to allocate and directly assign costs between the transmission owner and its affiliates by service category or function *for the applicable rate year*, including any changes to such cost allocation methodologies from the prior year, and the reasons and justification for those changes; and (2) the magnitude of such costs that have been allocated or directly assigned between the transmission owner and each affiliate by service category or function for the applicable period.”²² Please explain how Consolidation Edison’s proposed Protocols providing this information for the “prior Rate Year,” and not the “applicable rate year,” complies with this requirement.

Response: Con Edison agrees to change the language in Section 3.g.x of the Protocols from “prior Rate Year” to “applicable rate year.” Con Edison provides, as Attachments 2 and 3 to this filing, clean and redlined versions, respectively, of the Protocols incorporating this change.

7. The Commission also provided that, following the annual update, interested parties must be afforded the opportunity to obtain upon request, information on procurement methods and cost control methodologies used by the transmission owner.²³ Please explain how Consolidated Edison’s proposed Protocols comply with this requirement.

Response: In Section 6.a.vii. and ix., the Protocols provide that Interested Parties can request information on “the accuracy of actual costs and expenditures’ and ‘any other information that may reasonably have a substantive effect on the calculation of the Projected ATRRs or Actual ATRRs pursuant to the Formula Rate.” Notwithstanding, Con Edison agrees to identify specifically in this section of the Protocols, that Interested Parties can request information regarding procurement approaches and cost control methodologies. Con Edison provides, as Attachments 2 and 3, clean and redlined versions, respectively, of the Protocols incorporating this change.

8. The Commission has found that formula rate protocols cannot define the scope of various types of future section 205 filings, and the Commission will determine the

²² *Commonwealth Edison Co.*, 182 FERC ¶ 61,156, at P 28 (2023) (emphasis added).

²³ MISO Investigation Order, 143 FERC ¶ 61,149 at P 90.

scope of any future section 205 filings when such filings are made.²⁴ Consolidated Edison's proposed Protocols provide that "Con Edison may also make a limited section 205 filing to request recovery of extraordinary property losses or change or add new depreciation and amortization rates. In each case, the sole purpose of any such limited section 205 filing shall be to address whether such proposed changes are just and reasonable and shall not include other aspects of the Formula Rate."²⁵ Please explain how Consolidated Edison's proposed Protocols comply with Commission precedent.

Response: Though Con Edison is aware of many other transmission formula rate protocols that provide for limited section 205 filings for items such as those included in its Protocols, Con Edison agrees to remove this language. Con Edison provides, as Attachments 2 and 3, clean and redlined versions, respectively, of the Protocols incorporating these changes.

In addition, Con Edison has added language to Section 8.g of the Protocols to clarify that Formal Challenges are made pursuant to the Protocols and not Section 206 of the FPA.

²⁴ *ATX Sw., LLC*, 152 FERC ¶ 61,193, at P 85 (2015) ("We reject ATX Southwest's proposed Section IV.J, which attempts to define the scope of various types of future section 205 filings and is inappropriate to include in the formula rate protocols. The scope of any future section 205 filings will be addressed when such filings are made."); *Transource Kansas, LLC*, 163 FERC ¶ 61,176, at PP 13-17 (2018); *Indicated RTO Transmission Owners*, 161 FERC ¶ 61,018, at P 13 (2017) (declining to make an advance determination on single issue ratemaking for transmission owners of PJM Interconnection, LLC and Southwest Power Pool, Inc. on the basis that it was "unclear whether the specific revisions [] will affect other unchanged components of their formula rates"); *Commonwealth Edison Co.*, 182 FERC ¶ 61,156 at P 27.

²⁵ Consolidated Edison's Protocols, Section 3.k.