

## **6.19.8 Attachment 3 – Rate Mechanism for the Recovery of CLCPA Eligible Projects for Consolidated Edison Company of New York, Inc.**

### **6.19.8.1 Applicability**

This Attachment 3 to Rate Schedule 19 of the ISO OATT establishes the CFC Charge of Consolidated Edison Company of New York, Inc. (“Con Edison”). Con Edison is an Eligible Transmission Owner and may recover eligible costs for its CLCPA Eligible Projects in accordance with the requirements of Rate Schedule 19 of the ISO OATT.

### **6.19.8.2 Revenue Requirement**

For purposes of Rate Schedule 19 of the ISO OATT, the revenue requirement for the Eligible Transmission Owner’s CLCPA Eligible Projects shall be determined in accordance with the formula rate protocols set forth in Section 6.19.8.2.1 and the formula rate template set forth in Section 6.19.8.2.2. There shall be no duplicative recovery of costs as between the revenue requirement hereunder with any other Con Edison revenue requirement recovered through the ISO OATT

#### **6.19.8.2.1 Formula Rate Protocols**

##### **Section 1. Definitions**

The following definitions shall apply for purposes of this Attachment 3 to Rate Schedule 19 of the ISO OATT:

- a. **Accounting Change:** any change in accounting by Con Edison or its affiliates that affects inputs to the Formula Rate or the resulting charges billed under the Formula Rate.
- b. **Annual Review Procedures:** the procedures described in this Section 6.19.8.2.1 of Attachment 3 to Rate Schedule 19 of the ISO OATT that provide for review and challenge by Interested Parties of an Annual True-up Adjustment and Annual Update.
- c. **Annual Stakeholder Meeting:** an annual meeting for Interested Parties with the intention that Con Edison present, explain and answer questions related to an Annual True-up Adjustment

and Annual Update.

- d. **Actual Annual Transmission Revenue Requirement (“Actual ATRR”)**: 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.
- e. **Annual True-up Adjustment**: 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.
- f. **Annual Update**: determined separately for Schedule 19 Projects and Schedule 10 Projects, a Projected ATRR for the upcoming Rate Year including any applicable Annual True-up Adjustment for the prior Rate Year or any Corrections for prior years.
- g. **CLCPA Eligible Projects**: the transmission projects (or any portion thereof) owned by Con Edison that qualify as a “CLCPA Eligible Project” as such term is defined in Section 6.19.1.1 of Rate Schedule 19 of the ISO OATT. For the purposes of this Attachment 3 to Rate Schedule 19 of the ISO OATT, such transmission projects may also be referred to as “Schedule 19 Projects.”
- h. **Corrections**: determined separately for Schedule 19 Projects and Schedule 10 Projects, changes due to errors or otherwise to a prior Actual ATRR that occur after that Actual ATRR is used to determine an Annual True-up Adjustment for that Rate Year and included in an applicable Annual Update.
- i. **Formal Challenge**: a written challenge, filed with FERC, to an Annual True-up Adjustment

submitted to the Commission or to an Annual Update posted to the ISO website.

- j. **Formula Rate:** the Formula Rate Template (as set forth in Section 6.19.8.2.2 of this Attachment 3 to Rate Schedule 19 of the ISO OATT) and the Formula Rate Protocols (as set forth in this Section 6.19.8.2.1 of this Attachment 3 to Rate Schedule 19 of the ISO OATT).
- k. **Formula Rate Protocols:** The protocols under this Section 6.19.8.2.1 of this Attachment 3 to Rate Schedule 19 of the ISO OATT that provide safeguards to ensure that the input data to the formula rate is correct and accurate, that calculations are performed consistent with the formula rate, that the costs to be recovered in the formula rate are reasonable and were prudently incurred, and that the resulting rates are just and reasonable. The protocols address: (1) the scope of participation, (2) the transparency of the information exchange, and (3) the ability of Interested Parties to challenge Con Edison's implementation of the formula rate as a result of the information exchange.
- l. **Formula Rate Template:** the collection of formulas and worksheets, unpopulated with any data, included as set forth in Section 6.19.8.2.2 of this Attachment 3 to Rate Schedule 19 of the ISO OATT.
- m. **Informal Challenge:** a process by which Interested Parties may challenge certain aspects of an Annual True-up Adjustment or an Annual Update. Informal Challenges are presented to Con Edison directly.
- n. **Informational Filing:** the filing of an Annual Update and the results of the Review Period with FERC on or before February 1 of each year commencing with the completion of the initial Rate Year for which the Formula Rate is effective. This is filed at FERC for informational purposes only and does not require any action by the Commission.
- o. **Interested Parties:** any transmission customer under the ISO OATT, the New York State Department of Public Service, the New York State Department of State's Division of

Consumer Protection Utility Intervention Unit, consumer advocacy agencies, the New York Attorney General or any party that has standing in a Con Edison Formula Rate proceeding under sections 205 or 206 of the FPA.

