

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

In the Matter of the Rules and Regulations of
the Public Service Commission, Contained in
16 NYCRR Proposed Amendments to Chapter
I, Subchapters A, C and G, Chapter II,
Subchapters A and G, Chapter III, Subchapters
A and G, Chapter IV, Subchapters C and G,
Chapter V, Subchapters A and F, Chapter VI,
Subchapters A, E and F, Chapter VII,
Subchapters C and D, and Chapter VIII,
Subchapter B.

Case 09-M-0544

**COMMENTS OF
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
AND ORANGE AND ROCKLAND UTILITIES, INC.**

Consolidated Edison Company of New York, Inc. (“Con Edison”) and Orange and Rockland Utilities, Inc. (“O&R”) (Con Edison and O&R referred to collectively as the “Companies”) submit these comments in response to the Public Service Commission’s (“Commission”) *Notice of Proposed Rule Making*, issued November 30, 2010 in the above referenced proceeding (“Notice”).

The Companies support the Commission’s efforts to revise its rules to provide for electronic filing and service of documents and submit these comments with the goal of providing clarification and certainty to the proposed rule changes described in the Notice (brackets indicate deleted material and underlining indicates new material).

§ 1.2(e)

Under the proposed Rule change, this Section would read as follows:

active party: a party included on a list of active parties prepared by a presiding officer pursuant to § 4.3(b) of this Title.

The Companies propose the following additional language:

active party: a party included on a list of active parties prepared by a presiding officer (“Active Parties List”) pursuant to § 4.3(b) of this Title.

Explanation: The definition incorporates a term (i.e. Active Parties List)¹ commonly used in Commission proceedings.

§ 1.2(m)

Comment: The Companies request that the Commission provide definitions for the terms “electronic mail,” “e-mail” and “electronically.” The Companies propose that electronic mail or e-mail be defined as “a digital communication from one person to one or more recipients sent across the Internet or another computer network.” Electronically should be defined as “e-mail or other mode of digital communication over the Internet or another computer network.”

§ 1.2(o)

Comment: The Companies propose an additional §1.2(o) where the Rules would provide a definition for the term “Service List.” The Companies recommend that Service List be defined as “a list established by the Secretary to identify persons or entities that will receive Orders and

¹ The Companies request that the Commission explore making the Active Parties List available in a downloadable and searchable format so that e-mail addresses can be readily extracted and aggregated.

Notices in a particular proceeding.” The Service List² should be distinguished from the Active Parties List to avoid any possible confusion.

§ 2.1(b)(2)

Under the proposed Rule change, this Section would read as follows:

the name of such person's attorney or other representative (if applicable) upon whom service should be made;

The Companies propose the following additional language:

the name address, telephone number and e mail address of such person's attorney or other representative (if applicable) upon whom service should be made;

Explanation: This text should be added because the “address, telephone number and email address” of the attorney or representative is needed to allow for communications during the proceeding.

§3.2(a)(1)

Under the proposed Rule change, this Section would read as follows:

Every order of the Commission will be filed in the principal office of the Commission and served upon all parties to the proceeding in which it is issued, any other person requesting inclusion on the service list for such proceeding, and any person to whom, or corporation to which, the order issues a directive or prohibition (who or which shall be deemed to be a person or corporation to be affected by such order within the meaning of §23(1) of the Public Service Law). A certified copy or a copy bearing the seal of the Commission will be provided upon request.

² The Companies request that the Commission explore posting the Service List to its web site so that persons may know whether they are included on any Service List for a particular proceeding.

The Companies propose that the following language be deleted:

Every order of the Commission will be filed in the principal office of the Commission and served upon all parties to the proceeding in which it is issued, any [other] person [requesting inclusion] on the [s]Service [I]List for such proceeding, and any person to whom, or corporation to which, the order issues a directive or prohibition [(who or which shall be deemed to be a person or corporation to be affected by such order within the meaning of §23(1) of the Public Service Law)]. A certified copy or a copy bearing the seal of the Commission will be provided upon request.

Explanation: This text should be deleted because the terms of the Commission’s order itself, not the act of serving the order, should determine the identities of persons or corporations affected by the order.

§ 3.2(a)(2)

Under the proposed Rule change, this Section would read as follows:

Unless a statute, order, notice or ruling provides otherwise, such order, notice or ruling is effective upon issuance, which occurs when it is posted on the Commission’s website.

