NYPA's Governmental Customer Production Rate and Delivery Rate Structure Redesign – Notice of Adoption

Exhibit B

Written Comments Received

Westchester
gov.com

Robert P. Astorino
County Executive

Kevin J. Plunkett
Deputy County Executive

By: Hand
May 31, 2011

Karen Delince, Corporate Secretary
New York Power Authority
123 Main Street, 11-P
White Plains, New York 10601

Re: NYPA Rate Redesign

Dear Ms. Delince:

The Power Authority of the State of New York ("NYPA") proposes to implement a realignment of rates for production and delivery services for its Southeast New York ("SENY") Governmental customers, including its New York City Governmental Customers ("NYC Customers") and its Westchester County Governmental Customers ("Westchester Customers"). On April 13, 2011, pursuant to the provisions of the State Administrative Procedure Act, Notice was given in the New York State Register of NYPA's proposed Rule Making as it relates to the above matter.

Background:
NYPA acknowledges that over time there has developed a divergence between the Delivery Rates charged to NYPA by Con Edison and the Delivery Rates charged by NYPA to its SENY customers. This has resulted not only in a divergence between the rates but an annual over-collection by NYPA from its SENY customers of approximately $9.5 million per year. NYPA has been tracking and setting aside this over-collection in a separate fund (the "Fund") since the

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end of 2005, which Fund has an accumulated net balance of approximately $39 million as of January 2011. NYPA also reviewed its Production Rates and determined that they require realignment in order to eliminate subsidies between service classes. NYPA Staff acknowledged these problems, retained the firm of Black & Veatch to assist in the study of these issues, and met with representatives of its NYC Customers and Westchester Customers over the last twelve months to discuss these matters and attempt to seek a resolution that was satisfactory to most, if not all customers. NYPA Staff proposes to correct the above rate issues by returning the Fund to the SENY customers in 2011; realigning the Delivery Rates, so that they are consistent with the Con Edison Delivery Rates; and eliminating subsidies in its Production Rates, all as outlined in the "Memorandum to the Trustees from the President & Chief Executive Officer, Subject: NYPA's Governmental Customer Production Rate and Delivery Rate Structure Redesign – Notice of Proposed Rulemaking dated March 29, 2011" ("Memorandum").

Comments:

The County of Westchester respectfully submits the following comments in response to the Notice of Proposed Rule ("NOPR"). NYPA has stated that the purpose of the Rate Redesign is to properly align costs with rates and to comply with the terms of its respective contracts with its NYC Customers and Westchester Customers. It is understood that the proposed Rate Redesign will impact Production Rates, Delivery Rates, and will return the Fund to its customers.

Agreements:

NYPA has been serving the SENY customers since 1976. There are 104 Westchester County Governmental customers served by NYPA, consisting of the County of Westchester plus 103 cities, towns, villages, school districts, fire districts and other local governmental agencies located in the County of Westchester. The terms of the original agreements (1976 Agreements) between NYPA and the various Westchester customers were modified through the 2007 "Supplemental Agreements", all of which contain the same terms. Each of those Supplemental Agreements requires the pass-through of Con Edison Delivery Rates to each of the Westchester customers. In addition, it should be noted that other terms of the agreements between NYPA and the Westchester Customers are different from NYPA's agreements with its NYC Customers, including the factors that go into the calculation of Production Rates.

Production Rates:

The Westchester Customers each entered into an identical contract with NYPA. Those contracts with the Westchester Customers contain distinct terms, which differ in certain significant regards relevant to this discussion from the contracts with NYC Customers, including, but not limited to, the utilization of different production facilities and the utilization of hedging instruments. Westchester does not believe there is any disagreement about the fact that the adjustment in Production Rates should and must be handled separately for the customers in Westchester and those in New York City.

NYPA Staff also proposes to impose a minimum charge for Production Rates. The level has yet to be stated and may be minimal but there does not appear to be adequate explanation for the imposition of such a charge and until the amount and explanation is provided Westchester would reserve judgment.

Delivery Rates:

NYPA Staff has recommended implementing new, cost-based Delivery Rates for all customers. The recommended Delivery Rate structure is designed to match NYPA's Delivery Rates to Customers to the rates Con Edison charges NYPA, including minimum bill provisions. Staff recommends that the correlation of Con Edison and NYPA Delivery Rates be implemented in full for Westchester Customers effective July 1, 2011 concurrent with the adjustment of Production Rates, while the change in Delivery Rates for NYC Customers would be phased in over approximately four years. Westchester will attempt to limit its comments to the issue of realignment of rates for the County of Westchester.

The Supplemental Agreement between NYPA and the County of Westchester[1] effective January 1, 2007 clearly indicates that Westchester and each of the other Westchester Customers are entitled to be charged the Con Edison Delivery Rates, no more and no less. The contract provides that NYPA will use a true-up mechanism to assess to each customer individually the charges for under recovery and apply credits for over-recovery of Con Edison Delivery Rates.

> "Delivery Rates: NYPA will pass on to Customer, on a basis that is revenue neutral to NYPA, all charges related to the supply of electricity to Customer assessed by the Consolidated Edison Company of New York, Inc. ("Con Edison") or any other entity for which NYPA is required to secure transmission and delivery service. To the extent necessary and practicable, NYPA will use a true-up mechanism to assess charges for under-recovery and apply credits for over-recovery of Con Edison delivery charges. …" (2007 Agreement, §§ II C, p. 4)

As acknowledged by NYPA, the NYC Customers contracts contain different terms. In fact, it is understood that the contract with the NYC Customers states that they are supposed to be charged, on an aggregate basis, the Con Edison Delivery Rates. On such a basis, there is now a minimal annual overpayment by the NYC Customers, according to the Black & Veatch study, of $1.06 million out of total NYC customer Delivery Rates of over $650 million. In contrast, the current annual overcharge to the Westchester customers is $8.5 million out of total Delivery Rates of about $41 million.