- p. **Posting Date:** the date on which Con Edison causes to be posted to the ISO website an Annual Update, which is October 15 of each year; provided, however, that if such date falls on a weekend or holiday recognized by the Commission, the Posting Date shall be the next business day.
- q. **Projected Annual Transmission Revenue Requirement (“Projected ATRR”):** 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 Rate and posted on the ISO website no later than the Posting Date.
- r. **Publication Date:** the date on which Con Edison causes an Annual True-up Adjustment to be posted to the ISO website, which is June 15 of each year; provided, however, that if such date falls on a weekend or holiday recognized by the Commission, the Publication Date shall be the next business day.
- s. **Rate Year:** a twelve consecutive month period that begins on January 1 and continues through December 31.
- t. **Review Period:** the period during which Interested Parties may request information or make Informal Challenges to an Annual True-up Adjustment or an Annual Update. The Review Period extends from the Publication Date to January 31 of the following calendar year. Information requests can be submitted from the Publication Date through December 1 of the current year. The deadlines for information requests and the Review Period shall be extended for any delays in the Publication Date, including if the Publication Date falls on a holiday

recognized by FERC or a weekend. In addition, the deadline for information requests or for the Review Period shall be extended to the next business day if such dates fall on a holiday recognized by FERC or on a weekend.

- u. **Schedule 10 Projects:** the transmission projects (or any portion thereof) owned by Con Edison that are eligible for recovery under Rate Schedule 10 to the ISO OATT.

## **Section 2. Applicability**

These Formula Rate Protocols shall apply to Con Edison's calculation of its Projected ATRRs and Actual ATRRs, and related Annual True-up Adjustments. A timeline of the annual protocol process is contained in Section 10 of this Section 6.19.8.2.1 of Attachment 3 to Rate Schedule 19 of the ISO OATT.

## **Section 3. Projected ATRR, Actual ATRR, Annual True-up Adjustment and Annual Update**

- a. The Projected ATRRs, calculated pursuant to the Formula Rate, shall be applicable on and after January 1 of the Rate Year in which the applicable revenue requirement is to be included in transmission rates.
- b. On or before June 15 of each succeeding Rate Year (the Publication Date), Con Edison shall calculate its Actual ATRRs and resulting Annual True-up Adjustments according to the Formula Rate and cause the results to be posted on the ISO website. Within five (5) days of such posting, Con Edison shall provide (or caused to be provided) notice of such posting to Interested Parties. The ISO shall provide notice of such posting via email to Transmission Customers. Con Edison shall provide notice via email to all other Interested Parties utilizing the most recent email address provided to Con Edison.
- c. On or before October 15 of each year (the Posting Date) beginning when the applicable revenue requirement is to be included in transmission rates in the subsequent Rate Year, Con Edison shall calculate its Annual Update for the upcoming Rate Year and cause the results to be posted on

the ISO website. As part of the Annual Update, Con Edison shall determine its Projected ATRRs, calculated according to the Formula Rate. The Annual Update will also include the results of the applicable Annual True-up Adjustments for the prior Rate Year and any Corrections for prior years, when applicable. Within five (5) days of such posting, Con Edison shall provide (or caused to be provided) notice of such posting to Interested Parties. The ISO shall provide notice of such posting via email to Transmission Customers. Con Edison shall provide notice via email to all other Interested Parties utilizing the most recent email address provided to Con Edison.

