

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 05-S-1376 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Steam Service.

PROCEDURAL RULING AND
PREHEARING CONFERENCE REPORT

(Issued December 23, 2005)

ROBERT R. GARLIN, Administrative Law Judge:

INTRODUCTION

Pursuant to a notice issued November 17, 2005, a prehearing conference was held on Tuesday, December 6, 2004 at the Public Service Commission's New York offices. The notice stated that the purpose of the conference was to identify active parties, define issues, and establish a procedural schedule.

In addition, on December 5, 2005, the Commission issued an "Order on Consolidated Edison Company of New York, Inc.'s Steam Business Development Plan" in Case 03-S-1672 (the company's last steam rate case). That order directed the company to supplement its rate filing in this case with materials addressing three "action items" in the business development plan. Accordingly, this matter was also addressed at the prehearing conference.

Finally, at the conference, I directed the parties to submit, along with their direct and rebuttal filings, summaries of their witnesses' testimony setting forth their individual recommendations and brief descriptions of their reasoning underlying the recommendations.¹ The company has agreed to prepare summaries in the form of additional exhibits accompanying its witnesses' direct testimony.² The other parties

¹ Tr. 35-43.

² Electronic mail message from Marc Richter, Esq., dated December 14, 2005. A copy of this message has been placed in the correspondence file for this case.

(and the company, in any rebuttal filing) are encouraged to follow this approach.

SCHEDULE

The following procedural schedule is adopted, as the result of a discussion at the conference of similar proposals distributed by the undersigned and the Department of Public Service Staff:

Supplemental filing regarding steam business development plan action items; and summaries of the company's prepared direct testimony	January 4, 2006
Staff and intervenor direct cases and testimony summaries (in hand)	February 27
Rebuttal cases and testimony summaries (in hand)	March 13
Hearings begin	April 5
Initial briefs (in hand, tentative)	May 8
Reply briefs (in hand, tentative)	May 22
Recommended Decision	June 30
Exceptions (in hand)	July 21
Replies to exceptions (in hand)	August 4
Commission session (current schedule)	September 20
Suspension	September 30

The April 5, 2006 starting date for evidentiary hearings is established with the contemplation that the hearings could be concluded in the five business days from April 5 through April 11. Should additional dates be required, the hearings will resume in Albany in the week of April 24.

Staff's schedule proposal identified the period from March 16 through March 24 as available for settlement discussions. Should an agreement on a rate plan proposal be reached by all or most of the parties and reported to me by March 31, the remaining schedule, including the starting date for the hearings, could be changed to accommodate the preparation of a joint stipulation.

Should the need arise, requests for changing schedule dates will be entertained.³

SERVICE OF EXHIBITS AND TESTIMONY

The Commission's rules of procedure provide generally, and in pertinent part, that "[a] document served by one party on another will be deemed served at the time it is . . . delivered in-hand to the addressee" ⁴ However, the rules provide further that "[p]arties to any proceeding, who agree to be served by electronic means, may be served by electronic means."⁵ On my own behalf, I will accept electronic service of complete copies of exhibits and testimony on the in-hand due dates, provided that the paper copies are mailed to me with postmarks on the due dates. The parties are encouraged to make similar arrangements among themselves on a voluntary basis. The rules of procedure do not contemplate that a party may be compelled to use or accept electronic service.

INFORMATION GATHERING

There was considerable discussion at the prehearing conference about whether, and to what extent, the company's

³ Tr. 89-92.

⁴ 16 NYCRR §3.5(g)(2)(ii). This is the pertinent general requirement, as this ruling requires that the service dates shall be in-hand delivery dates.

⁵ 16 NYCRR §3.5(g)(4).

initial rate filing included sufficient documentation to support various requested rate allowances. The discussion revealed that Staff had served numerous requests for information and that the company was attempting to respond to those requests within, in its view, a reasonable amount of time. I have asked to be served with electronic copies of both Staff's information requests and the company's responses, so that I can monitor the progress of the information gathering.