Notwithstanding the above, whether the City has an agreement with similar language in it is not relevant as to the contract rights of the Westchester customers. NYPA has agreements with the Westchester Customers, and under those contracts the Westchester Customers have no more responsibility for the mitigation costs for NYC customers than any other NYPA non-SENY customer in New York State.[2]

As NYPA has acknowledged, Westchester and the other Westchester Customers that are receiving NYPA power over the Con Edison transmission and distribution system are being

[1] Each of the other 103 municipal entities in Westchester that are NYPA SENY customers entered into a contract with the same terms.
[2] According to the NYPA website http://www.nypa.gov/services/customers.htm, there are over 750 such customers in NYS, none of which are being asked to bear any of these mitigation costs.

overcharged annually by $8.5 million for delivery service. Therefore, based on the information provided by NYPA, as recommended by NYPA Staff, to insure transparency in the future between the rates charged by Con Edison to NYPA and the rates NYPA charges to its Westchester Customers, to comply with the requirements of the Supplemental Agreements with the Westchester Customers, and to mitigate the increase in Production Rates for the County of Westchester, Delivery Rates in Westchester should be reduced by $8.5 million effective July 1, 2011.

The above referenced contract language provides a clear solution and simplifies a number of the outstanding issues. The resolution of the issue of overpayment by the Westchester Customers should be treated separately from that of the NYC Customers, as recommended in the Memorandum. This is a contractual issue between NYPA and the Westchester Customers and should be treated accordingly. Therefore, the Board of Trustees of NYPA should adjust the Delivery Rates for Westchester Customers so that they are consistent with Con Edison's Delivery Rates to NYPA effective July 1, 2011.

Historic Overpayments:

NYPA has clearly stated that "[o]f the $9.5, it is estimated that Westchester overpays $8.5 million" Exhibit A, pg. 4 of 7 to the Memorandum, thereby contributing approximately 89% to the fund. It is understood, that pursuant to a separate procedure it has been proposed that 5.15% of the over-collection will be returned to the County of Westchester and 10% of the over-collection will be returned to the other 103 governmental customers in Westchester. The County of Westchester acknowledges that it has not challenged this allocation, even though an argument could be made for a larger share of the Fund, in consideration and anticipation of the immediate realignment effective July 1, 2011, of the Delivery Rates as proposed in Rate Redesign Exhibit A – Schedule 1, Estimated Customer Bill Impacts, Ibid.

The County of Westchester provided further comments on the return of the Fund in a separate filing dated May 20, 2011.

Coincident Peak - 1CP:

Though not explicitly stated in the recommended plan, 1CP was used in the Production Cost Study. The County of Westchester does not object to the use of 1CP as the means to allocate production costs among NYPA's SENY customers. It is acknowledged that NYPA's capacity requirements are set by the NYISO based on this single hour coincident peak. However, Westchester is concerned on the impact 1CP may have on future production cost allocations for certain customers, particularly if the peak occurs outside of the months of July and August. Such an outcome may create a short lived unfavorable impact for school districts. Some mitigation technique may be required such as averaging two or more year's 1CP. It may be appropriate to defer this issue for the future, when the actual impacts of a June or September based 1CP allocation is known.

Conclusion:

For the above stated reasons, the recommendations as contained in the Memorandum to the Trustees dated March 29, 2011 should be adopted effective July 1, 2011 as it relates to the Rate Redesign for Production and Delivery Rates for Westchester County Governmental Customers.

Respectfully submitted,

Kevin Plunkett
Deputy County Executive

KP/SMG:me

cc: Robert P. Astorino
by e-mail
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May 23, 2011

VIA E-MAIL AND FEDEX

Ms. Karen Delince
Corporate Secretary
New York Power Authority
123 Main Street, 11-P
White Plains, New York 10601

Re: SAPA No. PAS-15-11-00020-P – NYPA Recommended Plan for Implementation of a NYPA Governmental Customer Production Rate and Delivery Rate Redesign

Dear Ms. Delince:

Enclosed please find the Comments of the City of New York on the New York Power Authority's ("NYPA") Recommended Plan for implementation of a NYPA Governmental Customer production rate and delivery rate redesign. These comments are submitted in response to the notice published in the State Register on April 13, 2011.

If you have any questions regarding these comments, please feel free to contact me.

Sincerely,

COUCH WHITE, LLP

Adam T. Conway

ATC/glm
Enclosure
Via Email:
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Mr. Mitch Gipson, Chief of Staff, DCAS
Ms. Ariella Maron, Deputy Commissioner, DCAS Energy Management
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POWER AUTHORITY
OF THE STATE OF NEW YORK

NYPA Recommended Plan for Implementation of A NYPA Governmental Customer Production Rate and Delivery Rate Redesign	SAPA No. PAS-15-11-00020-P

COMMENTS OF THE CITY OF NEW YORK

May 23, 2011

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PRELIMINARY STATEMENT

On March 29, 2011, the New York Power Authority ("NYPA") distributed NYPA Staff's "Recommended Plan for Implementation of a NYPA Governmental Customer Production Rate and Delivery Rate Redesign" ("Recommended Plan") to its Governmental Customers. On April 13, 2011, NYPA published notice of the Recommended Plan in the New York State Register.

The City of New York ("City") is one of the Governmental Customers that will be affected by the proposed rate revisions. Therefore, in accordance with the notice and Section 202 of the State Administrative Procedure Act, the City hereby submits these comments on NYPA's Recommended Plan.[1]

BACKGROUND

In 1976, NYPA assumed the responsibility to provide electric service to the City. The City entered into a contract with NYPA that sets forth the terms and conditions of the parties' relationship ("1976 Agreement"). On or about March 18, 2005, NYPA and the City entered into a Long Term Agreement ("LTA"), which is the most recent amendment of the 1976 Agreement.

Pursuant to the terms of the LTA, NYPA is proposing to re-design the production and delivery components of the rates it charges the City. As part of the re-design, NYPA procured the services of the consulting firm Black & Veatch to perform cost of service studies and analyze service class and customer-specific rate impacts based on the recommended rate

[1] The Governmental Customers include customers located in New York City and Westchester County. The comments contained herein are limited to the City's position on the Recommended Plan and do not reflect the position of any other customer of NYPA.

structures. Black & Veatch's initial report was released in September 2010, and that report was supplemented and updated in a March 2011 Addendum. In addition, NYPA Staff has held several meetings and/or conference calls with the Governmental Customers regarding the rate redesign.