- d. If the Publication Date or the Posting Date falls on a weekend or a holiday recognized by FERC, then the Publication Date or Posting Date, as applicable, shall be the next business day.
- e. Within thirty (30) days after the Posting Date (October 15), Con Edison shall hold the Annual Stakeholder Meeting to present, explain and answer questions concerning the Annual True-up Adjustments for the prior Rate Year and the Annual Updates for the upcoming Rate Year. Con Edison will provide the opportunity for remote participation at Annual Stakeholder Meetings. To ensure that Interested Parties receive sufficient advance notice of Stakeholder Meetings, Con Edison shall schedule each Annual Stakeholder Meeting at least one (1) month in advance and cause notice thereof to be posted on the ISO website. Within five (5) days of such posting, Con Edison shall provide (or caused to be provided) notice of such posting to Interested Parties. The ISO shall provide notice of such posting via email to Transmission Customers. Con Edison shall provide notice via email to all other Interested Parties utilizing the most recent email address provided to Con Edison.
- f. Con Edison shall modify an Annual Update to reflect any changes that it and the Interested Parties agree upon by no later than December 1 and shall cause the revised Annual Update to

be posted on the ISO website no later than December 15. Any change agreed to or required after November 30 will be implemented as part of the applicable Annual True-up Adjustment to be effective in the next following Rate Year. Within five (5) days of such posting, Con Edison shall provide (or caused to be provided) notice of such posting to Interested Parties. The ISO shall provide notice of such posting via email to Transmission Customers. Con Edison shall provide notice via email to all other Interested Parties utilizing the most recent email address provided to Con Edison.

- g. The Actual ATRRs and Annual True-up Adjustments posting shall:
- i. Include a workable, data-populated Formula Rate Template and any underlying workpapers in native format with all formulas and links intact and based on Con Edison's FERC Form No. 1 reports for the prior Rate Year;
  - ii. Provide supporting documentation and workpapers for data that are used in the Annual True-up Adjustments that are not otherwise available directly from the FERC Form No. 1 reports;
  - iii. Provide sufficient information to enable Interested Parties to replicate the calculation of the Annual True-up Adjustments;
  - iv. Identify any changes in the Formula Rate references (page and line numbers) to the FERC Form No. 1 report;
  - v. Identify all material adjustments made to the FERC Form No. 1 data in determining Formula Rate Template inputs, including relevant footnotes to the FERC Form No. 1 and any adjustments not shown in the FERC Form No. 1;
  - vi. Include, with respect to any Accounting Change that affects inputs to the Formula Rate Template, or the resulting Actual ATRRs under the Formula Rate:
    - A. a description of any changes in an accounting standard or policy;

- B. a description of any accounting practices for unusual or unconventional items where FERC has not provided specific accounting direction;
- C. any correction of ~~material~~ errors and ~~material~~ prior period adjustments that impact an Annual True-up Adjustment calculation or prior Annual True-up Adjustments;
- D. a description of any new estimation methods or policies that change prior estimates; and
- E. changes to income tax elections or rates;
- vii. Identify items included in the Annual True-up Adjustments at an amount other than on a historic cost basis (e.g., fair value adjustments);
- viii. Identify any reorganization or merger transaction during the previous year and explain the effect of the accounting for such transaction(s) on inputs to the Annual True-up Adjustments;
- ix. Include, for each item identified pursuant to 3.g.vi – 3.g.viii of these Formula Rate Protocols, a narrative explanation of the individual effect of such changes on Actual ATRRs under the Formula Rate; and
- x. Provide for the ~~applicable rate year~~~~prior Rate Year~~ the following information related to affiliate cost allocation.
  - A. a detailed description of the methodologies used to allocate and directly assign costs between Con Edison and its affiliates by service category or function, including any changes to such cost allocation methodologies from the prior Rate Year and the reasons and justifications for those changes; and
  - B. the magnitude of such costs that have been allocated or directly assigned between Con Edison and each affiliate by service category or function.



h. The Projected ATRRs shall:

- i. Include a workable, data-populated Formula Rate Template and any underlying workpapers in native format with all formulas and links intact;
- ii. Provide 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;~~and~~
- iii. Provide enough information to enable Interested Parties to replicate the calculation of the Projected ATRRs;
- iv. Include, with respect to any Accounting Change that affects inputs to the Formula Rate Template, or the resulting Projected ATRRs under the Formula Rate:
  - A. a description of any changes in an accounting standard or policy;
  - B. a description of any accounting practices for unusual or unconventional items where FERC has not provided specific accounting direction;
  - C. any correction of errors and prior period adjustments that impact an Annual True-up Adjustment calculation or prior Annual True-up Adjustments;
  - D. a description of any new estimation methods or policies that change prior estimates; and
  - E. changes to income tax elections or rates;
- v. Identify items included in a Projected ATRR at an amount other than on a historic cost basis (e.g., fair value adjustments);
- vi. Identify any reorganization or merger transaction during the previous year and

explain the effect of the accounting for such transaction(s) on inputs to a

Projected ATRR; and

vii. Include, for each item identified pursuant to 3.h.iv – 3.h.vi of these Formula  
Rate Protocols, a narrative explanation of the individual effect of such changes  
on Projected ATRRs under the Formula Rate.

