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Brief



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August 18, 2006

**VIA HAND DELIVERY**

Hon. Jaclyn Brillling  
Secretary  
State of New York Public  
Service Commission  
Three Empire State Plaza  
Albany, New York 12223-1350

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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 Secretary Brillling:

Pursuant to the Commission's regulations and the procedures adopted in the above-referenced proceeding, please find enclosed twenty-five (25) copies of the Reply Post-Hearing Brief in Support of Joint Proposal submitted on behalf of the City of New York.

Please have the extra copies of the Reply Post-Hearing Brief time-stamped and returned to our messenger. Please call me if you have any questions.

Very truly yours,

COUCH WHITE, LLP

Robert M. Loughney

RML/MHB/slg  
Enclosures

cc: ALJ Rafael A. Epstein (via Hand Delivery; w/enc.)  
Active Parties List (via e-mail and U.S. Mail; w/enc.)

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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

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Case 05-S-1376

POST-HEARING REPLY BRIEF  
OF  
THE CITY OF NEW YORK

Dated: August 18, 2006

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## PRELIMINARY STATEMENT

In accordance with the schedule established by Administrative Law Judge Rafael A. Epstein (“ALJ Epstein”) in 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, the City of New York (the “City”), one of the largest customers on the Consolidated Edison Company of New York, Inc. (“Con Edison” or “Company”) steam system, hereby submits its Reply Post-Hearing Brief in support of the Joint Proposal filed with the State of New York Public Service Commission (“Commission”) on June 2, 2006 in this proceeding.<sup>1</sup> For the reasons set forth herein, the City urges the Commission to adopt the Joint Proposal, to which the City is a signatory, without modification.

Despite the widespread support for the Joint Proposal<sup>2</sup>, two parties – the County of Westchester (“County”) and TransGas Energy Systems LLC (“TGE”) (collectively, the “Opponents”) – continue to oppose select provisions of the Joint Proposal.<sup>3</sup> Specifically, the County is opposed to the manner in which the Joint Proposal allocates the

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<sup>1</sup> Citations to the Joint Proposal are preceded by the notation “JP.” Citations to the stenographic minutes and exhibits in this proceeding are preceded by the notations “S.M.” and “Ex.,” respectively. Citations to the initial statements in support or opposition to the Joint Proposal are preceded by the party’s name, as abbreviated herein, and “Initial Statement” (e.g., City Initial Statement, p. \_\_\_\_). Citations to the post-hearing briefs are preceded by the party’s name and “Brief” (e.g., Con Ed Brief, p. \_\_\_\_).

<sup>2</sup> The other parties filing statements supporting the Joint Proposal were: Con Edison, DPS Staff, Consumer Power Advocates, New York Energy Consumers Council, Inc. and Pace.

<sup>3</sup> Parties filing Post-Hearing Briefs were: the City, Con Edison, Staff and the County of Westchester.

costs of the ERRP between Con Edison's electric and steam departments. The County and TGE also are opposed to the provisions of the Joint Proposal that address the process for examining future steam supply options. For the reasons set forth below and in the City's earlier submittals, the Opponent's objections to the Joint Proposal should be rejected. As demonstrated herein and in the City's prior filings, the Joint Proposal submitted in this proceeding adequately resolves all of the contested issues in this case<sup>4</sup>, affirms Commission policy and precedent and incorporates the most equitable means of allocating ERRP costs between steam and electric ratepayers.<sup>5</sup>

This Post-Hearing Reply Brief is organized into two sections. In Point I, the City demonstrates why the Joint Proposal's allocation of costs for the ERRP is consistent with Commission policy and precedent and an equitable resolution for all ratepayers. In Point II, the City demonstrates that the Joint Proposal's provisions regarding the examination of future steam resources to satisfy future demand are reasonable.