The Companies propose that the following language be deleted:

[Unless a statute, order, notice or ruling provides otherwise, such order, notice or ruling is effective upon issuance, which occurs when it is posted on the Commission’s website.]

Explanation: This text should be deleted because §23.1 of the Public Service Law states, “Every order of the commission shall take effect at a time specified therein” Accordingly, the Public Service Law requires that orders of the Commission specify an effective time. The effective time of an order should not be established by a generic rule in the absence of a time specified in the order. A generic rule establishing the effective time of an order cannot satisfy the statutory requirement that the order specify the effective date. Further the proposed text can

create confusion regarding the enforceability of the Commission's orders. Case law holds that corporations affected by an order of the Commission are required to observe and obey the order of the commission "upon receipt of the order." See, People v. Dempsey, 224 N.Y. 140, 146. Posting on the Commission's web site should not be deemed "receipt" creating a duty upon the corporation to observe and obey the order. An order should be "served" on the corporation. See, Dempsey, at 147 ("The notice required under this section is actual notice, i.e., service of a certified copy of the order.") As stated in proposed §3.2(b)(3), "Electronic service is deemed complete upon sending. Personal service is complete upon delivery. Service by mail or by overnight delivery is deemed complete at the time of sending ."

§ 3.2(b)(3)

Under the proposed Rule change, this Section would read as follows:

Electronic service is deemed complete upon sending. Personal service is complete upon delivery. Service by mail or by overnight delivery is deemed complete at the time of sending.

The Companies propose the following modifications:

Electronic service is deemed complete upon sending. Personal service is complete upon delivery. Service by mail is complete when deposited in a post-paid wrapper, under the exclusive care and custody of the United States Postal Service or by delivering same in a post-paid wrapper to an authorized United States Postal Service employee, directed to the party at the address established by said party for the service of documents. [or by] Service by overnight delivery is deemed complete when deposited in a securely enclosed wrapper for delivery with an authorized overnight delivery service directed to such party at the address established by such party for the service of documents [at the time of sending].

Explanation: The requirements for service by U.S. mail and overnight delivery service are well established and should be explicitly provided for in the Commission’s Rules.

§3.5(d)

Under the proposed Rule change, this Section would read as follows:

A document presented for filing electronically will be deemed filed at the time it is received by the Secretary. A document presented for filing in paper form only will be deemed filed at the time it is received at the Commission’s Albany office. The Secretary, for the purpose of promoting the fair, orderly, and efficient conduct of the case, may authorize other arrangements.

The Companies propose the following modifications:

A document presented for filing electronically will be deemed filed at the time it is [received by] sent to the Secretary. A document presented for filing in paper form only will be deemed filed at the time it is received at the Commission’s Albany office. The Secretary, for the purpose of promoting the fair, orderly, and efficient conduct of the case, may authorize other arrangements.

Comment: The standard for determining when service is made, “received by the Secretary,” is inconsistent with other provisions of the title that provide for effective service when “sent” (§3.5(e)(3)). This inconsistency could lead to confusion and/or disputes. An electronic filing, timely filed but made late in the business day, may not provide the Secretary (or Department of Public Service Staff) the opportunity to “receive” and post to the Commission’s web site until the next day. Having been timely “sent” to the Secretary, the document should be considered filed when sent.

Finally, the Rules should establish the time of day deadline for the filing of documents. The Companies recommend that the time of day deadline be established as 5 p.m. Documents sent

after 5 p.m. would not be timely filed. Even though the Commission's file room has traditionally closed at 4:30 p.m. for the acceptance of paper filings, allowing electronic filing until 5:00 p.m. should present no inconvenience to the Secretary's Office.

§ 3.5(e)(1)

Under the proposed Rule change, this Section would read as follows:

A party who presents a document for filing in a proceeding in which there are other parties shall at the same time serve the document on each such party. A document requesting the institution of a new proceeding shall be served on any affected utility and on such other person or entities as the Secretary may direct.

The Companies propose the following modifications:

A party who presents a document for filing in a proceeding in which there are other parties shall at the same time serve the document on each such party. A document requesting the institution of a new proceeding shall be served as the Secretary may direct on any affected utility and on such other person or entities [as the Secretary may direct].