SUMMARY OF POSITION

In general, the City supports many aspects of the Recommended Plan. Specifically, the City supports: (1) the methodology that NYPA used to classify and allocate production-related costs in the cost of service study; (2) NYPA's proposed July 1, 2011 implementation date for new production rates and the plan for biennial production cost of service updates; (3) NYPA's initiation date for the start of the phase-in to Con Edison's delivery rates, and does not oppose NYPA's proposed four-year phase-in period; (4) NYPA's proposal to delay the impact of Con Edison's April 2011 delivery rate increase until July 1, 2011; (5) NYPA's proposed allocators for refunding, with interest, accumulated overcollections of delivery revenues;[2] and (6) NYPA's proposed July 1, 2011 implementation of a new standby tariff.

However, the Recommended Plan proposes to implement the new production and delivery rates beginning in July 2011; this will result in less than complete mitigation of the interclass subsidies identified in Rate Year 1 if one-twelfth (1/12) of the interclass subsidies identified is repaid monthly for only half a year. Accordingly, for the reasons set forth in more detail below, the City respectfully requests the NYPA Board of Trustees to modify the Recommended Plan to ensure that the Rate Year 1 interclass subsidies identified in the Black & Veatch March 2011 Addendum are fully mitigated in Rate Year 1. In addition, in response to a

[2] The City recently filed separate comments with NYPA Staff regarding the amount of interest due on the delivery service overcollections, the appropriate refund methodology, and refund timing and process.

provision to the contrary set forth in the Recommended Plan, the City requests that NYPA maintain a neutral position on any future rate design changes to Con Edison's PASNY No. 4 rate.

DISCUSSION

A. The City Supports Many Aspects of the Recommended Plan

The proposed, cost based production rates are derived from the allocation of production costs to each service class based on a 2009 NYPA load research study. Certain production related costs and revenues are allocated using customer peak demands at the time of the New York Independent System Operator ("NYISO") peak (i.e., 1 CP methodology). The City supports utilization of the 1 CP production cost allocation methodology because it is more reflective of actual cost causation principles and is the approach used by the NYISO for cost allocation purposes. Further, the 1 CP methodology provides the most accurate price signals to customers. For example, a customer is more likely to reduce its demand during the time of the system peak if it knows that its demand at that time will result in a higher allocation of costs to it.

Under the Recommended Plan, the new production rates will become effective with the July 2011 billing period. The Recommended Plan also proposes a biennial update to the production cost of service, which will incorporate and consider, among other things, updated load research, a review of all cost allocation bases, a new cost-of-service study, and a new marginal cost analysis. This process will help ensure that production rates continue to remain cost based on a forward looking basis as customer load profiles change. Accordingly, the City supports the start date for new production rates and the biennial update.

The Recommended Plan also proposes to implement delivery rates for all Governmental Customers that are based on the delivery rates charged to NYPA by the

Consolidated Edison Company of New York, Inc. ("Con Edison"). This approach is appropriate and represents a pure pass-through of the actual distribution-related costs incurred by NYPA. It further eliminates the approximately $9.6 million annual over collection of Con Edison's delivery charges by NYPA. Con Edison provides the delivery service to NYPA's customers, and the utility's delivery rates are subject to the review and approval of the Public Service Commission. Thus, utilization of Con Edison's delivery rates is appropriate.

The Recommended Plan notes that an immediate implementation of Con Edison-based delivery rates would cause delivery rates to rise by nearly 200% for two of NYPA's Governmental Customers. Based on this severe impact, NYPA has proposed a four-year transition to Con Edison delivery rates for most customers beginning in 2011.[3] (Recommended Plan at 4-6). Although it desires a more rapid phase-in, the City is willing to accept the proposed four-year plan to align NYPA's delivery rates with Con Edison's delivery rates, subject to the comments set forth herein, because the phase-in balances the need to move to the Con Edison delivery rates expeditiously with the desire to soften the impact on customers that currently are paying too little for delivery service.

Con Edison's delivery rates increased in April 2011. The Recommended Plan proposes to delay passing the impact of Con Edison's April 2011 increase to its Governmental Customers until July 2011. The City supports this deferral because it avoids an unnecessary rate hike by utilizing an existing over collection balance that NYPA has improperly accrued.[4]

In addition, the City supports the allocators from Schedule 2 of the Recommended Plan to refund the delivery over-collections (with interest) accumulated through June 30, 2011. Schedule 2 of the Recommended Plan contains a refund allocation percentage for each

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[3] New delivery rates for Westchester County will be implemented immediately.

[4] NYPA has conceded that it has over-collected from its Governmental Customers for delivery services.

Governmental Customer, and each customer's delivery credit for past over-collections will be determined using the proposed refund allocation percentages applied to the total over-collection balance. In the absence of a customer-by-customer accounting of the delivery over-collection balance, the City supports the use of the NYPA allocators as a fair representation of each customer's portion of the delivery over-collection balance.

Finally, the production rate redesign under the Recommended Plan will implement new Standby and Net Metering tariff provisions in July 2011. (Id. at 2-3). The City is supportive of NYPA's proposed Standby tariff rate provisions because they: (1) follow conventional practice of basing the contract (or reservation) demand charge on a reasonable forced outage rate; (2) follow the standard format used in New York for assessing the actual standby service taken via a prorated daily demand charge; and (3) adequately distinguish actual standby service from supplemental service.

B. The Recommended Plan Should Be Modified in Several Respects

Despite the City's general support for the Recommended Plan, the City is concerned that the proposed July 2011 implementation date for the new production rates will not fully mitigate the interclass subsidies in Rate Year 1. Specifically, the Recommended Plan notes that based on the new production rates, the City's rates for production service should decrease by approximately $4 million in 2011, the first rate year under the new rate plan. (See Recommended Plan at Sch. 1). Under the Recommended Plan, NYPA is obligated to perform a redesign update at year-end 2011 for the 2012 rate year because NYPA's rate year for production charges is the same as the calendar year. Based on the July 2011 implementation date, the City is concerned that the Year 1 production rate changes will not be fully realized in the remaining months of 2011, only mitigating 50% or less of the identified Rate Year 1 interclass subsidies.

In order to ensure that the new production rates fully mitigate the existing interclass subsidies, the City respectfully requests the Board of Trustees to clarify that the approved production rate changes will result in the full realization of each rate class's Year 1 rate change, as identified in Schedule 1 of the Recommended Plan, during the remaining months of 2011.

