

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 13-M-0028 - RED-Rochester LLC and Eastman Kodak Company -  
Petition for Approval to Transfer Regulated  
Utility Assets at Eastman Kodak Park, Approval  
to Transfer Certificates of Public Convenience  
and Necessity, for Continued Lightened and  
Incidental Regulation, Approval of Financing,  
and Authorization, to the Extent Necessary, for  
Submetering.

ORDER CONFIRMING PRIOR ORDER AND GRANTING  
CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued and Effective June 13, 2013)

INTRODUCTION

BY THE COMMISSION:

On May 30, 2013, an Order Approving Transfer Subject to Conditions, Providing for Lightened Ratemaking Regulation, and Making Other Findings (Transaction Order) was made in this proceeding, by Garry A. Brown, Chairman. As discussed in more detail in the Transaction Order, Eastman Kodak Company (Kodak) was authorized to transfer to RED-Rochester LLC (RED) the electric, gas, steam and water utility facilities at the Eastman Business Park (Eastman Park) that fall within the scope of regulation under the Public Service Law (PSL), and RED was authorized to obtain a financing. It was also decided that RED would be subject to lightened ratemaking regulation as the owner and operator of the PSL-regulated utilities and services at the

Park following the transfer transaction.<sup>1</sup> Kodak and RED had requested that the Certificates of Public Convenience and Necessity (CPCN) authorizing Kodak to provide gas, electric and steam service within the Eastman Park be transferred to RED.<sup>2</sup> CPCN issues, however, could not be decided in the Transaction Order.

The request that RED be certified under PSL §68 and §81 to provide gas, electric and steam service within the Park was submitted pursuant to the expedited process provided for under our regulations, at 16 NYCRR §21.10. That regulation, however, is best interpreted as requiring that certification issues be decided at a hearing held at a scheduled and noticed meeting where a quorum of Commissioners are present. As a result, the relief RED requests could not be granted until this Session. Certification issues are therefore decided below.

#### DISCUSSION AND CONCLUSION

The CPCNs that are the necessary prerequisite to RED's provision of gas, electric and steam service shall issue. In order to obtain CPCNs under PSL §68 and §81, a gas, electric and steam corporation must be able and willing to render safe and adequate service; must show that its enterprise is financially and economically viable; and, must demonstrate that

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<sup>1</sup> In an unauthorized filing made on June 10, 2013, Rochester Silver Works LLC (RSW) protested that RED had not complied with the requirements of the Transaction Order; on June 11, 2013, however, RED and RSW reported they had tentatively settled disagreements over the interpretation of that Order, rendering the filing moot.

<sup>2</sup> Since RED must be granted the CPCNs in its own name by showing that it meets the PSL §68 and §81 standards, describing the process as a transfer of the CPCNs is not a complete depiction.

certification is in the public interest.<sup>3</sup> It must also certify that it has been organized in conformance with applicable law and that its organizational instruments empower it to provide the gas, electric and steam service, and document that it has obtained all necessary municipal consents.<sup>4</sup>

RED meets the PSL §68 and §81 standards.<sup>5</sup> It is financially viable, and its arrangements for providing gas, electric and steam service conform to the requirements of the PSL. RED's history of successfully developing and operating other electric and steam facilities shows that it should be able to satisfactorily provide the services in the future within the Eastman Park to the customers located there, which nonetheless may instead avail themselves of competitive alternatives to the extent discussed in the Transaction Order. RED is also empowered to provide the services, and has obtained all needed consents on the same basis as Kodak. RED has therefore demonstrated the ability and the intention to render safe and adequate gas, electric and steam service, and that certification is in the public interest.<sup>6</sup>

Moreover, RED has timely moved for expedited treatment of its petition, and has attested that it has made the required

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<sup>3</sup> Case 93-E-1073, Wallkill Generating Company, Opinion No. 94-18 (issued August 12, 1994), p. 27.

<sup>4</sup> The filings that justify issuance of CPCNs are described in the Transaction Order, pp. 4-17.

<sup>5</sup> RED need not obtain a CPCN to provide water services under these circumstances. See PSL §89-e; Transaction Order, pp. 21-23.

<sup>6</sup> See Case 10-E-0339, Hudson Transmission Partners LLC, Order Granting Certificate of Public Convenience and Necessity, Authorizing Financing, and Approving Environmental Management and Construction Plan (Segment 1)(issued May 12, 2011).

notice. The period for comment under the notice expired on February 4, 2013 without objection.

Accordingly, we grant RED's motion for an expedited proceeding. A hearing having been held in this proceeding on June 13, 2013, we find, as required by PSL §68 and §81, that the operation of the gas, electric and steam facilities for providing gas, electric and steam services as described in RED's filings and in the Transaction Order is necessary or convenient for the public service.

The ambit of these CPCNs is limited to the provision of service within existing boundaries of the Eastman Park. If RED desires to serve additional customers outside of the Park, it must obtain an amendment to the relevant CPCN. There may be opportunities, however, for RED to supply steam to additional customers sited beyond the Park's boundaries. Since no other PSL-regulated steam service provider abuts the Park, in that event, the ambit of the CPCN can be expanded, assuming the expansion does not raise any safety, reliability or other issues.

The CPCNs issued to Kodak were non-exclusive, to the extent customers could avail themselves of delivery of electric and gas commodity supply, from providers that were alternatives to Kodak, over Kodak's delivery system. RED states it will offer customers the same opportunity, albeit no customer ever requested Kodak to develop the delivery rate that would be a prerequisite for accessing alternative commodity suppliers. Like Kodak, RED need not develop the delivery rate until a request to furnish the delivery service is received.

The CPCNs issued here are non-exclusive beyond permitting access to alternative commodity suppliers. As described in the Transaction Order, RED has offered existing customers at the Eastman Park three options for entering into

contracts with it that supplant the prior contracts with Kodak. Under the default option, customers may obtain utility service from alternative providers. As a result, the CPCNs shall be non-exclusive to the extent that customers within the Eastman Park may seek out alternative utility suppliers, including Rochester Gas and Electric Corporation (RG&E) as a provider of gas and electric delivery and other services, as permitted under the default contract option.

RED's two other contract options, at a standard formula price and at a market price options, provide that, other than competitive gas and electric commodity supply, customers must purchase all their utility service requirements from RED. The CPCNs will not be interpreted as overriding the two contractual arrangements on this point.<sup>7</sup>

The Commission orders:

1. The referenced foregoing Order is approved and confirmed and filed in the office of the Commission.
2. Certificates of Public Convenience and Necessity are granted to RED-Rochester LLC, subject to the discussion in the body of this Order, to permit the operation of the gas, electric and steam facilities and the provision of the gas, electric and steam services described in the body of this Order and the Order Approving Transfer Subject to Conditions, Providing for Lightened Ratemaking Regulation, and Making Other Findings issued May 30, 2013 in this proceeding.

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<sup>7</sup> The CPCNs shall further be interpreted as non-exclusive to the extent, as discussed in the petition RED and Kodak filed in this proceeding and in the Transfer Order, that existing customers are already taking utility service from an alternative provider.

3. This proceeding is closed.

By the Commission,

(SIGNED)

JEFFREY C. COHEN  
Acting Secretary