Comment: The proposed change refers to the institution of a “new proceeding.” As such, there would not be a designated utility representative or attorney assigned to the proceeding. Nor would there be an individual or attorney who would have consented to service by electronic means in the new proceeding. The Companies' modification clarifies that the Secretary will determine who is served at the utility and the method of service. The Companies also suggest that a generic e-mail inbox could be instituted at each utility for such service (i.e. Service@coned.com) for the Secretary's use in notifying the utility about new proceedings. This process avoids potential service notification on the utility through an individual who may not be available to receive such service.

§ 3.5(e)(2)

Under the proposed Rule change, this Section would read as follows:

When a document is served by a party on another party, service shall be by electronic means unless the serving and receiving parties agree otherwise, or the Secretary or presiding officer, upon a showing of good cause, authorizes the use of a different means of service.

The Companies propose the following modifications to the proposed Rule change:

When a document is served by a party on another party, service shall be by [electronic means] e-mail unless the serving and receiving parties agree otherwise, or the Secretary or presiding officer, upon a showing of good cause, authorizes the use of a different means of service.

Explanation: The term “electronic means” should not be used if “electronic mail” is intended.

The definition of “electronic service” distinguishes between e-mail and other electronic means.

§ 3.5(e)(3)

Under the proposed Rule change, this Section would read as follows:

Electronic service is deemed complete upon sending. If service by other means is agreed upon or authorized pursuant to paragraph (2) of this subdivision, it will be deemed complete when delivered in-hand to the addressee or when sent by United States mail or overnight delivery service.

The Companies propose the following modifications:

Electronic service is deemed complete upon sending. If service by other means is agreed upon or authorized pursuant to paragraph (2) of this subdivision, it will be deemed complete when delivered in-hand to the addressee or [when sent by United States mail] when deposited in a post-paid wrapper, under the exclusive care and custody of the United States Postal Service or by delivering same in a post-paid wrapper to an authorized United States Postal Service employee, directed to the party at the address established by said party for the service of documents or when deposited in a

securely enclosed wrapper for delivery with an authorized overnight delivery service directed to such party at the address established by such party for the service of documents [overnight delivery service].

Explanation: The requirements for service by U.S. mail and overnight delivery service are well established and should be explicitly provided for in the Commission's Rules.

§3.6(a)

Under the proposed Rule change, this Section would read as follows:

All written motions shall, pursuant to § 3.5 of this Part, be filed with the Secretary and at the same time be served on each party to the proceeding. Oral motions may be made at hearings or in extraordinary circumstances where required by the public interest. Any oral motion not made at a hearing shall be on oral notice to all parties to the proceeding.

The Companies propose the following modifications:

All written motions shall[, pursuant to § 3.5 of this Part,] be filed with the Secretary and at the same time be served on each party to the proceeding. Oral motions may be made at hearings or in extraordinary circumstances where required by the public interest. Any oral motion not made at a hearing shall be on oral notice to all parties to the proceeding.

Explanation: Many but not all of the sections being amended by this rulemaking employ the phrase "pursuant to §3.5" to modify "filing." Given that the requirements for filing stated in this Title are applicable to all documents filed with the Secretary, the inclusion of this phrase is unnecessary. If the phrase is retained, it should be included in every reference to "filing."

§3.9

Comment: References to “Administrative Law Judge” throughout this section should be changed to “presiding officer” consistent with the use of “presiding officer” in other sections of this Part.

§5.1(b)

Under the proposed Rule change, this Section would read as follows:

To the maximum extent possible, discovery requests and responses pursuant to this Part shall be served electronically.

The Companies propose the following modifications to the proposed Rule change:

To the maximum extent [possible] practicable, discovery requests and responses pursuant to this Part shall be served electronically.

Explanation: Electronic discovery requests and responses may be “possible” but may not be capable of being performed within a Party’s available means.

§6-1.3(g)(1)

Under the proposed Rule change, this Section would read as follows:

A determination that the submitted material does not merit confidential status made under subdivision (e) or (f) of this section or the grant or denial of access to the records made under subdivision (f) of this section may be appealed in writing, in electronic form or by mail, within seven business days of receipt. The appeal is taken when it is received by the Secretary who shall hear appeals from such negative determinations. The Secretary may consult with the General Counsel and the Chief Administrative Law Judge or their designees in reaching a determination. In addition, a copy of the appeal shall be served upon the opposing party and sent to the Department Records Access Officer.