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<sup>4</sup> As the City has previously noted, the Joint Proposal represents a series of compromises agreed to by the signatory parties. Selectively changing sections of the Joint Proposal, as the County and TGE propose, would upset the balance struck by the signatory parties. For example, the City would not have signed the Joint Proposal if it included the large steam rate increase (approximately \$37 million; See County Brief, p. 15) that would result from the County's ERRP cost reallocation.

<sup>5</sup> For the sake of brevity, the City will not repeat here all of the reasons why the Joint Proposal should be approved. Those reasons are set forth in the City's Statement in Support and Reply Statement in Support, both of which are included in the evidentiary record, as well as the City's Post-Hearing Brief. In addition, other proponents have advocated strongly in support of the Joint Proposal.

## **ARGUMENT**

### **POINT I**

#### **THE COUNTY'S POSITION ON THE ALLOCATION OF THE ERRP'S COSTS SHOULD BE REJECTED**

The County argues, for the umpteenth time, that the Commission should modify its well-settled policy of allocating costs at steam-electric generating facilities on an incremental cost basis. The County claims that a change in circumstances, substantially different than what was raised in the Company's last steam case, has occurred to justify modification of the Commission's well-settled principle of allocating costs between steam and electric ratepayers at steam-electric generating facilities (County Brief, p. 2). Specifically, the County alleges that because the market value of energy produced at the ERRP is below the cost to operate the plant, any fuel costs to operate the plant above the value of the energy produced at the plant should be paid by the steam department (County Brief, p. 15). This would result in a \$37 million increase in steam rates (County Brief, p. 15).

#### **A. Adoption of the County's Proposal Would be Detrimental to the Steam and Electric Systems**

As explained in the City's previous filings, the continued operation of a competitive steam business is an essential component to the Company's continued operation of the electric and gas systems. (Ex. 8, p. 10; City Brief, p. 13). The County's main argument is that the ERRP had a cost to electric ratepayers of \$335 million (\$98 million in fixed costs and \$237 million in fuel costs) while the value of the ERRP to the electric system was only \$229 million (\$29 million in capacity value and \$200 million for the energy

provided.) (County Brief, p. 9). However, in the 2004 Steam Rate Order, the Commission clearly acknowledged that ERRP electric costs might exceed electric revenues:

While the prevailing market prices for electricity in New York City do not match, or cover entirely, the amount of ERRP-related costs allocated to the electric department, they do, in fact, eliminate a substantial portion of them from further consideration. Moreover, the portion that is not covered is roughly matched by the amount of waterside-related costs that Consolidated Edison will be able to avoid. On these bases alone it is fair to conclude, and we find, that the cost allocations are fair.<sup>6</sup>

Thus, contrary to the County's assertion, there are no "changed circumstances" here to support a departure from the 2004 Steam Rate Order.

In the 2004 Steam Rate Order, the Commission also cited to additional factors in rejecting the County's argument that the ERPP cost allocation did not result in an equitable sharing of costs for the electric department, including the ERRP's improved operational efficiencies, reduced environmental emissions, improved economic development and the avoided transmission and distribution system reinforcements that would have been necessary without the facility in the East River load pocket of Manhattan.<sup>7</sup> In addition, the County's position that the ERRP is a net loser for electric customers ignores other quantifiable benefits that electric customers receive due to ERRP, including reduced investment in transmission and distribution system reinforcements and lower electricity prices.

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<sup>6</sup> Case 03-S-1672, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Steam Services, "Order Adopting the Terms of a Joint Proposal" (issued September 27, 2004) ("2004 Steam Rate Order") at 27.

<sup>7</sup> Case 03-S-1672, supra, 2004 Steam Rate Order at 27-28.