Similarly, the City is concerned that the proposed July 2011 implementation date for the new delivery rates will not fully mitigate the interclass subsidies in Rate Year 1. The rate year for delivery service runs from April to May. If new delivery rates become effective in July 2011, the new delivery rates will only mitigate about 75% of the identified Rate Year 1 interclass subsidies. As a result, the City respectfully requests the NYPA Board of Trustees to clarify that the new delivery rates will result in the full realization of each rate class's Year 1 rate change, as identified in Schedule 1 of the Recommended Plan, during the remaining months of 2011 and the first quarter of 2012 (i.e., distribution Year 1).

Finally, the Recommended Plan notes that any future increases to Con Edison delivery rates will be "passed on to Customers by rate component directly as they are charged to NYPA by Con Edison." (Id. at 5). Additionally, the Recommended Plan includes a yearly true-up mechanism to ensure that the delivery charges billed by NYPA to its Governmental Customers match the charges billed by Con Edison to NYPA. While the City is generally supportive of the Recommended Plan's treatment of future Con Edison delivery rate increases, it is opposed to NYPA's commitment in the Plan to seek a special, customer-specific rate in the next Con Edison electric rate case. (Id. at 6). It is premature for NYPA to make such a commitment so far in advance of that rate filing, and without any basis for believing that Con Edison's cost of service study will support such a new rate. Accordingly, the City respectfully requests the NYPA Board of Trustees to clarify that NYPA is not committed at this time to advocating any particular re-design of Con Edison's delivery service rates in a future Con Edison rate proceeding.

CONCLUSION

The City respectfully requests that the Recommended Plan be adopted by the NYPA Board of Trustees in accordance with the discussion and recommendations set forth herein.

Dated: May 23, 2011
Albany, New York

Respectfully submitted,

Robert M. Loughney

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Metropolitan Transportation Authority
State of New York

May 31, 2011

Ms. Karen Delince
Corporate Secretary
Power Authority of the State of New York
123 Main Street, 11-P
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Re: Comments of Metropolitan Transportation Authority ("MTA") on Power Authority of New York's Proposed Rule Making Relating to Rates for Production and Delivery Services; I.D. No. PAS-15-11-00020-P

Dear Ms. Delince:

We understand that at the March 29th, 2011, meeting of the Board of the Power Authority of New York ("PASNY"), the PASNY staff presented to the Board and to the public the results of the production and delivery rate redesign study for both production and delivery services charged to its NYC Governmental Customers and its Westchester County Governmental Customer. We also understand that the Board then adopted proposed rates and has sought public comment. MTA's comments on the proposed rates and rate-making process follow.

As a threshold matter, as described below, MTA does not believe that PASNY complied with the requirements of the 2005 Long Term Agreement between MTA and PASNY ("LTA") with respect to the rate redesign study. MTA, with the assistance of an energy consultant, conducted its own review of the PASNY rate redesign study and concluded that because of misalignments between the Con Ed rate allocation methodology and the PASNY 4 rate, MTA will be significantly overpaying for its delivery services if the proposed PASNY rates are adopted. MTA made its concerns known to PASNY. MTA believes that this misalignment can be addressed through adjustments to Con Ed's rate structure, but such changes cannot be made until the next Con Ed rate case, which will begin next year. While we appreciate that PASNY has agreed to assist MTA in this regard by agreeing to request an MTA-specific delivery charge rate during the next Con Ed rate case, we do not think that is the solution to the proposed unfair rate increase on MTA. The LTA requires that the PASNY delivery service rate changes must be aligned with the costs of serving each individual customer. Passing the Con Ed rate structure through to the NYC Governmental Customers does not comply with the terms of the LTA.

Finally, if PASNY were to adopt the proposed rates and not take into account the adverse impact to MTA of the inappropriate alignment between the Con Ed rate classes and the PASNY rate classes, MTA's delivery costs for PASNY power would increase nearly 200% per year. Implementing such an increase is itself inappropriate because it will result in MTA overpayment for delivery services, but implementation in one year would result in a wholly unfair and undue financial burden to the MTA and the public transportation riders of New York, many of whom are in our most economically vulnerable populations.

1. **<u>PASNY did not comply with the requirements of the 2005 Long Term Agreement with MTA with respect to the subject rate design study.</u>**

For the past 20 years, PASNY has historically ignored the Con Ed PASNY 4 Rate I & II rate structures and has maintained and utilized the rate structure PASNY inherited from Con Ed.. As part of the negotiation of long-term supply agreements with the NYC Governmental Customers, a mechanism was agreed to for undertaking cost of service studies. Article VI of the LTA (and mirrored in the long-term supply agreements with the other NYC Governmental Customers) provides that:

> "VI. Rate Design Study, New Tariffs
>
> NYPA will complete COS studies of the demand, energy, and delivery charges in NYPA's tariffs by March 31, 2008. Any such studies shall be performed with input and concurrence from the NYC Governmental Customers on the scope, design, data collection and cost allocation method to be employed, it being the goal of the Parties to, inter alia, redesign rates so that the rates charged to the NYC Governmental Customers are aligned with costs, all on a basis that is revenue neutral to NYPA and in a manner that recognizes individual customer bill impacts and ameliorates such impacts. The results of such studies will be shared with the NYC Governmental Customers and the NYC Governmental Customers agree that, as provided below, the appropriate tariff changes shall be implemented. After the studies are completed, and in cooperation with the NYC Governmental Customers, NYPA will initiate the public comment and approval process under SAPA to adopt appropriate tariff changes. The cost of any such studies and the cost of any metering or other equipment required to provide data for such studies or to implement the results of studies shall be included in the COS and borne by the NYC Governmental Customers unless such costs can be specifically assigned to a particular NYC Governmental Customer or Customers (e.g., metering costs)."

Although PASNY provided MTA with the opportunity to comment on the RFP for the rate redesign study and to comment on the interim and final rate redesign report, PASNY did not obtain MTA's concurrence on the design, data collection and cost allocation method employed in the final Black & Veatch study. MTA repeatedly identified problems and mistakes with the methodology employed by Black & Veatch, and PASNY declined to adopt MTA's proposed revisions and corrections to such methodology.

With respect to NYC Governmental Customer concurrence, Article V of the long-term agreement provides that:

> "V. Decisions by the NYC Governmental Customers
>
> Wherever in this Agreement a decision of the NYC Governmental Customers as a group is required, such decisions shall be made binding on Customer if made by the NYC Governmental Customers representing at least 80 percent of the total actual annual energy usage supplied by NYPA by kilowatt hour during the most recent full calendar year for which such information is available."

