

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on May 16, 2013

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman  
Patricia L. Acampora  
Maureen F. Harris  
James L. Larocca  
Gregg C. Sayre

CASE 09-S-0794 - 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.

CASE 09-S-0029 - Proceeding on Motion of the Commission to Consider Steam Resource Plan and East River Repowering Project Cost Allocation Study, and Steam Energy Efficiency Programs for Consolidated Edison Company of New York, Inc.

CASE 13-S-0032 - 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.

ORDER APPROVING COMPLIANCE FILING WITH MODIFICATIONS  
AND DENYING REQUEST FOR RECONSIDERATION  
AND MOTION FOR CONSOLIDATION

(Issued and Effective May 20, 2013)

BY THE COMMISSION:

INTRODUCTION

By this order, the Commission approves with modifications a compliance filing made by Consolidated Edison Company of New York, Inc. (Con Edison) to implement in phases the above-market cost methodology for allocating the fuel costs of the East River Repowering Project (ERRP); rejects Con

Edison's request for reconsideration of such methodology; and denies a motion by the City of New York (City) to consolidate the Commission's consideration of the compliance filing into a pending steam rate case.<sup>1</sup>

#### NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking concerning the compliance filing and reconsideration request was published in the State Register on February 6, 2013 [SAPA 09-S-0794SP5]. The minimum time period for the receipt of comments pursuant to the State Administrative Procedure Act regarding this notice expired on March 23, 2013. Comments were received from the City of New York and are addressed below. No other comments were received in response to the Notice.

#### BACKGROUND & PROCEDURAL HISTORY

The last Con Edison steam rate case was consolidated for briefing and decision with the consideration, in the steam planning case, of fuel cost allocation for the East River Repowering Project (ERRP). The Commission issued an order (2010 Order) adopting a 3-year rate plan -- the product of a joint proposal -- to expire October 1, 2013.<sup>2</sup> In adopting the rate plan the Commission accepted a \$7.5 million reallocation of ERRP "above-market" fuel costs to steam customers, beginning on October 1, 2011. The Commission adopted this reallocation as part of a shift to the "above-market" cost allocation method, as

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<sup>1</sup> Case 13-S-0032, et al. Consolidated Edison Company of New York - Steam Rates, Motion to Consolidate (filed March 22, 2103).

<sup>2</sup> Cases 09-S-0794 et al., Consolidated Edison Company of New York, Inc. - Gas & Steam Rates, Case 09-S-0029, Consolidated Edison Company of New York, Inc. - Steam Planning, Order Establishing Three-Year Steam and Gas Rate Plans and Determining East River Repowering Project Cost Allocation Methodology (issued September 22, 2010).

opposed to the "incremental" cost allocation method, to allocate fuel costs of the ERRP co-generation facility between electric and steam customers. The Commission decided to correct an imbalance in the allocation of fuel costs between electric and steam customers, after balancing the propriety of correcting that cost allocation against possible impacts on steam customers.

Previously, the incremental cost allocation method, which required steam customers to pay only the separate production costs associated with producing steam, was used for all ERRP costs. This methodology resulted in electric customers bearing approximately 98 percent of the fuel costs of the co-generation facility. The above-market cost allocation method adopted by the Commission will require steam customers to pay the fuel costs associated with producing electricity to the extent such costs exceed the market value of the electricity produced. In the steam planning proceeding, Con Edison filed a study of various methods of allocating ERRP costs. Westchester County supported the above-market method. Department of Public Service Staff (Staff) also supported the above-market method, which Staff indicated would produce a consistent relationship to the incremental cost-based floor for fuel costs that would come from the economic allocation method Staff presented. The City and Con Edison, among other parties, urged the Commission to adhere to the incremental method. The Commission did so with respect to non-fuel costs.

In the 2010 Order, the Commission estimated, for illustrative purposes, that the above-market method would allocate approximately \$52 million in ERRP fuel costs to steam customers.<sup>3</sup> In order to minimize bill impacts for steam customers and to maintain flexibility, we directed Con Edison to

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<sup>3</sup> 2010 Order at 116.

propose a phase-in of the costs remaining to be reallocated through the above-market method.<sup>4</sup> That phase-in of the remaining above-market costs was to be reflected in rates over not more than seven years following the expiration of the three-year rate plan also adopted in the order. The phase-in was to be included in Con Edison's next steam rate case filing or, if Con Edison did not file for new rates to be effective on October 1, 2013, in a compliance filing not less than nine months prior to that date, or by January 1, 2013.<sup>5</sup>

Con Edison delayed its anticipated November 2012 rate filing to focus on the challenges presented by Superstorm Sandy. Accordingly, on December 31, 2012, Con Edison filed its compliance filing proposing a seven-year phase-in, as ordered, but also requests that the Commission reconsider use of the incremental method, in lieu of the above-market method adopted by the 2010 Order. The City filed comments supporting a return to the incremental cost allocation methodology and, in the alternative, supporting Con Edison's proposed phase-in.