Moreover, the County's claims that ERRP unduly disadvantages electric customers are based on the costs and revenues that ERRP incurred in a start-up year that was marked by unprecedented gas price spikes. For example, in its Post-Hearing Brief, the County challenges the excess cost of operating the ERRP (and the associated fuel costs) with the claim that for eight months of the year (from October through May) the facility operates to "provide steam to the steam system for free." (County Brief, p. 12). As explained in the City's Post-Hearing Brief, however, there are a number of factors that can explain the difference between ERRP's fuel costs and the value of its energy in the start-up year, including: disruptions in fuel supply (including those caused by weather events such as last year's hurricanes), operational issues involved in bringing a new state-of-the art plant on-line and milder than forecasted weather reducing energy demand. The County's request to adjust the ERRP cost allocation on a yearly basis to shield the electric department from these unknown and unpredictable events is implausible and would result in significant yearly steam rate increases.

In its Post-Hearing Brief, the County also claims that a cap on the steam department's portion of the ERRP costs is inequitable if a similar cap is not placed on the electric department's share of those costs - to maintain the Commission's 66.4% allocation to the electric system and the 33.6% allocation to the steam system.<sup>8</sup> (County Brief, p. 17). The County's attempt to introduce a proposed cap on the electric department's share of the ERRP during a steam rate proceeding is misdirected. The proper forum for the County to

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<sup>8</sup> The City takes no position in this proceeding regarding whether a cap on the electric department's share of capital costs associated with the ERRP should be imposed.

raise its concerns on limiting the electric department's share of the ERRP's capital costs would be in the Company's next electric rate proceeding.

As the County has not introduced any new arguments on allocating costs of the ERRP between steam and electric ratepayers, for the reasons set forth herein and in the City's previous testimony and briefs, the Joint Proposal's provisions on ERRP cost allocation should be approved without modification.

## POINT II

### **THE STEAM RESOURCE PLAN ADEQUATELY ENSURES THAT ALL STEAM RESOURCE OPTIONS WILL BE EXAMINED TO SATISFY FUTURE DEMAND**

The County and TGE claim that the Joint Proposal insufficiently examines third party resource options to meet future steam demand or that the manner for examining potential future resource options is not in the best interest to all ratepayers. (County Brief, p. 19, TGE Brief, p.2). As repeatedly demonstrated throughout the parties' submissions in this proceeding, including during extensive cross-examination at the evidentiary hearing, the Joint Proposal provides adequate procedures to ensure the Company will examine all potential steam resource options to meet future steam demand. The Opponents' arguments to the contrary seek changes to the Joint Proposal that are not necessary and should not be adopted.

**A. The County's Opposition to the Joint Proposal  
Should Be Rejected**

In its Brief, citing to City testimony, the County alleges that "parties who question the wisdom of ERRP and similar facilities will not receive copies of the evaluations until they are filed with the Commission." (County Brief, p. 19). The County's Brief is inaccurate. The City testimony referred to was directed to the investment grade evaluation of the self-supply options (S.M. 192). After the investment grade evaluation is completed those results will be folded into the Steam Resource Plan analysis (Ex. 1 at 33). To the extent that a self-supply option is evaluated against other options and chosen by Con Edison, that selection will have to be "fully supported and justified," and likely will be the subject of formal comments (Ex. 1 at 34). The County obviously did not read the full text of the City testimony:

"In addition, interested parties will be updated as milestones are met and will receive copies of the investment grade evaluations when they are filed with the Commission (Joint Proposal, pp. 32-33).

Importantly, the results of the investment grade evaluations of the preferred Hudson Avenue repowering options do not pre-ordain that one of those options will be chosen to satisfy future resource needs. Instead, those self-supply options will be measured against other supply options, including potential third-party supply agreements, in the Steam Resource Plan (Joint Proposal, p. 34). That plan must examine and evaluate all resource options and identify and support a recommended option. (*Id.*) In sum, the Joint Proposal provisions requiring an investment grade evaluation and the preparation of a Steam Resource Plan simply require the utility to evaluate all potential sources of steam on a level playing field and make a rational decision."

(S.M. 192).

