

COPY MADE

**READ AND LANIADO, LLP**

ATTORNEYS AT LAW

25 EAGLE STREET  
ALBANY, NEW YORK 12207-1901

(518) 465-9313 MAIN  
(518) 465-9315 FAX  
WWW.READLANIADO.COM

HOWARD J. READ  
RICHARD C. KING  
OF COUNSEL

KEVIN R. BROCKS  
JEFFREY B. DUROCHER  
CRAIG M. INDYKE  
DAVID B. JOHNSON  
SAM M. LANIADO  
  
STEVEN D. WILSON

Via Electronic & Regular Mail

August 18, 2006

RECEIVED  
PUBLIC SERVICE  
COMMISSION  
EXEC FILES - ALBANY  
2006 AUG 18 PM 2:34

Hon. Rafael Epstein  
Administrative Law Judge  
New York State Public  
Service Commission  
Three Empire State Plaza  
Albany, New York 12223

Re: 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.

Dear Judge Epstein:

This letter serves as the reply by TransGas Energy Systems LLC ("TransGas") to the Post Hearing Brief of Consolidated Edison Company of New York, Inc. ("Con Edison"), filed on August 7, 2006 in the captioned proceeding. In its brief, Con Edison cites a ruling that was not mentioned in prior pleadings to support its argument that Con Edison need not negotiate with potential suppliers of steam based upon its avoided costs, nor disclose its costs to a potential supplier. (CE Br. 14)

Con Edison argues that its ability to obtain the lowest price for its customers would be undermined if suppliers knew the company's avoided costs. (*Id.*) As explained in TransGas' Initial Post Hearing Brief, this position is contrary to at least two orders issued by the Commission. (TGE Br. 3, 5) The ruling Con Edison cites involved determining avoided costs for setting electric buyback rates that was issued twelve years ago,<sup>1</sup> well before the aforementioned two steam orders issued by the Commission.

In the first instance, Con Edison truncates the quote from the Ruling. The full sentence is "[a]dditionally, disclosure would undermine Con Edison's ability to negotiate with Hydro Quebec" (emphasis added). (Ruling, p. 8) The cited portion of the Ruling addresses Con Edison's estimate of the price of diversity energy which it forecasted to purchase from Hydro Quebec in the future. The case was not about whether avoided costs was the proper standard.

<sup>1</sup> Case 94-E-0334 - *Ruling On Requests For Trade Secret Status And Motion For Preclusion* (Issued August 26, 1994) (the "Ruling").

That was a given. Rather, Con Edison argued that some of the inputs to forecast avoided costs were entitled to trade secret protection because of their alleged competitive value, pursuant to 16 NYCRR § 6. With respect to the forecast of the energy diversity price, the Ruling observed that it was an indication “. . .of the energy price that a leading energy producer like Con Edison is estimating it will pay.” (Ruling, p. 8)

The Ruling, therefore, did not question whether avoided costs was the correct standard. Unlike the forecast of an electric diversity price that could be employed in negotiations between Con Edison and Hydro Quebec, Con Edison is not being asked to forecast the price it is willing to pay for steam.

In this regard, Con Edison overreaches when it states that the Commission granted trade secret protection in the last steam case for cost projections because to disclose them might undermine negotiations. (CE Br. 14) The Joint Proposal stated that cost projections will be treated as confidential data and they will not be disclosed to any party (including steam supplier representatives) other than the core members of the Task Force (p. 54). The Commission did not elaborate on that provision of the Joint Proposal.

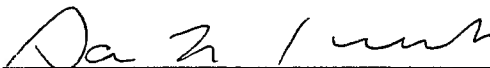
Nor is there any merit to the argument that ratepayers would be disadvantaged by the disclosure of Con Edison's avoided costs. Con Edison can always attempt to negotiate discounts to its avoided costs. There is no dispute that the Commission will be the final arbiter as to price. If the Commission is to determine that a supplier's proposal would benefit ratepayers, compared to Con Edison's production cost, suppliers must know the benchmark against which they are negotiating. It cannot be kept a secret; otherwise it would serve as a barrier to entry, something that would disadvantage ratepayers.

Furthermore, all concur that there is no competitive market for steam supply. (CE Br. 14; Tr. 161-62) In order for Con Edison to obtain competitive offers, it is extremely important that its costs be transparent. Otherwise, Con Edison can effectively block offers of competitive steam.

Respectfully submitted,

READ AND LANIADO, LLP  
Attorneys for TransGas Energy Systems LLC

By:

  
\_\_\_\_\_  
Sam M. Laniado

SML:tac

cc: Hon Jaclyn A. Brillong (25 copies) (*Via Hand Delivery & Electronic Mail*)  
Active Parties (*Via Electronic & Regular Mail*)  
Thomas P. Puccio, Esq.  
Of Counsel to TransGas Energy Systems LLC