Con Edison filed its pending steam rate case on January 25, 2013. The City filed its Motion to Consolidate on March 22, 2013, which was supported by The New York Energy Consumers Council (NYECC) and Consumer Power Advocates (CPA). Staff opposes consolidation; Con Edison did not file a response to the consolidation motion.

#### PARTIES' POSITIONS

##### Compliance Filing

Con Edison's compliance filing includes a forecast of the above-market fuel costs for each year of the seven-year phase-in. Con Edison projected the value of electric energy

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<sup>4</sup> 2010 Order at 116.

<sup>5</sup> 2010 Order at 117-18.

produced by ERRP using forecasted electric generation volumes and forecasted New York Independent System Operator (NYISO) monthly energy prices for Zone J. It then calculated the projected fuel costs associated with the expected ERRP electric production, excluding fixed fuel costs.<sup>6</sup> The difference between fuel costs and the value of the electric energy is the estimated above-market cost.

The compliance filing also contains a phase-in proposal and details of how the above-market allocation would be calculated and reconciled each year. As required in our 2010 Order, Con Edison's phase-in proposal covers the seven-year period 2013 to 2019. To arrive at the phase-in percentages each year, Con Edison states that, under the current rate plan, \$7.5 million of additional ERRP fuel costs are allocated to steam customers, representing approximately 20% of the above-market fuel costs when the Joint Proposal was developed. Therefore, Con Edison concludes that the 20% allocation should be used for the first year of the seven-year phase-in. Con Edison proposes that it would then increase the allocation percentage by 13.3% each subsequent year of the seven-year phase-in.

To effectuate the recovery of the above-market fuel costs, Con Edison proposes to project the above-market costs for each annual period, apply the phase-in percentage for that year, and then collect one-twelfth of that amount each month from steam customers. The projected annual amount would then be reconciled at the end of the year resulting in a surcharge/credit for the subsequent 12-month period.

The City argues that if the Commission declines to reinstate the incremental cost method, we should adopt Con Edison's compliance filing as filed without modifications. It

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<sup>6</sup> The excluded fixed costs are fixed gas transportation costs, demand charges, fees and associated taxes.

agrees with Con Edison's proposal to exclude fixed fuel costs in the calculation of above-market costs, which it claims would be consistent with how independent generators operate in a competitive market.

Request for Reconsideration

Con Edison asks the Commission to weigh the relative benefits of the incremental cost method of fuel allocation originally established for ERRP against the benefits of the above-market fuel cost methodology adopted in the 2010 Order. Specifically, Con Edison asserts that (1) the incremental method will protect the viability of ERRP, which is essential as it provides reliability in the East 13th Street load pocket; (2) the lump sum value of steam air conditioning exceeds the estimated total above-market forecast for ERRP; (3) the above-market method exposes steam customers to electric market risk, and (4) ERRP provides numerous reliability, environmental and economic benefits to the electric system and the City.

In support of Con Edison's request for reconsideration, the City argues that (1) the above-market cost allocation will threaten the economic viability of the steam system; (2) because steam customers are sensitive to rate increases and have the ability to exit the steam system in favor of alternatives, there will be a migration of customers away from steam; and (3) the steam system provides many non-economic benefits, such as environmental benefits, reduction of the summer electric peak-load, reliability to the East 13th Street load pocket, and service to historical buildings with no heating and cooling options other than steam.

Motion for Consolidation

In support of its motion, the City points out that, historically, the methodology for allocating fuel costs of co-generation facilities is considered as part of steam rate cases

and that, but for Sandy, the compliance filing would have been part of the pending steam rate case. It also argues that because the phase-in of the above-market method requires consideration of the impact on Con Edison's projected revenue requirement and customer bills, the phase-in is a necessary component of the pending steam rate case. Finally, the City contends that consolidation will be administratively efficient, as evidentiary hearings will be required both for the compliance filing and the rate case. NYECC and CPA make general statements in support of the City's motion.

In opposition, Staff made the threshold argument that the motion was premature in light of the City's challenge to the above-market cost allocation adopted in the 2010 Order then-pending before the Appellate Division.<sup>7</sup> Staff opposes the City's administrative efficiency argument by pointing out that evidentiary hearings would not be required to evaluate the compliance filing and, addressing the merits of the underlying request for reconsideration, takes the position that the cost allocation issue was fully litigated and should not be reopened. Staff asserts that the Commission decided that a further reallocation of ERRP fuel costs should be done as of October 1, 2013, and claims that the City seeks to re-argue issues decided by the Commission in the 2010 Order.