The discussion addressed the possibility of employing additional means for gathering or supplying information, including conference calls among the requesting party, the responding party, and me;⁶ depositions;⁷ and submission of supplemental testimony on January 4, 2006, when other materials will be submitted.⁸ All of these means are available to Staff, the company, and, as necessary, other interested parties.

One specific issue about which Staff identified a need for information is the reasonableness of the amount of the capital costs of the East River Repowering Project (ERRP) that would be included in base rates at the conclusion of this proceeding (or during the course of a multi-year rate plan that might ensue). Staff noted that the amount of ERRP capital costs currently recovered through the company's fuel cost adjustment is capped at about \$685 million, and that the total capital costs of the project amount to nearly \$800 million.⁹ Staff asserted that the rate filing lacks any presentation about the reasonableness of the amount of the total capital costs.

⁶ Tr. 87-89.

⁷ Tr. 82-83.

⁸ Tr. 76-77.

⁹ Tr. 57; Case 03-S-1672 et al., Consolidated Edison Company of New York, Inc. - Steam Rates, Order Adopting the Terms of a Joint Proposal (issued September 27, 2004), p. 5.

Although it appeared to me, as a result of the discussion at the prehearing conference, that a separate proceeding regarding the prudence of ERRP capital costs might be required, and that a motion - presumably from Staff - requesting institution of such a proceeding might be in order, I have since been advised that the company is able and willing to address the issue in a supplemental filing that can be considered within this case. Accordingly, at this time I do not expect that a motion will be filed.

RULES OF CONDUCT FOR THE HEARING

Set forth below are rules of conduct that shall be observed during hearing sessions. These rules follow from the Commission's rules of procedure concerning standards of conduct for parties and representatives and guidelines for the conduct of hearings.¹⁰

- Prefiled rebuttal testimony and exhibits must strictly respond to the testimony and exhibits to which they are directed. Information that could have been provided at an earlier stage of this proceeding may not be introduced in prefiled rebuttal testimony and exhibits.
- Examination of witnesses is limited to: the direct examination necessary to proffer prepared testimony for admission into the record; cross-examination; and redirect examination. "Re-cross-examination" and "re-redirect examination" will not be permitted. Redirect examination will be strictly limited to matters brought out on cross-examination. The representative of a party requesting redirect examination of that party's witness or panel of witnesses will not be permitted to confer with the witness/panel prior to conducting redirect examination.
- The order of cross-examination may be established by agreement between/among the parties; the administrative law judge will determine whether that order is consistent

¹⁰ 16 NYCRR §§2.1, 4.4(a), 4.5(a), and 4.5(f).

with the efficient conduct of the hearing. Succeeding cross-examiners will not be permitted to conduct repetitive cross-examination(s). To avoid repetitive cross-examination(s), the party representative(s) who will be conducting second and subsequent cross-examination(s) of a witness/panel must be present during all of the preceding cross-examination(s) of that witness/panel.

- All questions on cross-examination must begin with a reference to the page(s) and line(s) of the prepared testimony to which the questions pertain.
- Non-adverse cross-examination will not be permitted. Representatives of parties advocating the same or similar positions on particular issues will not be permitted to conduct cross-examinations of each other's witnesses with respect to those issues. Objections arguing that cross-examinations are non-adverse may be raised by any party.
- Other objections to questions posed or documents presented to a witness/panel during cross-examination may be raised only by the representative for the party sponsoring the witness/panel. Any document presented to a witness/panel on cross-examination must first be presented to the representative for the party sponsoring the witness/panel.
- Requests for clarification of a question on cross-examination may be made only by the witness/panel or the administrative law judge.
- Party representatives will be allowed to conduct further cross-examinations and/or redirect examinations with respect to answers given to questions posed by the administrative law judge.
- Cross-conversation between or among opposing counsel, witnesses, technical advisors, or other representatives will not be permitted. Counsel (etc.) wishing to address opposing counsel (etc.) shall do so only through the administrative law judge.
- Ring tones on electronic communication devices shall be turned off or muted in the hearing room.

Requests for waivers of the foregoing rules will be considered on a case-by-case basis, upon a showing that strict adherence to the rules would be unreasonable.

ROBERT R. GARLIN