Given MTA's percentage of energy usage, MTA concurrence, which was never formally obtained, was required on the design, data collection and cost allocation methods employed by PASNY in the rate redesign study. Without MTA concurrence, PASNY's entire rate redesign study and the enforceability of the proposed PASNY rates with respect to supply of MTA energy under the LTA could be considered invalid.

2. **<u>The PASNY 4 Rate I rate structure does not align with Con Ed's unbundled cost of service and the PASNY rate redesign should not be implemented until the Con Ed rate plan includes a rate class that is specific to MTA's unique consumption and demand patterns.</u>**

The State of New York Public Service Commission ("PSC") Order & Three Year Electric Rate Plan ("Con Ed Rate Plan") dated March 26, 2010 established a three year phase-in rate increase plan for Con Ed customers. Over the three year period, the Con Ed Rate Plan will result in a total overall delivery service rate increase to PASNY of 34.67% (compounded). Phase 1 is 12.42% as shown in the following table.

Annual Rate Increases

Year	Average Percentage Rate Increase	PASNY Percentage Rate Increase
1	10.607702	12.417926
2	9.526386	9.526386
3	8.647221	9.372559

The Con Ed Rate Plan was the result of a settlement agreement among parties in the case. Although the settlement agreement dictated an overall change in class cost of service and was not strictly based on cost of service results, we would expect that rate design would consider the cost of service results so that intra-class subsidies would be addressed. This was not the case, as Con Ed applied an across the board percentage rate adjustment to the existing rate structure that met the PASNY rate class revenue requirement per the settlement agreement.

Based on our review of the Con Ed rate design process, it appears that the across the board rate design methodology employed by Con Ed does not reflect the underlying cost of service as prepared by Con Ed and presented in the rate case. Specifically, we believe that the Con Ed rate structure of the PASNY 4 Rate I-Conventional rate tariff improperly reflects the cost differential between high and low tension service. Based on our analyses, the cost differential between high and low tension service is on the order of 26% rather than the 10% currently reflected in the Con Ed rate tariff. In other words, the high tension rate should be 26% lower than the low tension rate. Because MTA receives a significant amount of power at high tension, the impact of this rate design disparity significantly overcharges MTA for delivery service.

Looking at this disparity from another perspective, the PASNY 4 Rate II-Time of Day calculates high and low tension differentials for the summer and winter seasons. The differentials for the summer and winter seasons are 45% and 37% respectively. Because of the above evidence, the PASNY 4 Rate I rate design proposed by PASNY does not accurately reflect the cost of serving MTA and, if adopted, will result in substantial overpayments by MTA.

To make matters worse, the billing determinates used by Con Ed in its rate design process are suspect due to significant levels of estimated bills (nearly 40%) as mentioned in Alan Rosenberg's testimony in Docket No. 09-E-0428. In this regard, we are aware that PASNY is working with Con Ed to reconcile numerous discrepancies between PASNY customer counts and meter reads. Inaccurate billing determinates create inaccurate cost of service allocations which likely result in inaccurate rate design.

Given the above described infirmities with the current Con Ed rate structure, we believe this is not the proper time for PASNY to make significant changes to delivery service charge rate structures. Such a rate redesign should only be implemented after the proper Con Ed delivery service charge rate structure has been determined. MTA recognizes that the PASNY delivery service charge rate specific to Service Class 85 is below cost of service largely due to the declining block rate structure but that can only be fairly adjusted when it is aligned with a parallel Con Ed rate class.

3. **<u>The LTA requires that the PASNY delivery service rate changes must be aligned with the costs of serving each individual customer and the proposed PASNY rates do not meet that requirement.</u>**

Article VI of the LTA provides that the goal of the PASNY rate redesign process is "to redesign rates so that the rates charged to the NYC Governmental Customers are aligned with costs, all on a basis that is revenue neutral to NYPA and in a manner that recognizes individual customer bill impacts and ameliorates such impacts." The proposed PASNY rate redesign does not align actual delivery costs to individual customers and would result in a significant and unexpected potential rate shock that should have been addressed in the prior Con Ed rate case. Under the LTA, PASNY is required to obtain MTA's concurrence with the methodology adopted by Black & Veatch in its Production Rate Redesign, Delivery Service Rate Modifications and Production Cost of Service ("PASNY Report"). PASNY never obtained such concurrence and MTA noted its objections on numerous occasions. MTA's position is that the PASNY Report unfairly charges MTA for its delivery costs by passing through the unfair Con Ed rate structure, thus violating the provisions of the LTA and that PASNY's failure to obtain MTA's concurrence further violates the provisions of the LTA.

4. **<u>If PASNY decides to implement massive delivery rate increases on MTA, such delivery service rate changes must be phased in following industry practice to avoid an unduly burdensome financial hardship to MTA.</u>**

The PASNY Report calculates the impact on Service Class 85 related to the adoption of the PASNY rate structure as follows:

Delivery Service Charge Rate Impact on Service Class 85

	MTA Pays Under Current Rates ($)	MTA Pays Under Proposed Rates ($)	Difference ($)	Difference (%)
Delivery Service Service Class 85 (1)	24,129,488	71,313,411	47,183,923	195.5%

(1) PASNY Report page 3-2

The nearly 200% increase to this rate class is extraordinary and violates important rate setting principles related to gradualism in rate design and minimizing rate shock to customers. This 200% rate increase is partially offset by cost decreases in other MTA service classes. However, in total the delivery charge tariff is increasing by over 41% at an annual cost of $37.6 million. Importantly, this significant rate increase represents only Phase I of the Con Ed Rate Plan as approved by the PSC. The impact will only be exacerbated as later phases of the Con Ed Rate Plan become effective.

MTA and our customers cannot afford such a dramatic and immediate increase in delivery service costs. Therefore, a gradual phase-in of whatever rate increase is finally adopted and legally binding should, at the very least, take place over a four year period.