#### DISCUSSION

##### Compliance Filing

While Con Edison's calculation of above-market fuel costs is conceptually as we ordered, it diverges from our Order by only including the variable cost of gas. In our steam planning proceeding, all of the studies and calculations were

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<sup>7</sup> The Appellate Division, Third Department, has since upheld the Commission's order. See Matter of the City of New York v. Public Service Commission, \_\_ AD3d \_\_ (February 13, 2013).

based on all fuel costs including fixed gas transportation costs, demand charges, fees and associated taxes. Con Edison now claims that only variable fuel costs should be included in the above-market calculation to be "consistent with the way independent generators price day-ahead bids into the competitive electric energy markets," asserting that generators only bid their marginal costs. Due to this inconsistency, Staff requested that Con Edison provide a calculation of the above-market costs that includes the fixed fuel costs excluded by Con Edison. Con Edison responded on March 15, 2013 with the revised calculation in a supplemental filing. We find that the inclusion of the fixed gas costs is consistent with the basis of our determinations made in the 2010 Order. Moreover, Con Edison's argument about the electric day-ahead energy market is flawed because it fails to recognize that, for any given generator, the electric market price received by the generator exceeds its bid for most of the hours during which the generator is running. This provides the generator recovery that goes beyond just its variable cost of gas, and includes recovery of some, all, or more than all of the generator's fixed cost of gas. Therefore, Con Edison is incorrect in its claim that the electric day-ahead market price is comparable to the variable-only component of the cost of fuel at ERRP. Accordingly, we require that Con Edison include all fixed fuel costs when calculating the above-market fuel costs related to ERRP.

Con Edison's compliance filing contains a phase-in proposal that we find should be modified. Con Edison developed its phase-in proposal by first determining that the current \$7.5 million allocation is 20% of the above-market fuel costs calculated at the time the Joint Proposal was developed. It then proposed to begin the first year of the seven year phase-in using 20%, which essentially would delay the phase-in for one

year. In addition, since the current forecast of above-market costs is much lower, the Company's proposal results in the current \$7.5 million being reduced to \$3.2 million for the 2013-2014 period. Given the significant reduction in above-market fuel costs, the current phase-in amount of \$7.5 million equates to approximately 50% of the recently calculated above-market costs. We note that any bill impacts of an increased fuel cost allocation will be mitigated by the fuel cost savings associated with the Company's gas addition projects at its 59<sup>th</sup> Street and 74<sup>th</sup> Street steam generating stations that will go into service in 2014. In light of the fact that bills will be mitigated, it is reasonable to continue the phase-in from the current \$7.5 level without interruption. Therefore, adopting the Company's seven year phase-in period, the allocations shall be 50% effective October 1, 2013, followed by 58.3%, 66.7%, 75.0%, 83.3%, 91.7% and 100% for the subsequent six phase-in periods.

Based on the current forecasts of above-market fuel costs, this would result in the current \$7.5 million allocation increasing to \$7.9 million for the 2013-2014 period, followed by \$12.6, \$11.5, \$13.5, \$15.8, \$19.8 and \$21.6 million in the subsequent phase-in periods. We find the incremental increases to be reasonable in light of the expected fuel savings over this period.

Staff was concerned that Con Edison's proposed forecast and recovery method could result in large differences between estimated and actual above-market costs that would flow through the reconciliation. Con Edison's supplemental filing responded to Staff's concern with a proposed recovery method that provides for the calculation of the actual above-market costs on a two-month lag. Under that approach, in December 2013, Con Edison would determine the actual above-market cost of fuel for the ERRP units for the month of October 2013. The

applicable phase-in percentage would be applied and steam customers would be charged or credited through the Fuel Adjustment Clause effective in December 2013. This process would be repeated for each subsequent month. We find that this alternative recovery method addresses the forecasting error inherent in the initial proposal, by substantially mitigating the potential volatility. We still expect Con Edison to perform a year-end reconciliation to correct any differences between the projected and actual steam volumes used to calculate the monthly charges or credits.

Request for Reconsideration

In determining whether reconsideration of the merits of an issue recently decided by the Commission is warranted in the context of a compliance filing related to that issue, we are guided, in part, by our requirements for granting timely motions for rehearing. Pursuant to 16 NYCRR 3.7(b):

Rehearing may be sought only on the grounds that the Commission committed an error of law or fact or that new circumstances warrant a different determination. A petition for rehearing shall separately identify and specifically explain and support each alleged error of or new circumstance said to warrant rehearing.