The County also argues in its brief that when decisions are made regarding which steam resource option should be selected, there is an open issue of whether the determination will be made to reflect the interests of steam or electric ratepayers (County Brief, p. 19).<sup>9</sup> The County's argument is without merit. The purpose of the steam resource plan is to "examine and discuss various resource options." (Ex. 1, p. 34.) Implicit in any examination of resource options would be an examination of the least cost options available to the Company. The review process for the Steam Resource Plan undoubtedly will include an opportunity for interested parties to file comments. In short, the Joint Proposal provides sufficient safeguards to ensure the County and other interested parties will be able to comment on the Company's selection of future resource options.<sup>10</sup>

**B. TGE's Objections to the Joint Proposal Should Be Rejected**

TGE opposes certain language in the Joint Proposal because the language allegedly does not explicitly require examination of third party resources. (TGE, p. 2). Specifically, TGE contends that the Joint Proposal's reference to resource options that the Company must examine as part of its Steam Resource Plan is not a mandatory list but

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<sup>9</sup> The County's brief implies that the City is biased toward continuing the alleged steam subsidy because it represents approximately ten percent of the steam load (County Brief, p. 19). This is a groundless implication. Unlike the County, the City is a major customer of both the electric and steam departments. Unlike the County, the City does not benefit from unfairly shifting costs from one department to the other. In this regard, the City stands by the Commission's finding in Case 03-S-1672 that the ERRP cost allocation methodology utilized in the pending Joint Proposal is just and reasonable.

<sup>10</sup> The County previously had determined that any self supply option should be eliminated from consideration as part of the Company's examination of resource options because there may be adverse impact on electric customers. (S.M. 346.)

“simply lists examples of options that could be examined and discussed.” (Id.) Despite the fact that the Company’s filings in this proceeding (S.M. 58, 64) and an extensive evidentiary record (S.M. 73-74, 76, 150, 199), have clarified, ad nauseum, that all parties, including Con Edison, agree that third party supply options will be examined as part of the Steam Resource Plan (S.M. 73-74, 76), TGE charges onward in its pursuit of perfect sentence structure.<sup>11</sup> There is no reason to modify the Joint Proposal – the record here provides more than adequate assurances that all supply options will be evaluated in the Steam Resource Plan.

TGE also again attempts to include in the Joint Proposal the benchmark by which third party supply options would be priced. Specifically, TGE cites to the Company’s last steam case as precedent for third party supply being priced at the Company’s full avoided steam production and capacity costs.<sup>12</sup> The City opposes placing any pricing shackles on Con Edison as it negotiates third party supply options in the future. Initially, as TGE recognized in its Post-Hearing Brief, the Commission has held that “until TransGas can offer steam to customers, there is no need for us to consider any such cost calculations.” (Id.)

Additionally, placing such a requirement in the Joint Proposal would be disadvantageous to the Company and ultimately customers. Con Edison would be disadvantaged in negotiations with steam suppliers if the Company’s avoided costs were known and used as a “floor price.” The appropriate resolution for all involved is to allow the Company to negotiate with third party suppliers in an open and arms-length manner.

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<sup>11</sup> In its comments, TGE proposes that the “e.g.” be deleted from the Joint Proposal where it discusses various options that the Steam Resource Plan will examine and discuss. (TGE Brief at 7.)

<sup>12</sup> TGE Brief, pp. 5, 6; see also, Case 03-S-1672, supra, 2004 Steam Rate Order at 30.

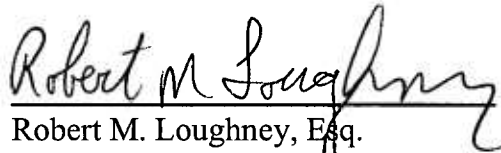
Accordingly, TGE's request to have the Company's avoided costs be the standard for negotiating competitive third party supply proposals should be rejected.

**CONCLUSION**

For the reasons set forth in the City's Statement in Support, its Reply Statement in Support, its Post-Hearing Brief and herein, the Joint Proposal should be adopted in its entirety and the objections of the County and TGE to the ERRP cost allocation provisions and the Steam Production Study should be rejected.

Dated: August 18, 2006  
Albany, New York

Respectfully submitted,



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