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Brief

Chanoch Lubling
Vice President
Regulatory Services

August 18, 2006

Honorable Jaclyn Brillling
Secretary
New York State Public
Service Commission
3 Empire State Plaza
Albany, NY 12223

Re: Case 05-S-1376
Con Edison Steam Rates

Dear Secretary Brillling:

Attached is an original and five copies of the Consolidated Edison Company of New York, Inc.'s post-hearing reply brief in the referenced proceeding.

If you have any questions, please contact me.

Respectfully submitted,



c: ALJ. Rafael Epstein
All parties

Attachments

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Case No. 05-S-1376	Proceeding on Motion of the	:	
	Commission as to the Rates, Charges,	:	Before
	Rules and Regulations of Consolidated	:	Hon. Rafael Epstein
	Edison Company of New York, Inc.	:	
	For Steam Service	:	

**POST-HEARING REPLY BRIEF OF
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

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Dated: August 18, 2006
New York, New York

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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.

**POST HEARING BRIEF OF
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

A. INTRODUCTION

Consolidated Edison Company of New York, Inc. (“Con Edison” or “Company”) respectfully submits this post-hearing reply brief in response to the post-hearing initial briefs (“IB”) of the County of Westchester (“Westchester”) and TransGas Energy, Inc. (“TransGas”). The Company is cognizant of Administrative Law Judge Epstein’s expectation that all reply briefs should be perfunctory (or even waived) given his admonition that all arguments in opposition of the Joint Proposal (“Proposal”) that could reasonably have been expected to be raised in the opponents’ initial briefs should have been addressed in the Company’s initial brief (407-09).¹ However, the Company could not have reasonably anticipated that Westchester and TransGas would both disregard the limits on the content of IBs set by the Administrative Law Judge and unabashedly introduce new alternative proposals for the very first time in their respective initial briefs. Accordingly, short of moving to strike these totally improper alternative proposals, which would unacceptably invite yet another round of briefs, the Company is left with no choice but to

¹ References to the stenographer’s minutes will be set forth in parentheses, without prefix.

address in detail those new proposals in this reply brief. As will be demonstrated below, both proposals are unjustified and flawed and should be rejected on the merits as well as on the aforementioned procedural grounds.

B. WESTCHESTER'S BELATED ALTERNATIVE PROPOSAL SHOULD BE REJECTED.

In its post-hearing initial brief, Con Edison demonstrated that Westchester's objections to the Proposal's continuance of the allocation of the costs of the East River Repowering Project ("ERRP") between the steam and electric departments based on the "incremental cost" allocation method should be rejected because: (1) each of the objections were considered and rejected by the Commission less than two years ago in the Company's last steam rate proceeding;² (2) the circumstances in this case have changed little from those the Commission considered long ago in adopting the "incremental cost" allocation method in its Opinion 78-27³ and again, more recently, in Opinion 00-15⁴ (185-86); and (3) none of the oft-repeated arguments against the incremental cost allocation method advanced by Westchester provides a basis for the Commission to alter its policies on this matter.⁵

² Case 03-S-1672, Order Adopting The Terms of a Joint Proposal, Sept. 27, 2004 ("2004 Rate Order").

³ Case 27276, Con Edison Steam Rates, Opinion No. 78-27, 18 NYPSC 1764, 1768-70 (1978).

⁴ Case 99-S-1621, Con Edison Steam Rates, Opinion No. 00-15, December 1, 2000, pp. 18-20.

⁵ As also demonstrated in the Company's initial brief (pp. 7-10), Westchester's analysis underlying its claim that the current allocation method is unfair to electric customers is seriously flawed. The record is clear that Westchester's estimate of above-market ERRP costs that have been allocated to the electric department is overstated by at least \$24.8 million (261) and any such above-market costs are more than offset by significant electric system benefits that its witness ignored (262-263, 289, 369). The record also discredits Westchester's new claim (its brief, p. 15) that market price anomalies during the period of its analysis should be ignored because Con Edison's fuel hedges should have mitigated spikes in the fuel market. To the contrary, hedging can worsen the linkage between fuel costs and electric market prices by widening the time between fuel procurement and observed spot market behavior (262, 285). Finally, it is undisputed that the ERRP costs charged to electric ratepayers have been entirely consistent with those anticipated in 2004 when the Commission approved the current allocations (264).

In its post-hearing brief (p. 16), Westchester presents for the first time an alternative proposal for reallocating ERRP costs between steam and electric, *i.e.*, that the incremental cost method should apply only during the four summer months, purportedly because the summer period is the only time during which electricity produced by ERRP is the primary product and steam is the by-product. During the other eight months of the year, according to Westchester, electricity produced by ERRP is a by-product of steam production and, therefore, above-market costs of ERRP should not be assigned to electric production for those eight months.

