

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**Proceeding on Motion of the Commission to Consider
Steam Resource Plan and East River Repowering
Project Cost Allocation Study, and Steam Energy
Efficiency Programs for Consolidated Edison
Company of New York, Inc.**

Case 09-S-0029

**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**

Case 09-S-0794

**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**

Case 13-S-0032

MOTION TO CONSOLIDATE

Dated: March 22, 2013

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PRELIMINARY STATEMENT

In deciding Consolidated Edison Company of New York, Inc.’s (“Con Edison” or “Company”) last steam rate case, the New York State Public Service Commission (“Commission”) required Con Edison to implement a new and different fuel cost allocation methodology for the East River Repowering Project (“ERRP”) on October 1, 2013, and to provide the details for such implementation either in its next rate case or in a compliance filing.¹ Because Con Edison decided to delay filing a steam rate case, on December 31, 2012, it submitted a “Compliance Filing of Consolidated Edison Company of New York, Inc. Regarding the Allocation of East River Repowering Project Fuel Costs” (“ERRP Compliance Filing”). Subsequently, on January 25, 2013, Con Edison filed a steam rate case.²

In the ERRP Compliance Filing, Con Edison set forth the details required by the 2009 Steam Rate Order. Additionally, Con Edison sought reconsideration of the 2009 Steam Rate Order to the extent it required implementation of the Above-Market Method for the ERRP fuel cost allocation. The Company argued that the Commission overlooked or erroneously evaluated a number of critical factors, and that proper consideration of these factors supports continued application of the Incremental Cost Method over the Above-Market Method.

In setting just and reasonable steam rates for Con Edison in Case 13-S-0032, the Commission is required to ensure that the costs recovered by the Company are fair and appropriate. As part of the rate-setting process for over 30 years, the Commission has

¹ Case 09-S-0794, Consolidated Edison Company of New York, Inc. – Steam Rates, Order Establishing Three-Year Steam and Gas Rate Plans and Determining East River Repowering Project Cost Allocation Methodology (issued September 22, 2010) at 118 (“2009 Steam Rate Order”).

² Case 13-S-0032, Consolidated Edison Company of New York, Inc. – Steam Rates.

considered the issue of the allocation of fuel costs between steam and electric customers. In particular, the Commission has addressed the ERRP fuel cost allocation issue in each Con Edison steam rate case filed since construction of ERRP began in 2001. Moreover, had Con Edison filed its new steam rate case in November 2012, the ERRP fuel cost allocation issues would have been included as part of the rate case. Accordingly, for the reasons set forth herein, the City of New York (“City”) moves to consolidate consideration of the ERRP Compliance Filing with consideration of Con Edison’s request for new steam rates.

BACKGROUND

The allocation of fuel costs for Con Edison’s cogeneration facilities between its electric customers and steam customers has been an issue regularly considered and resolved in the Company’s steam rate cases for decades. The Commission adopted the Incremental Cost Method of allocating those expenses in 1978, when it concluded that this method achieved the best balancing of interests among Con Edison’s steam and electric customers.³

The Commission continued to rely upon the Incremental Cost Method through and including 2003, when it first addressed the recovery of ERRP fuel costs in Case 03-S-1762, Con Edison’s then-current steam rate case. In that proceeding, the Commission decided that the ERRP fuel costs should be allocated in the same manner as combination steam and electric costs had been allocated for the previous 25 years – via the Incremental

³ Case 27276, Consolidated Edison Company of New York, Inc. – Steam Rates, Opinion No. 78-27, 18 NY PSC 1764, 1769-70 (issued November 14, 1978).

Cost Method.⁴ In its 2004 Steam Rate Order, the Commission adopted a comprehensive settlement of the rate case that included continuation of the Incremental Cost Method for allocating ERRP fuel costs. In adopting that settlement agreement, the Commission found the Incremental Cost Method, which is based on principles of cost causation, to be fair.⁵ The Commission continued to allocate ERRP fuel costs using the Incremental Cost Method in Con Edison's next two steam rate cases.⁶

Shortly after issuing its 2008 Steam Rate Order, the Commission instituted Case 09-S-0029 (the "Steam Planning Proceeding") to review the ERRP cost allocation methodology, among other things.⁷ Subsequently, on November 6, 2009, Con Edison filed its last steam rate case.⁸ In pre-filed testimony submitted as part of that steam rate case, Con Edison recommended that the Steam Planning Proceeding be consolidated with the rate case to avoid duplication of efforts between the proceedings and allow common issues, such as the ERRP cost allocation issue, to be decided as part of the rate case.⁹ The Commission

⁴ Case 03-S-1762, Consolidated Edison Company of New York, Inc. – Steam Rates, Order Adopting the Terms of a Joint Proposal (issued September 27, 2004) at 26-27 ("2004 Steam Rate Order").

⁵ *Id.* at 27.

⁶ Case 05-S-1376, Consolidated Edison Company of New York, Inc. – Steam Rates, Order Determining Revenue Requirement and Rate Design (issued September 22, 2006) at 20; Case 07-S-1315, Consolidated Edison Company of New York, Inc. – Steam Rates, Order Establishing Rate Plan (issued September 22, 2008) at 39-41 ("2008 Steam Rate Order").

⁷ Case 09-S-0029, Proceeding on Motion of the Commission to Consider Steam Resource Plan and East River Re-powering Project Cost Allocation Study, and Steam Energy Efficiency Programs for Consolidated Edison Company of New York, Inc., Order Instituting Proceeding (issued January 15, 2009) at 2.

⁸ Case 09-S-0794, *supra*.

