

Brief

05-S-1376

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

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August 18, 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:

Enclosed please find the Department of Public Service Staff's Reply Brief in the above-entitled proceeding. Copies of this Statement are being served on the active parties by electronic and first class mail.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin M. Lang".

Kevin M. Lang
Managing Attorney

Enclosure

cc: Active Parties to Case 05-S-1376

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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.

**REPLY BRIEF OF THE
NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE STAFF**

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Dated: August 18, 2006
Albany, New York

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.

**REPLY BRIEF OF THE NEW YORK STATE DEPARTMENT
OF PUBLIC SERVICE STAFF**

INTRODUCTION

Department of Public Service Staff (Staff) continues to assert that the claims and contentions of TransGas Energy Systems LLC (TransGas) and the County of Westchester (Westchester) do not warrant making any modifications to the Joint Proposal filed on June 2, 2006. As permitted by Administrative Law Judge Epstein, Staff offers this reply brief to respond to the arguments advanced by TransGas and Westchester in their post-hearing briefs.

TRANSGAS' PROPOSALS

As Staff noted in its post-hearing brief, the Joint Proposal is properly read as requiring Consolidated Edison Company of New York, Inc. (Con Edison) to consider and evaluate self-generated and third-party steam supply options. Given TransGas' continuing concern that alternate interpretations of the Joint Proposal are possible, the Commission should consider clarifying that Section I.2 of the Joint Proposal requires Con Edison to equally assess third-party supply options as part of the Steam Resource Plan.

In its post-hearing brief, TransGas proposed to remove the specific reference to itself from the new provision to the Joint Proposal it offered in its Statement in Opposition. While this proposal addresses one of Staff's concerns, it does not cure all of Staff's objections. Staff continues to object to the inclusion of any language that would require Con Edison to enter into contract negotiations with third-parties prior to determining whether a third-party option is indeed the most appropriate option. While it is appropriate for Con Edison to justify whatever

option it selects, there is no reason to require it to justify why it will not enter into a contract with a specific third-party.¹

Moreover, imposing such a requirement is unnecessary for the purpose of evaluating one or more third-party options. That is, Con Edison's analysis of that option would likely focus primarily on price, quality of steam, reliability of production, and terms of delivery. Interested third-parties can provide this information to Con Edison short of negotiating the detailed terms of a contract with the company. TransGas has not offered any specific explanation of the need for its proposed requirement, and the Commission should not attempt to divine the real purpose behind its request. Rather, for the reasons previously offered by Staff, as well as those offered herein, the Commission should reject TransGas' proposed modification.

In its post-hearing brief, TransGas offers what it denominates as an alternative to its proposed modification to the Joint Proposal. In the alternative discussion, it is unclear what TransGas claims the proponents of the Joint Proposal have acknowledged; to be clear, Staff has not acknowledged or otherwise expressed the position espoused by TransGas that Con Edison should be required to negotiate with any third-parties before finalizing the Steam Resource Plan. While Staff agrees that third-party, repowering, and other viable steam production options should be fairly and equally considered by the company, TransGas' new alternative is broader than providing for that result. Rather, it appears to be functionally and procedurally the same as its initially proffered language and is therefore as infirm and unreasonable as that language.

¹ Inasmuch as Staff generally opposed TransGas' proposed addition, Staff saw no need to separately comment on (or object to) the phrase calling for the Department's involvement in the purported negotiations. Given TransGas' misstatement of Staff's position regarding this phrase, Staff offers the following response. While the Department does offer mediation services to resolve various types of disputes between and among utilities and other parties, TransGas has not explained why it would be appropriate for the Department to take an active role in any contract negotiations between it and Con Edison, how the contract negotiations could be classified as a "dispute" to which the Department's mediation services would apply, or even why any mediator should be involved in a negotiation of this type. The example provided by TransGas, involving Rochester Gas and Electric Corporation and National Grid, is in no way comparable to this matter and provides no precedent for the Departmental involvement proposed by TransGas. Since TransGas has not satisfied its burden of demonstrating the need for this phrase, the Commission should reject it.

WESTCHESTER'S OBJECTIONS

While Westchester's post-hearing brief provides a good summary of Westchester's opposition to the allocation of the costs of the East River Repowering Project (ERRP) among electric and steam customers, it simply repeats the same arguments advanced by Westchester in its Statement in Opposition and does not add anything new. However, to ensure that the Commission is clear on Staff's position and to avoid the situation discussed above where TransGas improperly characterized Staff's silence as assent, Staff offers the following response to Westchester's arguments.