Although Westchester claims (IB, p. 16) that its alternative proposal is a more “proper” application of the incremental cost method, Westchester’s alternative proposal is entirely results driven because it would result in electric customers always benefiting at the expense of steam customers. As shown on Westchester’s own chart (IB, p. 13), electric customers would receive the benefit of ERRP’s efficiency in the summer months, when the fuel cost is lower than the electric price, while paying no more than fuel costs during the winter months. In fact, however, not only is Westchester’s “heads I win and tails you lose” proposal not a proper application of the incremental cost method, it would contravene one of the primary purposes of the Commission’s adoption of the incremental costs method, *i.e.*, to stem migration of steam customers to the electric system and ensure that, in the long term, electric customers would not be required to incur even higher costs (132, 260). In short, Westchester’s alternative steam-to-electric-subsidy proposal makes it clear that Westchester’s objection to the incremental cost method as applied to ERRP is entirely unprincipled, that Westchester is disingenuous when it claims (IB, p. 10) that it supports the Commission’s goal to gradually, but not abruptly, eliminate any existing

electric-to-steam subsidy, and that Westchester is hypocritical when it asserts (its br., p. 18) that any subsidy of the steam department by another is “repugnant (Stew – I thought you were taking the high road)” (sic) to established ratemaking principles. Moreover, Westchester’s attempt to establish the periods in which steam is and is not the by-product is contrary to principles underlying the incremental cost method, as well as an improper analysis of ERRP’s electric operation in isolation from its steam operation (292-93).⁶ Westchester alleges (its br., p. 14-15) that ERRP is dispatched solely to produce steam and, therefore, electric customers should not have to pay more than the prevailing market price for its electric production. ERRP, however, was built to address the needs of both the steam and electric systems (2004 Rate Order, p. 27) and has proven to be an efficient plant (292) whose benefits (e.g., reduced fuel consumption and lower emissions) accrue to all customers (262). Even under Westchester’s analysis, the cost of fuel at ERRP was significantly less than the cost of electric and steam generation that ERRP displaced (289, 382). These overall fuel savings accrued to customers throughout the year, including during the eight months of the year that Westchester purports the plant was not needed to produce electricity.⁷

C. TRANSGAS’S BELATED ALTERNATIVE PROPOSAL SHOULD BE REJECTED.

In its post-hearing brief (pp.13-14), Con Edison addressed TransGas’s proposal to insert a new provision in the Proposal, which would require the Company to negotiate “potential terms” with TransGas and other interested steam suppliers on the basis of

⁶ Westchester’s comparison (its brief, p. 9) of the ERRP fuel costs to those of Waterside and East River 6 is misleading because the steam department pays one-third of the ERRP capital costs as compared to less than 5 percent of the capital costs of the other plants.

⁷ Westchester incorrectly interprets (IB, p. 13) the absence of NYISO operating orders as evidence that ERRP was not needed to produce electricity. In fact, the plant operated most of the time and, thus, there was no need for the NYISO to call for the operation of the plant.

avoided costs and evaluate such terms in the Resource Plan. Con Edison demonstrated that there is no need to modify the Proposal as urged by TransGas because nothing in the Proposal precludes the Company from considering offers from third parties and the Company has every intention to consider third party suppliers in the Resource Plan (63-66). In its post-hearing brief (pp. 2-3), TransGas agrees that there is no need to alter the Proposal as TransGas had initially proposed.

TransGas's initial brief (p. 7), however, introduces for the first time an alternative, which would modify the provision in the Proposal that requires that "[t]he Resource Plan will examine and discuss various resource options (e.g., maintain and/or rebuild existing boilers, construct a new boiler(s), construct cogeneration, or seek competitively procured capacity). Under TransGas's alternative proposal:

TransGas would agree to have the "e.g." deleted from the JP, with the Commission adopting as requirements for implementing the JP, the acknowledgements of the proponents stated herein, concerning Con Edison's obligation to seek competitively procured capacity, and evaluate and negotiate offers from potential steam suppliers in good faith, based on its own avoided costs, before the *Steam Resource Plan* is finalized, so they may be evaluated on a level playing field against the Hudson Avenue repowering options in the *Steam Resource Plan*.