The Companies propose the following modifications to the proposed Rule change:

A determination that the submitted material does not merit confidential status made under subdivision (e) or (f) of this section or the grant or denial of access to the records made under subdivision (f) of this section may be appealed in writing[, in electronic form or by mail,] within seven business days of [receipt] service as governed by §3.5(e)(3) of this Title. The appeal is taken when it is filed with [received by] the Secretary who shall hear appeals from such negative determinations. The Secretary may consult with the General Counsel and the Chief Administrative Law Judge or their designees in reaching a determination. In addition, a copy of the appeal shall be served upon the opposing party and sent to the Department Records Access Officer.

Explanation: The additional language “in electronic form or by mail” to describe writing in unnecessary. Section 1.2(n) of this Title includes both methods of conveying information within the defined term “writing.” In addition, consistent with the Companies’ proposed changes to §3.5(d), the Rule should reflect that an appeal shall be taken when filed with the Secretary.

§216.1(a)

Under the proposed Rule change, this Section would read as follows:

Every public utility company subject to the jurisdiction of this Commission shall file, in accordance with the requirements of §3.5 of this Title, with this Commission one copy of every proposed cost-plus contract or agreement, including those contracts or agreements in which the payment to be made by the utility is based on time and material consumed regardless of the number of units completed, for the construction, improvement or extension of its plant, works or system exceeding in amount \$100,000 in any calendar year, and a list of any other offers received, and such contract or agreement shall not become effective until it has been on file with this Commission for 30 days, or until the Commission has notified the utility that such contract or agreement may be made effective immediately. If during 30 day period the Commission determines that it is in the public interest for the contract or agreement to be performed shall be let after public bidding, the Commission will notify the public utility company, and the filed contract or agreement will not become effective. In

such circumstances the public utility shall proceed to make a public offering of the proposed work in accordance with the direction of the Commission.

The Companies propose the following modifications to the proposed Rule change:

Every public utility company subject to the jurisdiction of this Commission shall file, in accordance with the requirements of §3.5 of this Title, with this Commission one copy of every proposed cost-plus contract or agreement, including those contracts or agreements in which the payment to be made by the utility is based on time and material consumed regardless of the number of units completed, for the construction, improvement or extension of its plant, works or system exceeding in amount \$100,000 in any calendar year, and a list of any other offers received, and such contract or agreement shall not become effective until it has been on file with this Commission for 30 days, or until the Commission has notified the utility that such contract or agreement may be made effective immediately. If during the 30 day period the Commission determines that it is in the public interest for the contract or agreement for the work proposed to be performed [shall] to be let after public bidding, the Commission will notify the public utility company, and the filed contract or agreement will not become effective. In such circumstances the public utility shall proceed to make a public offering of the proposed work in accordance with the direction of the Commission.

Explanation: The proposed revisions – “If during 30 day period the Commission determines that it is in the public interest for the contract or agreement to be performed shall be let after public bidding,” – is grammatically incorrect. The sentence can be edited in a few ways to correct the structure. The edits shown are one possibility. Similar edits are required for sections 351.1, 481.1, 586.1, and 686.1. In the alternative, the Companies recommend that this Section not be changed.

§ 641.7

Under the proposed Rule change, this Section would read as follows:

Final dates for filing

Every telephone corporation shall file, in accordance with the requirements of §3.5 of this Title, each annual report as soon as possible after the end of the year covered by the report, but in no event later than the date specified herein. The final dates for filing shall be as follows:

Kind of Utility	Filing Date
Steam Corporations	March 31
Telephone Corporations	March 31
Electric Corporations and Gas Corporations	March 31
Waterworks Corporations	March 31
Municipal Gas, Electric or Steam	3 months after last day of fiscal year

The Companies propose that the following language be deleted:

Every telephone corporation shall file, in accordance with the requirements of §3.5 of this Title, each annual report as soon as possible after the end of the year covered by the report, but in no event later than the date specified herein. The final dates for filing shall be as follows:

Kind of Utility	Filing Date
[Steam Corporations]	[March 31]
Telephone Corporations	March 31
[Electric Corporations and Gas Corporations]	[March 31]
[Waterworks Corporations]	[March 31]
[Municipal Gas, Electric or Steam]	[3 months after last day of fiscal year]

Explanation: The filing dates for the annual reports of electric, gas, steam and waterworks corporations and municipalities are established in Part 732. The filing date for the annual reports of cable corporations is established in Part 899.

CONCLUSION

For the foregoing reasons, the Commission should modify the changes to its Rules as provided in the Notice by adopting the changes requested by the Companies.

New York, New York
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and Orange and Rockland Utilities, Inc.

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