- i. If Con Edison files any corrections to its FERC Form No. 1 that impacts an Annual True-up Adjustment, such corrections and any resulting refunds or surcharges shall be reflected in the subsequent, applicable Annual True-up Adjustment or Annual Update as a Correction, with interest.
- j. Interest on each Annual True-up Adjustment shall be determined based on the Commission's regulations at 18 C.F.R § 35.19a a(iii)(A). The interest payable shall be calculated using the average of the interest rates used to calculate the time value of money for the twenty-four (24) months during which the over- or under- recovery in the applicable Actual ATRR exists (middle of Rate Year for which the applicable Annual True-up Adjustment is being determined to the middle of Rate Year where such Annual True-up Adjustment is included in the respective Annual Update). The interest during this 24-month period will initially be estimated and then trued-up to actual and included in a subsequent, applicable Annual True-up Adjustment.
- k. Formula Rate Template inputs for (i) the ceiling rate of return on common equity for Schedule 19 Projects; (ii) the base return on equity for the Schedule 10 Projects; (iii) extraordinary property losses, and (iv) depreciation and amortization expense rates shall be stated values to be used in the Formula Rate approved by FERC order(s). Con Edison may make a limited section 205 filing to change its Schedule 19 Projects ceiling rate of return on common equity or its base rate of return on common equity for a Schedule 10 Project(s) to reflect incentive rate

of return adders, if any, which may only be included upon FERC order. Such filings shall comply with the filing requirements that FERC has established for seeking such incentives.

~~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.~~

Changes in depreciation and amortization rates to track a state commission order shall become effective only upon FERC order permitting a change in depreciation and amortization rates, which, to the extent possible, should be made effective as of the same date the state commission order becomes effective. Con Edison will include notification of any of the above changes in the applicable informational filing. Con Edison may also request transmission rate incentives pursuant to section 219 of the FPA or any superseding sections.

1. It is the intent of the Formula Rate, including the supporting explanations and allocations described therein, that each input to the Formula Rate will be taken either directly from the FERC Form No. 1 or reconcilable to the FERC Form No. 1 by the application of clearly identified and supported information. If the FERC Form No. 1 is superseded, the successor form(s) shall be utilized and supplemented as necessary to provide equivalent information as that provided in FERC Form No. 1. If the FERC Form No. 1 is discontinued, equivalent information as that provided in FERC Form No. 1 shall be utilized.

#### **Section 4. Fundamental Predicates**

- a. The Formula Rate is premised upon data reported or recorded by Con Edison consistent with the following predicates ("Fundamental Predicates"):
  - i. FERC's Uniform System of Accounts;
  - ii. Applicable FERC Form No. 1 reporting requirements;

- iii. FERC's policies governing formula rates for transmission service, including FERC's policies that all charges billed under transmission formula rates are subject to: (A) challenge on grounds of imprudence, and (B) an order by FERC requiring refunds in the manner and to the extent ordered;
  - iv. FERC orders establishing transmission ratemaking policies of general application to transmission-owning public utilities, including Con Edison; and
  - v. The accounting and cost allocation policies, practices and procedures of Con Edison to the extent consistent with the authorities listed in (i) through (iv) above.
- b. The Formula Rate is based upon each of these Fundamental Predicates as existed as of the date these Formula Rate Protocols are filed with FERC. Provisions of the Formula Rate may be modified to conform to changes in these Fundamental Predicates in accordance with Section 8 of these Formula Rate Protocols or as ordered by FERC.
- c. The Projected ATRRs and Actual ATRRs shall include 1) as it relates to CLCPA Eligible Projects, only costs for CLCPA Eligible Projects approved by the PSC as contemplated by the CSRA and such costs as are directly related to or properly allocable to transmission functions pursuant to Rate Schedule 19 of the ISO OATT and 2) as it relates to Schedule 10 Projects, only costs for projects eligible for recovery under Rate Schedule 10 of the ISO OATT and such costs as are directly related to or properly allocable to transmission functions pursuant to Rate Schedule 10 of the ISO OATT. Interested Parties shall be entitled to review and challenge (i) the reasonableness and prudence of costs and expenditures included in the Projected ATRRs and Actual ATRRs, (ii) the basis for and reasonableness of allocating all or any portion of such costs and expenditures in determining the Projected ATRRs and Actual ATRRs, and (iii) whether the allocation of costs as applied results in a disproportionate

allocation of cost to the Projected ATRRs and Actual ATRRs for charges under, as applicable, Rate Schedule 19 or Rate Schedule 10 of the ISO OATT. Any such review and challenge shall adhere to the procedures set forth in Sections 6 and 8 below.