This belated alternative proposal should be rejected. First, the alternative proposal is unnecessary, because, as already acknowledged by TransGas, Con Edison has agreed to consider third-party offers as part of its resource plan and to fully justify the decision it makes. Second, the alternative proposal is flawed because it appears to require Con Edison to seek competitively procured capacity prior to the filing of the Resource Plan,⁸ and to

⁸ Con Edison would agree to have "e.g." replaced with "i.e." but even that minor change would be unnecessary given its public commitment to evaluate merchant supply in the Resource Plan.

evaluate and negotiate offers from potential suppliers based on avoided costs.⁹

Con Edison should not be required to seek steam production supply from merchant producers prior to the issuance of the Resource Plan. As Staff explained with respect to the Company's steam production planning, "[t]he decision is Con Edison's; the role of the Commission is to evaluate the prudence of that decision, and the parties' involvement is limited to providing information to Con Edison and the Commission to assist them in making their respective evaluations and decisions" (130). To be sure, Con Edison may decide that the proper course of action is to affirmatively seek offers from merchant suppliers prior to the issuance of the Resource Plan, but it should do so because it has determined it makes sense from the utility and ratepayer perspectives, and not simply to promote business opportunities for merchant suppliers. The new TransGas proposal "puts the cart before the horse" by requiring Con Edison to seek offers before it determines its specific needs in the context of the Resource.¹⁰ Moreover, the avoided costs to which TransGas seeks access will not be fully determined until the Resource Plan is completed.¹¹ In the interim, Con Edison will, however, continue to entertain offers from third-party

⁹ As Con Edison has consistently stated in this proceeding, while an eventual contract would be evaluated on the basis of avoided costs, Con Edison should have no obligation to provide potential third-party merchant suppliers with its estimated avoided costs as a target for negotiating purposes. As the Company explained in more detail in its post hearing brief (p. 14), "given that there is no competitive market for steam supply (161-62), it would make no sense to provide a potential third-party steam supplier with additional leverage by providing it with knowledge of, and allowing it to negotiate against, Con Edison's avoided costs (65)."

¹⁰ The choice to seek third-party supplies can be seen as largely one of procurement method rather than technology selection. The question of which technology (e.g., boilers or cogeneration) is best suited to meet future steam needs can be addressed in the Resource Plan using the information that is being developed in the Steam Production Study as well as the more detailed information that will be forthcoming in the Investment Grade Evaluation. The question of whether Con Edison should build a plant itself or purchase steam from others is mostly one of risk management. That too will be addressed in the Resource Plan, but it may not make sense to negotiate those specific issues in advance of discussing them in the Resource Plan.

¹¹ The costs obtained from the Steam Production Study and the Investment Grade Evaluation will be inputs to the Resource Plan, but cannot be used in isolation as avoided costs.

suppliers as required by the Phase II Steam Planning Order.¹²

TransGas claims that other proponents of the Proposal agreed that Con Edison should be required to “negotiate” with third-party suppliers on the basis of avoided costs, but the transcript demonstrates otherwise. For example, TransGas’s brief claims (p. 6) that the Staff Panel concurred that Con Edison’s cost “is the proper negotiating standard.” TransGas is incorrect. The Staff Panel agreed that a competitive offer would be “compared” to Con Edison’s avoided costs (162, lines 14-15), but the panel did not agree that Con Edison should be required to “negotiate” on the basis of avoided costs. Moreover, the City’s witness explicitly cautioned that Con Edison should not be required to negotiate on the basis of estimated avoided costs, because that could have the same result as occurred when the electric utilities were required to do the same -- above-market contracts that were detrimental to ratepayers. (204-05). Accordingly, the TransGas alternative proposal is fundamentally flawed to the extent that it requires Con Edison to “negotiate” with potential suppliers on the basis of avoided costs.¹³

In sum, the Commission should reject TransGas’s belated and flawed alternative proposal.

D. CONCLUSION

For all the reasons set forth in the Company’s Statement and Reply in Support of

¹² Cases 96-S-1065 and 96-S-1121, Order Concerning Phase II Steam Plan Report (Dec. 2, 1999).

¹³ This is entirely consistent with the Commission’s decision in the 2004 Rate Order (pp.29-30). Nowhere does the Commission state, as TransGas suggests, that a merchant supplier has the right to negotiate with Con Edison on the basis of avoided costs. Instead, the Commission merely points out that it will be necessary to determine Con Edison’s avoided costs at some point if TransGas is in the position to provide steam to Con Edison. Clearly, however, the Commission does not state that TransGas has the right to know such avoided costs, or the right to negotiate on the basis of avoided costs, which would have been contrary to prior rulings that recognized the sensitivity of avoided cost estimates. Cases 93-E-0912 and 93-E-1075, Procedural Ruling and Protective Order, May 16, 1995.

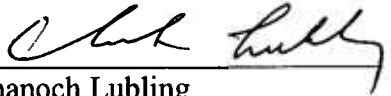
the Proposal, its Post Hearing Brief, and in this brief, the Proposal balances the interests of a variety of parties and produces results within the range of reasonableness that would have been achieved through a fully-litigated proceeding, reflects agreements by normally adversarial parties and comports with the Commission's policies. No evidence adduced at the hearings alters this conclusion, nor justifies adoption of the belated alternative proposals advanced by TransGas and Westchester. As such, the Commission should approve the Proposal in its entirety as in the public interest.

Dated: New York, New York
August 18, 2006

Respectfully submitted,

Consolidated Edison Company
of New York, Inc.

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