

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 03-G-1671 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Gas Service.

CASE 03-S-1672 - 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.

RULING CONCERNING DISCOVERY

(Issued March 26, 2004)

WILLIAM BOUTEILLER, Administrative Law Judge:

INTRODUCTION

In November 2003, Consolidated Edison Company of New York, Inc. filed the company's proposals to increase natural gas and steam service rates. Since then, the parties participating in these proceedings have conducted discovery in accordance with the requirements of 16 NYCRR Part 5 and most recently, on March 16, 2004, they filed testimony opposing various portions of the rate filings.¹ Consolidated Edison appears to have responded adequately to most parties' information requests. One party, United Workers Union of America, AFL-CIO, Local 1-2, has requested a ruling on discovery matters.

Local 1-2 submitted four sets of discovery requests to Consolidated Edison. The first three appear to have been satisfied as they do not present the issues here. The fourth set presented eleven discovery requests to which Consolidated Edison has objected.

¹ Cases 03-G-1671 and 03-S-1672, Ruling Establishing Rate Case Schedules and Initial Procedures (issued January 29, 2004).

RULING

Interrogatories That Received Responses

Two of Local 1-2's information requests drew general objections from Consolidated Edison but the utility company, nonetheless, provided responses concerning the training that contract labor may receive and the measures used to guard against illegal aliens receiving employment from contractors.²

I have reviewed these interrogatories and the answers provided. Consolidated Edison has responded adequately and no action is otherwise required. The company has reserved its right to object to any other information requests on these matters.

Three additional information requests are similarly situated.³ Initially, Consolidated Edison stated its general objection to burdensome and irrelevant discovery; however, to reduce the matters in dispute, the company ultimately provided its readily available information in response to these inquiries.

Thus, the company has responded to the union's questions concerning the use of documentation sheets to record work crew information, and the code numbers used to track work delays. I find that Consolidated Edison has responded sufficiently to these information requests and has reserved its right to object to any additional interrogatories on these subjects.

Unanswered Interrogatories

1. Maintenance Service Study

Local 1-2 Question No. 36(G)/43(S) asked for the company's documents and work papers related to a 2002-03 study of maintenance services in Brooklyn and Queens provided by outside contractors and internal labor. Consolidated Edison claims the study is not relevant to the gas and steam rate

² Local 1-2 Question Nos. 37(Gas)/44(Steam) and 38(G)/45(S).

³ Local 1-2 Question Nos. 40(G)/47(S), 43(G)/49(S) and 44(G)/50(S).

proceedings because no steam service is provided in Brooklyn or Queens, and no gas service is available throughout Brooklyn and parts of Queens.

I find that Local 1-2 has not demonstrated a sufficient relationship between the company's 2002-03 maintenance services study and the provision of steam and gas service to warrant a company response to this interrogatory. The production of the study for use in these rate proceedings would require either a direct or indirect showing that a material adjustment to the steam and gas revenue requirements could follow from the use of such information.

2. Contractor Compensation Changes

Local 1-2 Question No. 35(G)/42(S) asked Consolidated Edison to list the changes made to the compensation provisions in contracts executed with outside contractors during the last three years (2000 to 2003). It asked for the amount of additional compensation awarded and the amendments pertaining to per diem labor.

In response, Consolidated Edison claims the interrogatory is irrelevant and unduly burdensome. It objects to providing information beyond the historic test period (the twelve months ended June 30, 2003) and claims that any such information is useless without the base compensation provisions from the original contracts--information Local 1-2 has not requested.

As a general matter, Consolidated Edison is not required to provide with its rate filings the detailed financial information and operating results for periods other than the test periods specified by the Commission's rules and policy statements. However, if the proper accounting and treatment of any revenue, expense or capital item over time requires a more extensive examination, there is no preclusion on a rate investigation and audit extending to other periods and such matters could be pursued through discovery.

In this instance, however, Local 1-2 has not endeavored to show in its discovery motion that any of the

amounts shown or claimed by the utility company (either in the historic or forecast test periods) are incorrectly stated or in need of adjustment. Absent such a demonstration, Consolidated Edison is not required to respond to this interrogatory.

3. Seventeen Contractors

Local 1-2 Question No. 41(G) listed, by name, 17 contract laborers and asked Consolidated Edison to state the number of months per year they have worked since they first worked for the company. Consolidated Edison claims that this interrogatory is not relevant to the rate proceedings and it has no relationship to the calculation of the company's revenue requirements. Were any such information to be provided, the company suggests that it should be limited to the historic test period. In any event, it considers this information to be personal to the named individuals and believes it should not be disclosed absent a clear showing of need and relevance.

This discovery item apparently seeks to measure the extent to which Consolidated Edison has made use of contract labor. Significantly, Local 1-2 has alleged that the use of outside laborers can be more expensive than the cost of using an equivalent internal labor force. Consolidated Edison's response to this inquiry could indicate whether or not the company makes sufficient use of contract labor for there to be any cost differences that would have a material impact on the statement of its gas or steam revenue requirements. For this reason, Consolidated Edison should produce, only for the historic test period, the total number of months that the listed laborers provided contract services. The company need only provide Local 1-2 its aggregate result and need not disclose any information pertaining to specific laborers or contractors.

4. Management Methods

Local 1-2 Question No. 34(G)/41(S) asked the company to describe its management methods for per diem and other contract laborers. Consolidated Edison considers this interrogatory to be overly broad and burdensome. The company

states it would have to audit all its operations to describe how the contractors are managed. It also claims there has been no showing that such information is relevant to the rate proceedings or the outcome of these cases.

Consolidated Edison is correct that it is not clear either from this interrogatory or from Local 1-2's March 10th motion that a broad description of the company's management approach, by itself, is apt to provide the basis for a ratemaking adjustment. A stronger showing would be necessary to justify the efforts that such discovery would entail.

5. Work Assignments

Local 1-2 Question No. 39(G)/46(S) asked the company to provide the criteria and describe how it is used to determine whether utility system work will be performed by internal employees or outsider contractors. In addition to claiming that this inquiry is irrelevant to the rate proceedings and unduly burdensome, the company states that it has already responded to this question. It has indicated that per diem contract forces are used to supplement, not replace, weekly employees and to fill peak demands. It also noted that these laborers often provide specialty skills (and equipment) and provide a source of trained and qualified personnel in emergency situations. According to Consolidated Edison, for it to respond in any greater detail would require a study of its entire operations which it does not want to do.

I find that the company has provided a sufficient general response to Local 1-2 for the union to present its case and any evidence it has that conflicts or disproves the company's assertions. Consolidated Edison need not perform a survey of its operations at this time.

6. Purchase Orders

Finally, Local 1-2 Question No. 42(G)/48(S) asked for all purchase orders for per diem labor in 2002 and 2003. Here too, the company considers the inquiry to be overly broad, unduly burdensome and irrelevant to the rate proceedings. In

any event, Consolidated Edison states that its purchase systems do not readily identify per diem contracts nor do they separate them from other types of construction contracts. It objects to performing a manual review of the over 500 purchase orders it has for 2002 and the over 400 orders for 2003.

I find that that Local 1-2 has not provided a sufficient basis, either in its discovery request or its March 10th motion, to require Consolidated Edison to deliver to it the company's per diem labor purchase orders for the last two years. While it appears to be possible for the company to manually gather these items from the group of 900 purchase orders in which they are contained, there has not been a sufficient showing to date that would justify this amount of effort by the company.

(SIGNED)

WILLIAM BOUTEILLER