## **Section 5. Construction Work in Progress**

- a. This section applies to any and all Con Edison Schedule 19 Projects or Schedule 10 Projects where the Commission has granted Con Edison inclusion in rate base of CWIP above 50% (“CWIP incentive”). This section does not apply to FERC’s general policy of including 50% CWIP in rate base, which, if authorized, would be treated for review like other ratebase items.
  - i. Con Edison shall use the following accounting procedures to ensure that, if authorized by a Commission order to include 100% of any CWIP in rate base, Con Edison ceases to accrue for recovery any AFUDC and, if less than 100% of CWIP in rate base is authorized, a corresponding percentage of AFUDC accruals will cease. Con Edison shall assign each Schedule 19 Project or Schedule 10 Project where the Commission has authorized the CWIP incentive a unique funding project number (“FPN”) for internal cost tracking purposes.
  - ii. Con Edison shall record actual construction costs to each FPN through work orders that are coded to correspond to the FPN for each applicable Schedule 19 or Schedule 10 Project. Such work orders shall be segregated from work orders for other Schedule 19 or Schedule 10 projects for which the Commission has not authorized Con Edison to include any portion of CWIP in rate base.
  - iii. For each applicable Schedule 19 Project or Schedule 10 Project, Con Edison shall prepare monthly work order summaries of costs incurred under the associated FPN. These summaries shall show monthly additions to CWIP and transfers to plant in service and shall correspond to amounts shown in Con Edison’s FERC Form No. 1.

Con Edison shall use these summaries as data inputs into the respective Annual True-up Adjustments. Con Edison shall make such work order summaries available upon request under the review procedures of Section 6 of these Formula Rate Protocols.

- iv. When a Schedule 19 Project or Schedule 10 Project for which the Commission granted the CWIP incentive, or portion thereof, is placed into service, Con Edison shall deduct from the total CWIP the accumulated charges for work orders under the FPN for that project, or portion thereof. The purpose of this control process is to ensure that expenditures are not double counted as both CWIP and as additions to plant.
  - v. For Schedule 19 Projects or Schedule 10 Projects for which the Commission has not granted the CWIP incentive, Con Edison shall record AFUDC to be applied to CWIP and capitalized as part of CWIP and included in the project investment when the project is placed into service.
  - vi. For Schedule 19 Projects or Schedule 10 Projects where the Commission has granted the CWIP incentive, Con Edison will include in the investment for such project's AFUDC accrued prior to the date that Con Edison first includes the CWIP for such projects in rate base.
- b. For each Schedule 19 Project and Schedule 10 Project where FERC has approved the CWIP incentive, Con Edison shall include in its Informational Filing a report that includes the following concerning each project:
- i. the actual amount of CWIP recorded for each project by month for the Rate Year;
  - ii. the current status of each project; and
  - iii. the estimated in-service date for each project.

## **Section 6. Annual Review Procedures**

Each Annual True-up Adjustment and Annual Update shall be subject to the following review procedures:

- a. Interested Parties shall have until December 1 to serve reasonable information requests on Con Edison for both the Annual True-up Adjustments and the Annual Updates. If December 1 falls on a weekend or a holiday recognized by FERC, the deadline for submitting all information and document requests shall be extended to the next business day. Such information and document requests shall be limited to what is necessary to determine:
  - i. the extent or effect of an Accounting Change;
  - ii. whether the Annual True-up Adjustments or Annual Updates fail to include data properly recorded in accordance with these Formula Rate Protocols and the Fundamental Predicates or includes data not properly recorded in accordance with these Formula Rate Protocols and the Fundamental Predicates;
  - iii. whether the costs included in the Annual Updates are properly accounted for (e.g., recordable and recorded in the appropriate accounts) under FERC's Uniform System of Accounts under 18 C.F.R. Part 101, and otherwise consistent with Con Edison's accounting policies, practices, or procedures;
  - iv. whether there are errors in the current Annual Updates and, if any are identified, whether the same or similar errors were made in prior Formula Rate filings with a further explanation identifying each Formula Rate filing in which such errors were made;
  - v. the proper application of the Formula Rate and procedures in these Formula Rate Protocols;
  - vi. the accuracy of data and consistency with the Formula Rate of the calculations

shown in the Annual True-up Adjustments or the Annual Updates;

vii. the prudence of actual costs and expenditures;

viii. the effect of any change to the underlying Uniform System of Accounts or the FERC Form No. 1;

