

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.

PROTECTIVE ORDER

(Issued March 24, 2006)

ROBERT R. GARLIN, Administrative Law Judge:

Over the course of this proceeding, Consolidated Edison Company of New York, Inc. (Con Edison) has identified certain documents and information sought by Department of Public Service Staff (Staff) that Con Edison regards as confidential and as to which it requests trade secret protection. Con Edison is willing to make those materials available to Staff, subject to suitable protections.

The purpose of this protective order is to permit prompt delivery to Staff of the materials it seeks, subject to the following terms and conditions. The materials subject to this order are listed in Appendix A, which appendix will be supplemented from time to time during this proceeding, as appropriate.

1. Information subject to this order will be treated as confidential in accordance with 16 NYCRR Part 6 and the Freedom of Information Law. If Staff does not want to accept any document or information as confidential in accordance with this order, it shall promptly notify Con Edison. Within five business days of Staff's notification, Con Edison shall submit the material to me for in camera review pursuant to 16 NYCRR §6-1.4. Any material still accorded confidential status at that time shall remain subject to this order and any other terms or conditions adopted at that time. Consistent with 16 NYCRR §6-1.4 (a)(4), any material not accorded confidential status at that time will remain subject to this order pending a final decision on any appeal, issued by the Commission's Secretary or a court of competent jurisdiction.

2. All confidential materials will be maintained by Staff in one or more secure locations, and review of such materials will be limited only to those Staff personnel whose official duties require it. The materials that remain confidential will be returned to Con Edison at the conclusion of this proceeding. In the alternative, Staff may destroy such materials and certify their destruction to Con Edison.

3. If Staff proposes to use any materials covered by this order on the record, it shall notify Con Edison at least seven business days prior to such use thereof, unless circumstances prevent Staff from doing so (e.g., a Con Edison witness makes a statement during a hearing that is inconsistent with a confidential document, and Staff seeks to cross-examine the witness on such inconsistency). Within three business days of notification Con Edison shall submit the material and justification to me for in camera review pursuant to 16 NYCRR §6-1.4. As to materials for which circumstances prevent seven days' prior written notice, I will establish measures for determining whether, and if so how, Staff may use such material.

4. If confidential status is accorded to the material, or if confidential treatment has been refused but a final decision on appeal has not been rendered, Staff shall separate out the portion of its testimony and exhibits that relate to such material and file it separately and under seal. Additionally, Staff shall advise the parties of its action but shall not serve or otherwise provide copies of such testimony, and related exhibits, to any party except Con Edison, unless otherwise directed to do so by me. To the extent any Staff testimony and exhibits includes both confidential and non-confidential information, redacted revisions will be prepared and timely served on all active parties. I will take whatever action is appropriate to preserve the confidentiality of the material during the hearing when the subject testimony and exhibits are proffered and any cross-examination thereon is conducted.

5. If Staff is permitted to use any of the materials subject to this order on the record, whether or not subject to confidential status, nothing herein precludes Con Edison from

making a motion to exclude such material from the record in this proceeding on other grounds.

6. Any work product or other documents developed by Staff relating to the confidential documents or information shall also be treated as confidential, and the same treatment will be accorded the work product or such other documents as is accorded the underlying confidential documents and information.

7. This order applies to the use of confidential materials protected hereunder regardless of the manner in which they may be used, including without limitation notes, memoranda, pleadings, interrogatory responses, transcript tapes, original documents, direct or responsive testimony, examination of witnesses, exhibits, and briefs.

8. This order applies only to confidential material disclosed by Con Edison to Staff. Should other parties seek access to any confidential materials, they shall notify me. Such requests will be addressed on a case-by-case basis.

9. In the unlikely event of any disclosure of any of the confidential documents or information subject to this order, in a manner inconsistent with the terms of this order, Staff shall immediately report such disclosure to Con Edison and to me.

(SIGNED)

ROBERT R. GARLIN

APPENDIX A

Confidential documents and information
covered by protective order as of March 23, 2006

1. Staff 77 - Information related to tax proceedings.
2. Staff 94 - Description and drawings of fuel oil storage and handling system
3. Staff 368(d) - Fuel price information from January 2006.
4. Staff 386/387 - ERRP testing protocols and results.