Generally, when disproportionately large rate increases are implemented with respect to particular customer classes, these increases are phased-in over time to minimize the rate shock. The phase-in periods are determined based on the economic impact of proposed rate increases on the customers and the regional economy. In this case, MTA believes that a four year phase-in period is the minimum reasonable period. In addition to smoothing the economic impact, it will give MTA the ability to properly plan and respond to the higher power costs. Additionally, the four year phase-in period provides adequate time to review and petition for adjustments during Con Ed's next rate setting process.

In conclusion, MTA believes that:

1. PASNY did not comply with the requirements of the LTA with respect to the subject rate design study and any rate redesign implemented in reliance thereon is invalid as a contractual matter as between PASNY and MTA.

2. The PASNY 4 Rate I rate structure does not align with Con Ed's unbundled cost of service and the PASNY rate redesign should not be implemented until the Con Ed rate plan includes a rate class that is specific to MTA's unique consumption and demand patterns.

3. The LTA requires that the PASNY delivery service rate changes must be aligned with the costs of serving each individual customer and the proposed PASNY rates do not meet that requirement.

4. If PASNY decides to implement massive delivery rate increases on MTA, such delivery service rate changes must be phased in following industry practice to avoid an unduly burdensome financial hardship to MTA.

Very Truly Yours,

David Keller

Senior Deputy Director, Revenue, Economics and Energy Forecasting

THE PORT AUTHORITY OF NY & NJ

Christopher R. Zeppie
Director, Office of Environmental & Energy Programs

May 31, 2011

Ms. Karen Delince
Corporate Secretary
New York Power Authority
123 Main Street, 11-P
White Plains, New York 10601

Re: NYPA's Proposed Production and Delivery Rate Redesign: NYS Register April 13, 2011

Dear Ms. Delince:

Enclosed please find the Comments of the Port Authority of New York and New Jersey on the New York Power Authority's proposed production and delivery rate redesign for the New York City Governmental Customers. These comments are submitted in response to the notice issued in the State Register on April 13, 2011.

Our comments set forth in detail our position relative to the recommended Plan and the phase-in of its full implementation, among other matters. Additionally, the Port Authority calls specific attention to the JFK International Airport and the need for a successor service class that specifically takes into consideration the cost of service for this particular facility.

If you have any questions regarding these comments, please do not hesitate to contact me.

Sincerely,

Christopher R. Zeppie
Director, Office of Environmental and Energy Programs
Port Authority of New York and New Jersey

cc: James Pasquale, NYPA
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I. Preliminary Statement

On March 29, 2011, the New York Power Authority ("NYPA") presented its Recommended Plan for a redesign of the electricity production and delivery rates for the Port Authority of New York and New Jersey ("Port Authority") and other New York City and Westchester County governmental customers ("Governmental Customers"). On April 13, 2011, NYPA published notice of the Plan in the New York State Register. Pursuant to that notice, comments on NYPA's proposal will be accepted through May 31, 2011. In accordance with Section 202 of the State Administrative Procedure Act, the Port Authority submits these comments to NYPA regarding the Recommended Plan for redesigning the Governmental Customers' electricity rates.

II. Introduction and Summary of Position

The Port Authority is one of the fifteen Governmental Customers affected by NYPA's proposed electric production and delivery rate redesign. The Port Authority has received full requirements electric service (i.e., electric production and distribution) from NYPA since the two parties first entered into a contract in 1976 ("1976 Agreement"). The 1976 Agreement has been amended various times since then, with the most recent being the Long Term Agreement ("LTA"), executed in 2005. Under the LTA, the Port Authority will continue to receive electric service from NYPA through 2017.

The electric production and delivery rates NYPA charges the Port Authority and other Governmental Customers are described in NYPA Service Tariff No. 100 (for NYC Governmental Customers) and Service Tariff No. 200 (for Westchester County Customers). On the production side, NYPA's rates are designed to recover both the fixed and variable costs NYPA incurs for generating and purchasing power on the Governmental Customers' behalf. Power purchased by NYPA for the Governmental Customers is delivered by the Consolidated Edison Company of New York, Inc. ("Con Edison"), the electric distribution utility in the New York City and Westchester areas. The terms and rates of Con Edison's delivery service to NYPA are described in its PASNY No. 4 Service Tariff. The delivery rates NYPA charges its customers under Service Tariffs Nos. 100 and 200 are intended to recover the costs NYPA incurs for delivery service from Con Edison. Ideally, these costs should be a direct pass through to the various customer classes consistent with Con Edison' charges.

Under the terms of the LTA, NYPA is proposing to redesign its production and delivery rates consistent with cost of service principles, standard practice in the electric utility industry. As part of the rate redesign, NYPA procured the services of the consulting firm Black & Veatch to undertake the necessary cost of service studies and other analysis required. Throughout 2010, the Port Authority participated in a number of meetings with NYPA staff and other Governmental Customers to review the results of the rate design studies and provide feedback. As noted in the Recommended Plan, these meetings were extensive and sought, to the greatest extent possible, to achieve consensus on a number of matters.

In November 2010, NYPA staff solicited informal comments from the Governmental Customers on a range of redesign issues, including two options for allocating certain production-related costs to customer peak demands (1 CP and 4 CP) and four different options for the phasing-in of new delivery rates that mirror PASNY No. 4 (Immediately, 3-years, 5-years and 7-years). On December 8, 2011, the Port Authority submitted comments on these issues, noting, among other things, that it believed immediate implementation of the new production and delivery rates was the most appropriate option for the customers.

The Port Authority supports many features of the Recommended Plan, including the proposal to institute the new rate design in July 2011 and conduct biennial rate reviews based on cost of service and load studies going forward. It also supports the proposed revisions to NYPA's Standby and Net Metering tariff provisions. However, the Port Authority continues to believe that implementation of Con Edison's delivery rates should occur faster than the proposed 4-year phase-in. While the Port Authority can appreciate NYPA's sensitivity to rate impacts on other affected customers, it does not believe that it should bear the financial responsibility for easing these customers to the appropriate rate levels. Finally, as the proposal to consolidate Service Classes 64 and 69 uniquely affects the Port Authority as it relates to the Kennedy International Airport, the Port Authority respectfully requests the Board of Trustees to specify that the final rate plan should include a successor service class that specifically takes into consideration the cost of service for that facility.