~~viii-ix.~~ information on procurement methods and cost control methodologies used by Con Edison; or

~~ix-X.~~ 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.

- b. The information and document requests shall not otherwise be directed to ascertaining whether the Formula Rate is just and reasonable. Additionally, information requests shall not solicit information concerning costs or allocations where the costs or allocation methods have been determined by FERC (or resolved by a settlement accepted by FERC) or for Annual True-up Adjustments for other Rate Years, except that such information requests shall be permitted if they seek to determine if there has been a material change in Con Edison's circumstances.
- c. Con Edison shall make a good faith effort to respond to information requests pertaining to the Annual True-up Adjustments and Annual Updates within fifteen (15) business days of receipt of such requests. Con Edison shall respond to all information and document requests by no later than December 20 unless the information exchange period is extended by Con Edison or FERC. If December 20 falls on a weekend or a holiday recognized by FERC, the deadline for response to information requests shall be extended to the next business day.
- d. If Con Edison and any Interested Party are unable to resolve disputes related to information requests submitted in accordance with these annual review procedures, Con Edison or the Interested Party may petition FERC to appoint an Administrative Law Judge as a discovery



master. The discovery master shall have the power to issue binding orders to resolve discovery disputes and compel the production of discovery, as appropriate, in accordance with these annual review procedures and consistent with FERC's discovery rules.

- e. Con Edison will cause to be posted on the ISO website all information requests from Interested Parties and Con Edison's response to such requests; except to the extent such responses to information and document requests include material deemed by Con Edison to be confidential information (in which event such information will not be publicly posted but will be made available to requesting parties pursuant to a confidentiality agreement to be executed by Con Edison and the requesting party).
- f. Con Edison shall not claim that responses to information and document requests provided pursuant to these Formula Rate Protocols are subject to any settlement privilege in any subsequent FERC proceeding addressing Con Edison's Annual True-up Adjustments, Annual Updates, or its Formula Rate.
- g. The dates and time periods set forth in this Section 6 may be modified by agreement between Con Edison and other Interested Parties.

## **Section 7. Informational Filing**

- a. By February 1 of each year, Con Edison shall submit to FERC an Informational Filing of its Annual Updates and the results of the Annual Review Procedures. This Informational Filing must include the information that is required by Section 3, must describe any changes pursuant to the Annual Review Procedures and must describe all aspects of the formula rate or its inputs that are the subject of an ongoing dispute under the Informal or Formal Challenge procedures.

In addition, Con Edison will include supporting documentation and workpapers for all Schedule 19 Projects and Schedule 10 Projects added to operating property in the Rate Year of the respective Projected ATRRs, including projected costs of each project, expected

construction schedule and in-service dates. Within five (5) days of such Informational Filing, Con Edison shall provide (or cause to be provided) notice of the Informational Filing to Interested Parties via an email exploder list and by posting the docket number assigned to Con Edison's Informational Filing on Con Edison's website and OASIS.

- b. Any challenges to the implementation of the Annual Updates must be made through the Challenge Procedures described in Section 8 of these protocols or in a separate complaint proceeding, and not in response to the Informational Filing.

## **Section 8. Challenge Procedures**

- a. Interested Parties have through January 31 of the following year to make an Informal Challenge to Con Edison's Annual True-up Adjustments or Annual Updates. If January 31 falls on a weekend or a holiday recognized by FERC, the deadline for submitting all Informal Challenges shall be extended to the next business day. Failure to pursue at least one issue through an Informal Challenge shall bar the filing of a Formal Challenge. If at least one Informal Challenge was pursued, then a Formal Challenge may be filed on that issue or any other issue. Failure to pursue an issue with respect to any particular Annual True-up Adjustment or Annual Update shall not bar pursuit of such issue through Informal Challenge or the lodging of a Formal Challenge as to such issue as it relates to subsequent Annual True-up Adjustments or Annual Updates. This Section 8 shall in no way affect a party's rights under FPA section 206.
- b. A party submitting an Informal Challenge to Con Edison must specify the inputs, supporting explanations, allocations, calculations, or other information to which it objects and provide an appropriate explanation and documents to support its challenge. Con Edison shall make a good faith effort to respond to any Informal Challenge within twenty (20) business days of notification of such challenge. Con Edison shall appoint a senior representative to work with

