

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on June 13, 2013

COMMISSIONERS PRESENT:

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

CASE 12-G-0539 - Petition of The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York for Approval of the Transfer of Certain Property Located at 809-873 Neptune Ave., Brooklyn, New York, to 809 Neptune Ave LLC d/b/a Storage Deluxe.

CASE 08-G-0071 - Petition of The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York for Approval of the Transfer of Certain Property Located at 809-873 Neptune Avenue, Brooklyn, New York, to Steel Arrow, LLC.

ORDER DENYING REHEARING

(Issued and Effective June 13, 2013)

BY THE COMMISSION:

INTRODUCTION

On May 20, 2013, we approved the transfer of certain property -- 809-873 Neptune Avenue, Brooklyn, New York -- from Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (the Company, Brooklyn Union) to 809 Neptune Avenue LLC d/b/a Storage Deluxe (Storage Deluxe) for \$15 million.<sup>1</sup> In that order, we addressed comments submitted by Ms. Toniann Zito, a Brooklyn developer whose 2007 and 2012 bids were not chosen by

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<sup>1</sup> Case 12-G-0539, Order Approving Transfer (issued and effective May 20, 2013) (May 20 Order).

Brooklyn Union in the public bidding processes by which the Neptune Avenue property would be sold.

On May 20, 2013, Ms. Zito filed an "appeal" of the May 20, 2013 determination. In a May 23, 2013 letter from Acting Secretary Jeffrey Cohen, Ms. Zito was informed that her filing would be treated as a Petition for Rehearing pursuant to Public Service Law §22 and 16 NYCRR §3.7. Ms. Zito submitted further filings on May 21, 22, 23, 24, 28, 30, 31, and June 6, 7, 11, 12, and 13, 2013.

We deny the Petition for Rehearing.

#### DISCUSSION

Commission Rules of Procedure, 16 NYCRR §3.7(b), states, "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."

In her petition and later filings, Ms. Zito's primary claim is that she was treated unfairly in the two bidding processes by which Brooklyn Union marketed 809-873 Neptune Avenue. In repeating this claim, which she made repeatedly in earlier submissions and comments in the proceeding, Ms. Zito raises no new circumstances warranting a different result. Any deficiencies in the 2006-2007 bidding were rectified by requiring a new open bidding process in 2012, over which Staff did its best to oversee and found to be sound.<sup>2</sup>

Ms. Zito also claims the Commission did not take into account the "nyc planning commission" rules in approving the sale of the property. This is not an error of law warranting rehearing because the Public Service Law does not assign to the Commission any authority to rule on City of New York planning requirements.

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<sup>2</sup> See May 20 Order at 5, 7.

Ms. Zito cites Utility Procurement rules as a basis to question Brooklyn Union's sale procedures of the Neptune Avenue property.<sup>3</sup> First, Utility Procurement rules govern utility purchases, not utility sales of assets. In any event, Ms. Zito does not provide any new documentation to support her claim that Brooklyn Union did not accept confidential, competitive bids in 2012. Secondly, after initial confidential bids were received, Brooklyn Union's marketer reached out to highly interested buyers to see if they would be willing to increase their bid. As Brooklyn Union explains in its response to Ms. Zito's petition, this is a "common and customary" practice when selling commercial real estate.<sup>4</sup> Brooklyn Union states, moreover, that no bidder identities were disclosed to others during this inquiry. Indeed, Ms. Zito does not state that she learned the identity of other bidders during this part of the process.

After the Company's marketer contacted Ms. Zito to seek a higher bid, she did not raise her bid enough in that contact to outbid Storage Deluxe. Again attempting to show unfairness in the bidding process, Ms. Zito provides no new facts or mistake of law warranting rehearing on the appropriateness of Brooklyn Union's marketing of the Neptune Avenue property.

Finally, Ms. Zito's petition questions the adequacy of the notice that the Commission provided to the community surrounding the Neptune Avenue building.<sup>5</sup> The Commission's consideration of the sale of the Neptune Avenue property to Storage Deluxe was published in the New York State Register on December 19, 2012 in accordance with the State Administrative

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<sup>3</sup> Zito May 23, 2013 filing at 3.

<sup>4</sup> Brooklyn Union May 29, 2013 Reply Comments at 1.

<sup>5</sup> Zito May 22, 2013 filing at 2.

Procedure Act. Ms. Zito identifies no mistake of law regarding the adequacy of the Commission's notice.

CONCLUSION

For the reasons stated above, no basis exists to reopen our May 20, 2013 Order Approving Transfer, which found that the sale of 809-873 Neptune Avenue to Storage Deluxe for \$15 million is in the public interest.

The Commission orders:

1. The May 20, 2013 Petition for Rehearing of the Commission's May 20, 2013 Order Approving Transfer is denied.
2. Case 12-G-0539 is continued pending the real estate closing and transfer of title between Brooklyn Union Gas and Storage Deluxe, LLC at which time it is closed.

By the Commission,

(SIGNED)

JEFFREY C. COHEN  
Acting Secretary