III. Discussion

A. The Port Authority supports many features of the Recommended Plan

The Port Authority supports many components of NYPA's Recommended Plan. The Port Authority supports NYPA's proposed July 1, 2011 implementation date for new production and delivery rates, as well as full and immediate implementation of the proposed production redesign (with the exception noted below regarding peak demand allocators for certain production costs). While the Port Authority prefers that NYPA implement Con Edison's delivery rates immediately, rather than over a four-year period, it supports the Recommended Plan's overall objective of re-aligning NYPA delivery rates with the underlying Con Edison rate structure and rate levels.

The Port Authority also supports the Recommended Plan's proposal to establish regular, scheduled updates to its rate design, informed by cost of service analysis. Under the Plan, a biennial update to the production cost of service would be instituted, incorporating new load research, a new cost of service study and a new marginal cost analysis, among other things. The two-year updates will ensure that NYPA's rates remain cost-based going forward and take into consideration changing customer load characteristics and contributions to NYPA's cost of service.

Significantly, the Recommended Plan is also proposing to implement new Standby and Net Metering tariff provisions beginning July 2011. The Port Authority welcomes these additions to NYPA production rates, as the Port Authority is currently evaluating whether clean, distributed generation can provide economic and environmental benefits to a number of its facilities. As discussed during meetings with NYPA and the other Governmental Customers, the Port Authority is supportive of the proposed Standby tariff rate provisions because they: (1) follow conventional practice of basing the contract (or reservation) demand charge on a reasonable forced outage rate; (2) follow the standard format used in New York for assessing the actual standby service taken via a prorated daily demand charge; and (3) adequately distinguish actual standby service from supplemental service.

B. The Port Authority asserts that a 4-month peak demand allocator is preferable to a 1-month peak demand allocator

Currently, NYPA's fixed production costs are allocated to each customer based on the respective customer class's contribution to NYPA's annual peak. Since NYPA's New York System Operator ("NYISO") related costs are incurred based on its demand at the time of the NYISO system peak, it has been suggested that the NYISO peak be used to allocate costs. There are two alternative methodologies:

- 1-month peak (i.e., 1 CP): an allocator that uses the contribution of each customer class to NYPA's peak coincident with the NYISO system annual peak (a single hour); or
- 4-month peak (i.e., 4 CP): an allocator that uses an average based on the four summer monthly peaks (one hour per month June-Sept).

While the Port Authority appreciates the intent behind the 1 CP methodology in linking the allocation of costs to customer rates based on those customers' contributions to the NYISO system peak, the fact is that it is difficult to foresee when the peaks will occur and modify usage accordingly. The system peak has a tendency to change across the summer months from year-to-year. This could result in rate volatility for some customers when NYPA rates are updated during a subsequent cost-of-service period (e.g., two years from now). On the other hand, the 4 CP method, which averages customer peaks across the four summer months, would provide a more stable approach to cost allocation, reducing the degree of volatility from one cost-of-service period to the next. It will also continue to send a signal to the Customers to reduce their demand during the mid-weekday summer afternoons.

C. The Port Authority respectfully requests that the NYPA Board of Trustees modify the Recommended Plan to fully align its delivery rates with Con Edison's PASNY No. 4 in less than four years and preferably in the 2012 Rate Year

The *delivery* portion of NYPA's rates is intended to recover the charges associated with Con Edison delivery services provided under Con Edison's PASNY No. 4 tariff. As the Recommended Plan notes, NYPA's delivery rates were initially designed to mirror Con Edison's, but over time these rates have diverged. The resulting misalignment has led to: 1) a significant over-collection on the delivery portion of the bill amounting to approximately $39 million as of the end of February 2011; and 2) the cross-subsidization of different NYPA rate classes.

The Port Authority believes that the best option for the Governmental Customers is an immediate implementation of the full PASNY No. 4 rates. The misalignment between NYPA delivery rates and PASNY No. 4 has occurred for too long, and delaying implementation comes at great expense to the customers that have been paying inflated rates. While the Port Authority understands that immediate implementation of the PASNY No. 4 rates will result in rate increases for some customers, this is no reason to deny or unreasonably delay rate decreases to deserving customers. Delaying implementation of true cost-based rates only perpetuates the on-going cross-subsidization and defers the reforms necessary to align budgets with true costs.

NYPA's proposal would have the Customers wait four years before delivery rates are aligned with the underlying charges from Con Edison. While the Recommended Plan purports to eliminate the approximately $9.6 million in annual NYPA over-collections in the first year, the proposed phasing results in continued inter-class subsidization for at least another four years. For example, according to Schedule 1 of the Recommended Plan, over the course of the proposed four-year phase-in, the Port Authority alone will continue to overpay in delivery rates a sum of approximately $4.1 million. This amount, which would be a transfer to other customer classes, exceeds the value of the entire principal amount the Port Authority would expect to receive in its refund of the historical over-collections (i.e., approximately $3.5 million, before interest). As a bi-state agency that is responsible to the taxpayers of *both* New York and New Jersey, the Port Authority believes it should not be subsidizing the rates of other New York State governmental agencies at the expense of its New Jersey obligations.

During meetings between NYPA staff and the Governmental Customers, some asserted that PASNY No. 4 rates do not accurately reflect Con Edison's true delivery cost of service for certain customer classes. As a result, it was argued, NYPA should not adopt the PASNY No. 4 rates. The Port Authority does not believe that this is the proper venue to make determinations regarding Con Edison's cost of service; nor is it appropriate to realign NYPA rates based on a general belief of what Con Edison's rates should be. The goal of this effort is to make NYPA rates reflect cost causality and the only way to do that is to make them consistent with Con Edison's PASNY No. 4 without further delay.

Concerns relating to the appropriateness and equitableness of the PASNY No. 4 rates should be directed to the New York State Public Service Commission, which makes these decisions. To the extent customers' believe that the underlying Con Edison rates do not reflect the utility's cost of service, this should be raised before the Public Service Commission during a Con Edison rate case. Other Governmental Customers should not be required to make up for a perceived over-collection by Con Edison for delivery services to certain customer classes. Aligning NYPA rates with Con Edison delivery rates will provide Governmental Customers with the proper signals to address delivery cost of service issues in the appropriate venues. In this regard, the Port Authority respectfully requests the Board of Trustees to clarify that NYPA reserves prejudgment regarding any particular customer-oriented rate design until evidence supporting such rates is established in the next Con Edison rate case (see "Re-Examination of Con Edison Delivery Rates" on Page 6 of Recommended Plan).