the party that submitted the Informal Challenge (or its representative) toward a resolution of the challenge. If Con Edison disagrees with such challenge, Con Edison will provide the Interested Party(ies) with an explanation supporting the inputs and provide supporting calculations, descriptions, allocations, or other information. No Informal Challenge may be submitted after January 31, and Con Edison must respond to all Informal Challenges by no later than February 28, unless the Review Period is extended by Con Edison or FERC. Informal Challenges shall be subject to the resolution procedures and limitations in this Section 8.

c. Informal Challenges shall be presented to Con Edison, and Formal Challenges shall be filed before the FERC, pursuant to these Formula Rate Protocols, and both Informal and Formal Challenges shall:

- i. Clearly identify the action or inaction which is alleged to violate the filed Formula Rate or Formula Rate Protocols;
- ii. Explain how the action or inaction violates the Formula Rate or Formula Rate Protocols;
- iii. Set forth the business, commercial, economic, or other issues presented by the action or inaction as such relates to or affects the party filing the Informal Challenge or Formal Challenge, including:
  - A. The extent or effect of an Accounting Change;
  - B. Whether the applicable Annual True-up Adjustment or Annual Update fails to include data properly recorded in accordance with these Formula Rate Protocols;
  - C. The proper application of the Formula Rate and procedures in these Formula Rate Protocols;

- D. The accuracy of data and consistency with the Formula Rate of the charges shown in the applicable Annual True-up Adjustment or Annual Update, including errors as described in Section 6.a.iv, for the current, applicable Annual True-up Adjustment or Annual Update and for any prior years in which the Formula Rate included such errors;
  - E. The prudence of actual costs and expenditures;
  - F. The effect of any change to the underlying Uniform System of Accounts or FERC Form No. 1; or
  - G. Any other information that may reasonably have substantive effect on the calculation of the applicable Annual True-up Adjustment or Annual Update.
- iv. Informal Challenges and Formal Challenges may address whether costs are recorded consistent with the Fundamental Predicates in these Formula Rate Protocols and FERC's policies and regulations, how the costs charged by Con Edison's affiliates are recorded on Con Edison's books in accordance with Instruction 14 of the Uniform System of Accounts, the amounts of such affiliates' costs, and whether the costs are properly includable in transmission rates.
  - v. With respect to an issue that had previously been adjudicated by the Commission in a Formal Challenge proceeding that was not resolved by settlement, the principles of *res judicata* and *collateral estoppel* shall apply and, therefore, if a subsequent Formal Challenge is made with respect to such issue, Con Edison may move to dismiss on such grounds, the challenging party or other Interested Parties may contest whether such principles apply, and the Commission shall have the discretion to determine whether the Formal Challenge may proceed or should be dismissed.

- vi. Make a good faith effort to quantify the financial impact or burden (if any) created for the party filing the Formal Challenge as a result of the action or inaction;
  - vii. State whether the issues presented are pending in an existing Commission proceeding or a proceeding in any other forum in which the filing party is a party, and if so, provide an explanation why timely resolution cannot be achieved in that forum;
  - viii. State the specific relief or remedy requested, including any request for stay or extension of time, and the basis for that relief;
  - ix. Include all documents that support the facts in the Formal Challenge in possession of, or otherwise attainable by, the filing party, including, but not limited to, contracts and affidavits; and
  - x. State whether the filing party utilized the Informal Challenge procedures described in these Formula Rate Protocols to dispute the action or inaction raised by the Formal Challenge, and, if not, describe why not.
- d. Any person filing a Formal Challenge must serve a copy of the Formal Challenge on Con Edison. Service to Con Edison must be simultaneous with filing at the Commission. Simultaneous service can be accomplished by electronic mail in accordance with 18 C.F.R. § 385.2010(f)(3), facsimile, express delivery, or messenger. The party filing the Formal Challenge shall serve the individual listed as the contact person on Con Edison's Informational Filing required under Section 7 of these Formula Rate Protocols.
- e. Con Edison will cause to be posted on the ISO website all Informal Challenges from Interested Parties and Con Edison's response(s) to such Informal Challenges; except to the extent such Informal Challenges or responses to Informal Challenges include material deemed by Con Edison to be confidential information (in which event such information will not be publicly posted but will be made available to requesting parties pursuant to a confidentiality agreement

to be executed by Con Edison and the requesting party).

