

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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Briefs

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August 7, 2006

VIA HAND DELIVERY

Hon. Rafael Epstein
 Administrative Law Judge
 New York State Department of Public Service
 Three Empire State Plaza
 Albany, NY 12223-1350

Re: Case 05-S-1376 – Consolidated Edison Company of New York, Inc. –
 Steam Rates.

Dear Judge Epstein:

Department of Public Service Staff (Staff) respectfully submits this letter as its post-hearing brief in the above captioned proceeding. Staff has determined that the issues raised by the County of Westchester (Westchester) and TransGas Energy Systems LLC (TransGas) during the hearing were no different from the issues those parties raised in their statements in opposition. Staff fully responded to those issues in its June 30, 2006 Statement In Response To The Statements In Opposition To The Joint Proposal (Reply Statement) and will not repeat its arguments.¹

Your Honor also requested that the parties "should make every reasonable opportunity to anticipate all the arguments you should have been known would be coming out of this hearing."² Inasmuch as the issues and arguments advanced by Westchester at the hearing are virtually identical to the arguments it advanced throughout this proceeding and in prior proceedings, Staff does not anticipate that Westchester will raise any new arguments in its post-hearing brief. However, a review of the transcript indicates that it may expand on one argument. Accordingly, Staff will supplement its prior arguments with the following.

¹ Tr., pp. 127-135.

² Tr., pp. 412-413.

Westchester will likely assert that if the East River Repowering Project (ERRP) were built solely as an electric generating facility, it would have different operating characteristics (e.g., a lower heat rate) and the costs borne by electric customers would be different (and lower). These arguments may be interesting from a theoretical standpoint, but they do not provide any basis to modify the recommendations set forth in the Joint Proposal or to change the allocation methodology for ERRP's costs that was approved in Case 03-S-1672.³

The Commission sets rates based on "the utility's revenues, operating expenses, and conditions ... in the period for which [the Commission is] setting rates."⁴ It does not set rates based on how a hypothetical plant may operate. Westchester contends that because ERRP cost more to construct than anticipated and did not, over its first year of operation, yield the amount of benefits that were expected, the Commission should reset the cost allocation between steam and electric customers based largely on the costs that would be incurred by a hypothetical electric-only generating facility. While Staff does not dispute that ERRP was more costly or that, during the limited amount of time it has been in commercial operation, did not produce significant savings, these facts do not warrant resetting the allocation based on a different plant than what actually exists.

ERRP was designed and constructed, and is operated, as a combination steam and electric generating facility. As such, its costs are allocated using the same methodology the Commission has employed since 1978, or earlier—the costs associated with the production of electricity are allocated to electric operations and the incremental costs of producing steam are allocated to steam operations. The reason the amounts allocated to electric and steam are different than for other steam-electric plants is attributable to ERRP's use of modern technology (*i.e.*, a gas turbine). The Joint Proposal properly reflects the use of this methodology, as well as the requirements of the Commission's rate-setting Policy Statement.

During the hearing, TransGas received assurances from Staff, Consolidated Edison Company of New York, Inc. (Con Edison), and the City of New York that, as part of the Steam Resource Plan, Con Edison must evaluate third party steam production options. As part of that evaluation, Con Edison should obtain and use the most current information available to it. Staff never considered this to be a disputed issue, so no further discussion of it is needed.

³ Cases 03-G-1671 and 03-S-1672, Consolidated Edison Company of New York, Inc. – Gas and Steam Rates, Order Adopting the Terms of a Joint Proposal (issued September 27, 2004).

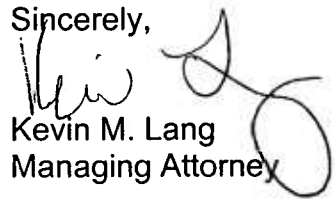
⁴ Case 26821, Statement of Policy on Test Periods in Major Rate Proceedings (issued November 23, 1977), p. 3.

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TransGas also pursued issues associated with Phase I of the Steam Production Study being undertaken in accordance with requirements of the Rate Order issued in Case 03-S-1672. The Phase I Study is not part of this proceeding, and any issues TransGas may have regarding the preparation, contents, or conclusions of that Study are properly addressed in Case 03-S-1672. Moreover, TransGas' claims are premature since the Study is not yet completed and it is not yet known whether TransGas' concerns will be suitably addressed in the final document. Certainly, its disputes with the Phase I Study do not bear on the rates recommended in the Joint Proposal or on the scope or elements of the Steam Resource Plan. Inasmuch as Staff has not identified any other argument TransGas may raise in its post-hearing brief that was not adequately addressed in Staff's Reply Statement, Staff offers no additional arguments at this time.

Should Westchester or TransGas raise any novel or otherwise unanticipated arguments in their post-hearing briefs, Staff reserves the right to respond to those arguments in a reply brief. In sum, Staff respectfully submits that, for the reasons set forth in its Statement in Support and Reply Statement, as well as in its testimony at the July 12 hearing, the Commission should adopt or approve the June 2, 2006 Joint Proposal (marked as Exhibit 1) as proffered and with no changes.

Sincerely,


Kevin M. Lang
Managing Attorney

Dakin Lecakes
Assistant Counsel

cc: Active Parties to Case 05-S-1376