⁹ Case 09-S-0794, *supra*, Pre-Filed Direct Testimony of Saumil Shukla at 24-25.

agreed with Con Edison and consolidated the two proceedings, observing that “[t]he Company maintains that the ERRP cost allocation question is important to the determination of just and reasonable rates in the Steam Rate Case....”¹⁰

The Commission concluded in the 2009 Steam Rate Order that Con Edison should transition from the Incremental Cost Method to the Above-Market Method of allocating ERRP fuel costs.¹¹ Specifically, the Commission required:

In its next steam rate case filing, Con Edison will propose a phase-in methodology that takes into account the Company’s then-current forecasted revenue requirement and corresponding custom bill impacts. ... In the event that Con Edison does not make a steam rate case filing that would be effective immediately following the expiration of the steam rate plan adopted in this order, the Company is ordered to propose a phase-in methodology not less than nine months prior to the expiration of the steam rate plan adopted here.¹²

ARGUMENT

THE ERRP COST ALLOCATION METHOD AND PROPOSED PHASE-IN SET FORTH IN THE ERRP COMPLIANCE FILING SHOULD BE CONSOLIDATED WITH AND RESOLVED IN THE STEAM RATE CASE

The Commission historically has considered the allocation of fuel costs for Con Edison’s cogeneration facilities, and the methodology for allocating such costs, as part of Con Edison’s steam rate cases. There is no legitimate reason to treat this issue differently now. Indeed, there is nothing different or unique about the present rate case that warrants different consideration of this issue or exclusion of it from the rate case. To the contrary, the

¹⁰ Case 09-S-0794, *supra*, Notice of Consolidation of Issue (issued January 6, 2010) at 2-3.

¹¹ 2009 Steam Rate Order at 118.

¹² *Id.*

2009 Steam Rate Order indicated that the Commission considered the ERRP cost allocation issue to be a matter that properly is considered and resolved in the context of a rate proceeding.

In the 2009 Steam Rate Order, the Commission directed Con Edison to justify its proposed phase-in of the Above-Market Method by explaining how it would impact the Company's projected revenue requirement, and estimating the customer bill impacts. It would be difficult, if not impossible, to fully understand the impact of the proposals in Case 13-S-0032 without a coordinated and contemporaneous examination of the magnitude of ERRP fuel costs that would be allocated to steam customers, and the methodology used to allocate such costs. A careful examination of these issues in the pending rate case is essential, particularly given that the Above-Market Method that Con Edison proposes will have a material impact on steam rates.¹³

Con Edison typically files for new steam rates to become effective immediately upon the expiration of its existing rate plans. However, the Company did not file in November, 2012, apparently, and understandingly, in order to focus on responding to the devastation wrought by Superstorm Sandy. Had Con Edison filed its steam rate case in early November 2012, it would have been required to include in its rate filing the same information set forth in the ERRP Compliance Filing.¹⁴ The delay in filing should not change how the impact of the change to the Above-Market Method is examined.

Maintaining the economic viability of Con Edison's steam business continues to be a challenge. Each incremental cost imposed on steam customers moves the steam

¹³ ERRP Compliance Filing at 8.

¹⁴ 2009 Steam Rate Order at 118.

system closer to the tipping point beyond which the rate of customer exodus from the steam system will make the steam business unsustainable. This concern makes it imperative that the level of ERRP fuel costs, and how they are allocated to steam customers, be included in the overall examination of Con Edison's steam costs in Case 13-S-0032.

Moreover, in the ERRP Compliance Filing, Con Edison has raised legitimate factual issues that warrant a full examination, including a hearing at which parties can fully engage in cross-examination and rebuttal. It is indisputable that fuel costs always have been, and should be, examined fully during steam rate cases. The Commission acknowledged this point before the New York State Appellate Division, Third Department, arguing that fuel costs are "one among many categories of expenses that factor into the calculation of steam rates."¹⁵ Moreover, the Commission asserted that any party may advocate that the Incremental Cost Method should be reinstated "when Con Edison files its proposal or thereafter...."¹⁶

Inasmuch as an evidentiary hearing must be held in Case 13-S-0032 pursuant to Public Service Law § 80(10)(f), the most efficient use of administrative and party resources would occur by examining all of the open issues at one time and in one proceeding. In this regard, the City notes that during oral argument before the Appellate Division, Third Department in the City's Article 78 proceeding against the Commission related to ERRP allocation rulings in the 2009 Steam Rate Order, counsel for the Commission asserted that

¹⁵ App. Div. Case No. 515472, City of New York v. New York State Public Service Commission et al., Brief of Respondent Public Service Commission (dated November 30, 2012) at 9. The Commission provided further support for consolidating the allocation issue with the current steam rate case, stating that the "actual shift will not be known until the PSC reviews Con Edison's proposal for reallocating ERRP "above market" fuel costs to steam customers *and reflects that proposal in rates.*" (*Id.*; emphasis added.)

¹⁶ *Id.* at 10, n.4.

the City and other parties would be entitled to a hearing in the future Commission proceeding addressing the ERRP cost allocation issue. Consistent with counsel's representations to the Court, and based on the facts and circumstances presented in the ERRP Compliance Filing, the City respectfully submits that it is entitled to a full hearing, including the ability to cross-examine witnesses and present rebuttal testimony, on this issue.¹⁷

CONCLUSION

For the foregoing reasons, the City requests that the consideration of the ERRP Compliance Filing, and the ERRP fuel cost allocation issues, be consolidated with and decided in Case 13-S-0032.

Dated: March 22, 2013
Albany, New York

Respectfully submitted,

/s/ S. Jay Goodman

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¹⁷ *Matter of New York Tel. Co. v. Public Serv. Commn.*, 59 A.D.2d 17 (3d Dep't 1977), *app. den.* 42 N.Y.2d 810 (1977) at 19 (stating that "all interested parties must be permitted to call and cross-examine witnesses and to rebut adverse claims").