The Port Authority further asserts that anything other than immediate, full implementation of new rates would pose an undue administrative and auditing burden on customers, who must then track new annual rates, Con Edison rate increase adjustments and other related factors and impacts over the 4-

year period. As NYPA explained during a conference call with the Governmental Customers on April 12, 2011, the delivery bill impacts presented in Schedule 1 of the Plan are based on Con Edison delivery rates in effect from April 2010-March 2011. As such, these bill impacts do not reflect Con Edison rate increases put in place in April 2011, nor those expected for April 2012, requiring customers to, at best, make additional calculations and, at worst, guess at what the actual bill impacts over the phase-in period will be. In times when utility budgeting and cost containment is a key operational concern for the all the Governmental Customers, further complicating budget formulation and expense projection through a protracted phase-in would further disadvantage customers who have already shouldered a disproportionate financial burden.

While the Port Authority would prefer that PASNY No. 4 delivery rates be instituted immediately, it proposes that NYPA implement them in two-steps. The Recommended Plan currently proposes to institute 75% of the Con Edison rates beginning in July 2011 with 10% adjustments each in 2012 and 2013 and a final 5% adjustment in 2014. Instead, the Port Authority proposes that NYPA keep the 75% step in 2011 and complete the transition to PASNY No. 4 with a 25% step in 2012. This approach would eliminate the annual over-collection under existing NYPA rates in 2011 and remaining inter-class subsidies in 2012.

To the extent NYPA believes that rate relief is required for some customers during implementation of the new delivery rates, the Port Authority suggests that NYPA work with these customers to establish a separate phase-in schedule with NYPA covering the required subsidy. Especially when taken in context with the added expense to the Port Authority of supporting projects with regional energy benefits, it is of high importance to the Port Authority to ensure that other energy-related expenses are effectively managed, including advocating for accurate, fair rates that appropriately account for costs. The Port Authority does not believe that other customers should continue to subsidize the few that have benefited from erroneously low delivery rates.

D. **If the delivery rate phase-in is adopted as proposed in the Recommended Plan, the Port Authority respectfully requests that the full Year 1 mitigation of inter-class subsidies be realized before April 2012.**

Consistent with Con Edison's rate year, NYPA's rate year for delivery service runs from April to March. If new delivery rates become effective in July 2011, the new delivery rates will only mitigate about 75% of the identified Rate Year 1 interclass subsidies because new rates will be implemented commencing April 2012. If NYPA adopts the Recommended Plan as proposed, the Port Authority respectfully requests that the NYPA Board of Trustees clarify that the new delivery rates will allow the full realization of each rate class's first year rate change, as identified in Schedule 1 of the Recommended Plan, during the remaining months of 2011 and the first quarter of 2011.

E. **The Port Authority supports the Recommended Plan's proposed method for refunding historical delivery over-collections, with the caveat that the refund be made available as a one-time payment including interest.**

Schedule 2 of the Recommended Plan presents a refund allocation percentage for each of the Governmental Customers. Each Governmental Customer's refund for past delivery over-collections will be calculated by multiplying the proposed refund allocation percentages by the total over-collection balance. Since NYPA does not have customer-specific over-collection figures, the Port Authority supports the use of the proposed allocators for purposes of determining each over-paying customer's share of the delivery over-collection balance.

The Port Authority further agrees with the Recommended Plan that only customer classes that are currently over paying should receive a refund. The over-collections should not be used as a means of mitigating the impact of the rate redesign on those customers that have historically been underpaying for delivery services relative to PANSY No. 4. The result of such an approach would be yet further subsidization of rates for customers that have been underpaying relative to their cost.

The Port Authority agrees with the proposal to begin refunding the accumulated over-collection balance to customers no later than July 2011. However, the Port Authority respectfully requests the NYPA Board of Trustees to provide over paying customers with the option of receiving their share of the over-collections as a one-time payment instead of a credit on customer bills over a twelve-month period. Since the over-collected balance dates back to at least 2005, the refund calculation should also include interest payments to customers. Interest should be calculated in a consistent manner across all over-paying customers, using the monthly over-collection figures provided by NYPA on May 20, 2011.

F. The Port Authority respectfully requests that NYPA's Board of Trustees specify that the final rate plan should include a successor service class that specifically takes into consideration the cost of service for JFK International Airport

Among the recommended changes to production rates contained in the Recommended Plan is the consolidation of Service Classes 64 and 69 due to similarity of usage patterns and service. This recommendation will uniquely impact the Port Authority as it relates to the JFK International Airport ("Airport")/ Kennedy International Airport Cogeneration plant ("KIAC"). Service Tariff Rider B, which establishes the terms and conditions applicable to the sale and exchange of power between Port Authority and NYPA related to the Airport/KIAC, references Service Tariff 15 Time of Day (ST 15 TOD) or a successor tariff. The current applicable tariff to Port Authority for power fo

In addition to the consolidation of general Service Classes 64 and 69, NYPA staff's proposed Plan includes the implementation of new Standby rate provisions starting July 2011. Since the Rider B governing power purchased from NYPA (i.e., Back-Up, Maintenance, and Supplemental) references ST 15 TOD rates, the successor service class required for Airport/KIAC would also need to revise the back-up power (and other power) rates to be consistent with redesigned standby rates. Delivery rates consistent with the redesigned rates must also be applied to the Airport/KIAC successor tariff.

Given the intent of the Rate Redesign to establish cost-based production rates derived from the appropriate allocation of production costs to each service class, the Port Authority believes that the Airport/KIAC successor tariff that is developed should also be adjusted to more appropriately reflect the costs to serve the Airport load. Currently NYISO charges related to serving this load are separately charged to the Port Authority even though Service Tariff 100 – Service Class 64 (successor to ST 15 TOD already has NYISO charges embedded in it. The successor rate must rectify such issues related to the allocation of costs and benefits associated with the capacity and production from the Airport/KIAC plant and service of Airport load, and the Port Authority requests the NYPA do a stand-alone analysis of the production components of the Airport successor service class.

G. Conclusion

The Port Authority respectfully requests that the NYPA Board of Trustees adopt a Governmental Customer rate restructuring plan in accordance with the discussion and recommendations presented above.

Dated: May 31, 2011
New York, New York

Respectfully submitted,

Christopher R. Zeppie

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