Westchester erroneously claims that Staff's position is that the issues surrounding the allocation of the ERRP costs were already decided and thus, the matter should be at an end.² As a general proposition, Staff acknowledges that the cost allocation can be revisited and reconsidered in any rate case. Here, however, Staff submits that Westchester's position relies solely on a near-term cost-benefit analysis, disregards long-term effects, and does not justify changing the allocation. That is, Westchester relies on only one year of operational data, and Staff disagrees that this limited amount of data is sufficient to support changing the allocation of ERRP costs. Neither the data nor Westchester's arguments demonstrate that there has been a significant change in circumstance since the Commission set the allocation in the 2004 Steam Rate Order.³ The two-year term of the Joint Proposal allows for additional time to collect and analyze data from the plant's operations and determine whether there is a pattern that would warrant revision of the allocation methodology.

Westchester also erroneously claims that "the primary purpose of ERRP, as shown by how it was designed, is to generate steam."⁴ ERRP was designed to benefit both electric and steam operations. The function of ERRP cannot be looked at as built primarily for either business; it supports both. For this reason, the allocation should not be revised solely because of a comparison of fuel consumption to the market price of electricity.

² Westchester Brief, p.1.

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) (2004 Steam Rate Order).

⁴ Westchester Brief, p.6.

Westchester incorrectly asserts that "the Commission stated that electric ratepayers will not incur any economic harm from the ERRP cost allocations."⁵ The 2004 Steam Rate Order states:

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.⁶

Thus, the Commission not only did not state that electric customers would not incur any electric harm from ERRP cost allocations, it explicitly recognized that a disparity existed between the costs allocated to electric and steam customers and found that the differential was, on balance, fair.

In summary, Westchester bases its arguments solely on an examination of a single year of fuel costs versus market price data. In doing so, it ignores the long term benefits realized by both steam and electric operations as a result of ERRP, benefits that are both quantitative and qualitative (e.g., increased electrical output compared to Waterside, improved reliability via the addition of generation within a load pocket, gains in operational and generation efficiency, reduction of air emissions, use of proceeds from the sale of the First Avenue Properties). All costs and benefits must be considered in determining the allocation of costs between electric and steam operations. The information about ERRP known at this time does not change the balancing performed by the Commission in the 2004 Steam Rate Order or warrant revision of the allocation.

Westchester seeks to modify the Rate Order governing Con Edison's electric operations⁷ within the context of this steam rate case.⁸ Westchester knows, or should know, the procedure

⁵ Westchester Brief, p.8.

⁶ Cases 03-G-1671 & 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), p.27.

⁷ Case 04-E-0572, Consolidated Edison Company of New York, Inc. – Electric Rates, Order Adopting Three-Year Rate Plan (issued March 24, 2005).

⁸ Westchester Brief, p. 17.

for seeking modification of a Commission Order. Its request is improperly presented, has no relationship to setting steam rates, rules, practices, and procedures (which is the sole purpose of this proceeding), and should be rejected. Moreover, it is improper to require, as Westchester proposes, that Con Edison commit to a cap in the next electric rate proceeding as a condition of approval of the Joint Proposal in this proceeding.⁹

Westchester also contends that the Commission should consider factors that will impact electric rates in the next electric rate proceeding in deciding on the appropriate level of steam rates and the allocation of ERRP costs. The evidentiary record in this proceeding is closed, and Westchester did not offer any testimony or other evidence that would allow the Commission to conduct the requested assessment. Even if the County had sought to introduce such evidence, Staff would have objected since prospective and speculative future impacts on electric rates are not controlling on the determination of what constitutes just and reasonable rates for Con Edison's steam business.

Finally, Westchester seeks to be involved in whatever process is instituted to consider Con Edison's future plans for addressing its steam production needs. Westchester has not explained what it means by "full access and participation in any study of new steam facilities,"¹⁰ but Staff has no objection to Westchester participating in the process in the same manner as other interested parties. However, if Westchester is suggesting that it be given access to the same information provided to Staff, Staff would object as Westchester's role is not the same as Staff's. Because of its regulatory oversight responsibilities, it is appropriate for Staff to have greater access to information than intervenors such as Westchester.

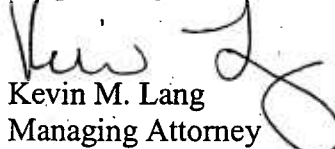
⁹ It is also unclear what effect Con Edison's commitment, in and of itself, would have in that proceeding. The Commission, not Con Edison, decides on the appropriate level of the company's electric rates, including the amount of ERRP costs that may be recovered from electric customers.

¹⁰ Westchester Brief, p. 21.

CONCLUSION

For the reasons set forth above and in Staff's prior statements and briefs, the positions of the parties opposing the Joint Proposal do not warrant revision or rejection of the Joint Proposal. Staff respectfully requests that their arguments and proposed revisions be denied and that the Joint Proposal be approved or adopted as presented.

Respectfully submitted,


Kevin M. Lang
Managing Attorney

Dakin D. Lecakes
Assistant Counsel

Dated: August 18, 2006
Albany, New York