

Filed Session of May 17, 2012
Approved as Recommended
and so ordered
By the Commission

JACLYN A. BRILLING
Secretary

Issued and Effective May 18, 2012

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

May 4, 2012

TO: THE COMMISSION

FROM: OFFICE OF ELECTRIC, GAS AND WATER
– Tariffs, Electric Supply and Small Utility Rates Section

SUBJECT: CASE 11-M-0542 – In the Matter of the Commission’s Implementation of
Certain Provisions of the Excelsior Jobs Program.

Tariff Filings by Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., KeySpan Gas East Corporation d/b/a National Grid, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, St . Lawrence Gas Company, Inc., and The Brooklyn Union Gas Company d/b/a National Grid NY to Effectuate Amendments to Public Service Law Concerning the Excelsior Jobs Program.

SUMMARY OF

RECOMMENDATION: Staff recommends that the tariff filings be allowed to become effective.

SUMMARY

The Excelsior Jobs Program (EJP) is an economic development program which provides job creation and investment incentives through four separate tax credits, as well as electric and gas delivery rate discounts on incremental load to firms in such targeted industries as biotechnology, pharmaceutical, high tech, clean technology, green technology, financial services, agriculture and manufacturing. The major electric and gas

utilities have amended their tariffs to institute the rate discount portion of this program which is intended to continue for ten years. The EJP is administered by Empire State Development (ESD), the State's chief economic development agency. Firms which satisfy the investment and job creation targets will be issued a certificate of tax credit by ESD. The utilities will accept this certificate as evidence of the customer's acceptance in the EJP and will provide delivery rate discounts beginning with the first full billing cycle after the certificate is issued by ESD. Staff has reviewed the companies' filings and recommends the revisions be allowed to become effective.

BACKGROUND

On March 31, 2011, Chapter 61 of the Laws of 2011 became effective requiring the establishment of subdivision, 12-d, to Public Service Law (PSL) §66, regarding a special EJP delivery rate equal to the incremental cost of providing service to participants in the EJP as defined in Article 17 of the Economic Development Law.¹ On December 9, 2011, the Commission issued a *Notice to File Proposed Tariff Provisions* (December 9th Notice) directing the major electric and gas utilities to file tariff amendments necessary to conform their tariffs to the new statutory requirements by February 14, 2012 with an effective date of June 1, 2012. On February 14, 2012 a further notice was issued granting an extension for submitting these filings to February 29, 2012.

THE PROPOSED TARIFF FILINGS

Central Hudson Gas and Electric Corporation (Central Hudson), Consolidated Edison Company of New York, Inc. (Con Edison), KeySpan Gas East Corporation d/b/a National Grid (KeySpan), National Fuel Gas Distribution Corporation (National Fuel), New York State Electric & Gas Corporation (NYSEG), Niagara

¹ NY PSL §66(12-d) states: "Notwithstanding any other provision of law, upon application of a gas or electric corporation, the commission shall authorize such corporation to charge a special excelsior jobs program rate equal to the incremental cost of providing service to participants in the excelsior jobs program as defined in article seventeen of the economic development law."

Mohawk Power Corporation d/b/a National Grid (NMPC), Orange and Rockland Utilities, Inc. (O&R), Rochester Gas and Electric Corporation (RG&E), St. Lawrence Gas Company, Inc. (St. Lawrence), and The Brooklyn Union Gas Company d/b/a National Grid NY (BUG) (collectively the Utilities) filed proposed tariff amendments pursuant to the December 9th Notice. The proposed filings provide for discounted electric and gas delivery rates to program participants. Such discounted rates through the EJP may remain available to participants as defined in Article 17 of the Economic Development Law for a period of up to ten years commencing in the first taxable year that the participant receives a certificate of tax credit, or the first taxable year listed on its preliminary schedule of benefits, whichever is later. If a participant is removed from the EJP, the discounted rates may be denied as discussed below.

NYSEG and RG&E also filed amendments of a housekeeping nature to consolidate revisions made to previously approved filings in Cases 11-E-0320 and 11-E-0322², which are currently effective and affect the same amendments as those filed in this case.

PUBLIC NOTICE

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), Notices of Proposed Rulemaking for the electric and gas tariffs were published in the State Register on March 21, 2012. The minimum public comment period provided for under SAPA §202(1) expired on May 5, 2012. Comments were received from ESD on April 25, 2012 and are summarized below.