A timely rehearing petition filed pursuant to 16 NYCRR 3.7 invokes a statutory remedy, created by Public Service Law (PSL) §22, to toll the statute of limitations on any challenge to the order for which rehearing is sought. In contrast, a request for reconsideration is addressed at our discretion.

While the requirements for rehearing are not controlling, they are illustrative, particularly insofar as they require a "new circumstance." The record in the steam planning proceeding demonstrated that, once ERRP began operating, experience showed that the incremental method for allocating ERRP fuel costs created an unwarranted benefit for steam

customers. We found, on balance, after considering customer impacts, that above-market ERRP fuel costs should be allocated to steam customers and phased in over a ten-year period. The Appellate Division has found no legal or factual errors in our reallocation. Neither Con Edison, nor the City in supporting Con Edison, has identified any new circumstances that would warrant reconsideration of our decision. The above-market cost methodology was adopted following extensive hearings, thorough consideration of policy arguments and a careful balancing of the parties' contentions. The arguments now made in support of reconsideration merely reiterate arguments which we fully considered in the steam planning case, and they fail to acknowledge the balancing performed in the 2010 Order.

Con Edison and the City rely, for instance, on ERRP's reliability and other benefits, but we recognized those benefits in deciding to continue use of the incremental method for non-fuel costs.<sup>8</sup> Con Edison claims a potential loss of steam air conditioning load and the alleged harm to steam customers of exposure to market forces, while the City claims the increases resulting from the reallocation of "above-market" costs may cause steam customers to leave the system. We addressed these contentions, balancing a possible loss of steam load, if steam elasticity of demand is higher than forecast, against the propriety of sending appropriate price signals to steam customers.<sup>9</sup> We decided the reallocation could appropriately be done over a ten-year period, beginning with the reallocation of \$7.5 million of ERRP above-market fuel costs in the rate plan, and continued through the seven-year phase-in.<sup>10</sup>

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<sup>8</sup> 2010 Order at 115.

<sup>9</sup> 2010 Order at 117.

<sup>10</sup> 2010 Order at 117-18.

Con Edison and the City have not addressed the balancing we performed, let alone pointed to new circumstances vitiating that balancing. If anything, the most recent circumstances support our decision, since the reduction in the amounts reallocated means a lower potential burden on steam customers. We found, moreover, that the seven-year phase-in provides flexibility and a potential for revisions due to unanticipated situations.<sup>11</sup> Those benefits remain.

Accordingly, Con Edison's request for reconsideration is denied. We observe that we cannot preclude any party from raising issues related to prospective ERRP cost allocations within the context of the pending steam rate case. However, parties seeking to relitigate this issue in that case or future cases should, at the very least, acknowledge the careful balancing of factors that led to the reallocation of ERRP fuel costs. Any such parties should be prepared to explain why we should revisit that balancing, when the underlying costs are more modest than we anticipated in 2010.

Motion for Consolidation

Inasmuch as we have, today, approved the compliance filing as modified herein and denied Con Edison's request for reconsideration, nothing remains to be consolidated with the pending steam rate case. Indeed, we see no reason to further delay implementation of the reallocation, and the resulting bill increases can be reflected in the pending steam rate case. Accordingly, the motion for consolidation is denied as moot.

CONCLUSION

We adopt Con Edison's compliance filing and supplemental filing to phase in the above-market cost methodology for allocating the fuel costs of the East River

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<sup>11</sup> 2010 Order at 116.

Repowering Project with modifications as described above. Further, we decline Con Edison's invitation to reconsider the ERRP cost allocation methodology with the context of this compliance filing, and deny as moot the City of New York's request that we consolidate this filing within the context of the pending steam rate case.

The Commission orders:

1. Consolidated Edison Company of New York, Inc. shall implement the phase-in of the above-market method applicable to the East River Repowering Project Fuel costs as described in the body of this order.
2. Consolidated Edison Company of New York, Inc. shall file with the Secretary, within 10 days of the effective date of this order or at a later date if authorized by the Secretary, the corporate operating procedure which describes in detail the East River Repowering Project fuel cost allocation using the above-market method and describing the corresponding cost recovery process, described in the body of this order.
3. The request of Consolidated Edison Company of New York, Inc. for reconsideration of the cost allocation methodology for the East River Repowering Project is denied.
4. The City of New York's motion to consolidate the compliance filing with the current steam rate case is denied as moot.
5. These proceedings are continued.

By the Commission,

(SIGNED)

JEFFREY C. COHEN  
Acting Secretary