- f. Any changes or adjustments to an Annual True-up Adjustment or Annual Update resulting from the information exchange and Informal Challenge processes agreed to by Con Edison on or before December 1 will be reflected in the applicable Annual Update for the upcoming Rate Year. Any changes or adjustments agreed to by Con Edison after December 1 will be reflected in the following year's applicable Annual True-up Adjustment.
- g. If Con Edison and a challenging party have not resolved an Informal Challenge to an Annual Update, the challenging party shall have the right to submit by May 1 a Formal Challenge with the FERC, which shall be served on Con Edison on the date of such filing as specified in Section 8.d., above. If May 1 falls on a holiday recognized by FERC or on a weekend, the deadline for submitting a Formal Challenge shall be extended to the next business day. However, there shall be no need to make a Formal Challenge or to await conclusion of the time periods in this Section 8 if the FERC already has initiated *sua sponte* a proceeding to consider the corresponding Annual Update. A Formal Challenge shall be filed pursuant to these Formula Rate Protocols rather than Section 206 of the FPA and in the same docket as Con Edison's informational filing discussed in Section 7 of these Formula Rate Protocols. Con Edison shall respond to the Formal Challenge by the deadline established by FERC. A party may not pursue a Formal Challenge if that party did not submit an Informal Challenge on at least one issue during the applicable Review Period.
- h. In any proceeding initiated by FERC concerning an Annual True-up Adjustment or Annual Update or in response to a Formal Challenge, Con Edison shall bear the burden, consistent with FPA section 205, of proving that it has correctly applied the terms of the Formula Rate consistent with these Formula Rate Protocols, and that it followed the applicable requirements and procedures in these Formula Rate Protocols. Nothing herein is intended to alter the

burdens applied by FERC with respect to prudence challenges.

- i. In the event an error, as further described in Section 6.a.iv, is identified in an Annual True-up Adjustment or Annual Update and such error was present in prior Annual True-up Adjustments or Annual Updates, an Interested Party may request a FERC order making any correction or providing other remedial relief retroactive to the first Formula Rate filing in which such error occurred. Con Edison retains all rights to oppose such a request.
- j. Except as specifically provided herein, nothing herein shall be deemed to limit in any way the right of Con Edison to file unilaterally, pursuant to FPA section 205 and the regulations thereunder, to change the Formula Rate or any of its inputs (including, but not limited to, ceiling rate of return on common equity for Schedule 19 Projects, base rate of return on common equity for Schedule 10 Projects, and transmission incentive rate treatment), or to replace the Formula Rate with a stated rate, or the right of any Interested Party to request such changes pursuant to FPA section 206 and the Commission's regulations thereunder.
- k. No Interested Party shall seek to modify the Formula Rate under the challenge procedures set forth in this Section 8, and the Annual True-up Adjustments and Annual Updates shall not be subject to challenge by anyone for the purpose of modifying the Formula Rate. Any modifications to the Formula Rate will require, as applicable, an FPA section 205 or section 206 filing.
- l. Any Interested Party seeking changes to the application of the Formula Rate due to a change in the Uniform System of Accounts or FERC Form No. 1 shall first raise the matter with Con Edison in accordance with this Section 8 before pursuing a Formal Challenge.

## **Section 9. Changes to Annual Informational Filings**

Any changes to the data inputs as a result of revisions to Con Edison's FERC Form No. 1 or as a result of any FERC proceeding to consider an Annual True-up Adjustment or as a result of the

procedures set forth herein shall be incorporated into the Formula Rate (with interest determined in accordance with 18 C.F.R. § 38.19a) in the applicable Annual Update for the next effective Rate Year. This approach shall apply in lieu of mid-Rate Year adjustments or any refunds or surcharges. However, actual refunds or surcharges (with interest determined in accordance with 18 C.F.R. §38.19a) for the then current Rate Year shall be made if the Formula Rate is replaced by a stated rate by Con Edison.

## Section 10. Example Timeline of Annual Process