DISCUSSION

On March 31, 2011, Chapter 61 of the Laws of 2011 became effective, requiring the establishment of a new subdivision, 12-d, to Public Service Law (PSL) §66, regarding the EJP. The EJP is a statewide program, administered by ESD which provides for job creation and investment incentives to firms in such targeted industries as

² Untitled Order (issued March 16, 2012) in Case 11-E-0318, et al.

biotechnology, pharmaceutical, high tech, clean technology, green technology, financial services, agriculture and manufacturing. Firms in these industries that create and maintain new jobs or make significant financial investments in New York State are eligible to apply for various tax credits as well as utility delivery rate discounts on incremental load which results from expansion of existing facilities, construction of new facilities, or relocation to New York State. ESD will annually verify and issue certificates of tax credit to program participants who meet program's requirements. The electric and gas utilities will use these certificates to affirm the customers acceptance into the program and will offer these customers discounted delivery rates for up to ten years, as long as the customer continues to satisfy program performance criteria and are issued a certificate of tax credit from ESD each year.

The December 9th Notice required the Utilities to file tariff amendments, necessary to conform their tariffs to the new statutory requirements discussed above as follows:

1. Inasmuch as the provisions relating to the amount of the EJP gas and electric service rates mirror those of the existing Empire Zone rates, utilities that have such Empire Zone rates should file proposed EJP tariff delivery rates equal to their existing Empire Zone delivery rates.
2. For utilities that do not have existing Empire Zone rates, but did submit a marginal cost of service study with their last major rate case, such utilities should file proposed EJP tariff delivery rates reflecting the applicable marginal costs contained in those studies adjusted for any modifications to the studies which were ultimately adopted by the Commission.
3. For utilities that do not have existing Empire Zone rates, and did not submit a marginal cost of service study with their last major rate case, such utilities should file proposed EJP tariff delivery rates which estimate the applicable marginal delivery costs. These rates will be used on an interim basis until rates are developed by a marginal cost of service study. Further, such utilities should submit a marginal cost of service study in their next major rate filing before the Commission.

Subsequent to the December 9th Notice, Staff, ESD, and the Utilities participated in several conference calls and exchanged e-mail correspondence to discuss and resolve several questions and concerns, as well to help assure a certain level of uniformity among utility EJP filings. These discussions led to the consistent handling of many provisions and the inclusion of one provision that enhances the program for participating customers and provides ESD additional time to review a customers' continued compliance with the requirements of the program. This additional provision provides for a three month grace period which is intended to allow for uninterrupted discounts for customers who are eligible for the EJP rates, but for whom ESD is unable to complete its review prior to the initial twelve month discount period ending. During this grace period the customer will continue to receive the discounted rates on its excelsior jobs load for a maximum of fifteen months (including the initial twelve). After the fifteen months, and in the absence of a valid certificate of tax credit, the customer's discounted rates will expire and the customer's incremental load will be billed at standard tariff rates.

Per the Commission's December 9th Notice, utilities that either have Empire Zone delivery rates or had submitted a marginal cost of service study with a recent major rate case filed tariff revisions consistent with the Notice. The remaining utilities submitted EJP rates based on existing economic development program rates also consistent with the Notice. These utilities will update these rates in their next major rate case filing. Some of the marginal cost of service studies showed that for certain utilities, the marginal cost rates are higher than the standard tariff delivery rates in some service classifications that are eligible to participate in the EJP (Con Edison, NYSEG, O&R and RG&E). These utilities did not file EJP discount rates in some instances, but have included tariff language that will allow for the rates to be updated if a future marginal cost of service study determines otherwise.

Customers' incremental load (as determined by the prior twelve monthly billing periods, weather normalized for weather sensitive gas customers) served under the EJP rates are exempt from the Utilities' revenue decoupling mechanism as well as any utility specific non-marginal surcharges (ex. Legacy Transition Charge, Transition

Charge etc.), but are subject to all other applicable Commission required surcharges such as Renewable Portfolio Standard, Energy Efficiency Portfolio Standard and the Incremental State Assessment.

Each participating existing customer will be required to achieve a minimum incrementality test in order to assure the additional load is truly incremental and not just incidental differences in usage. For example, Niagara Mohawk's proposed EJP rules require an existing non-demand metered customer's monthly electric usage to exceed the baseline threshold by 25% in order for the customer to receive the EJP rate on that incremental load.

The proposed filings provide for discounted electric and gas delivery rates to program participants, which may be available to participants as defined in Article 17 of the Economic Development Law for a period of up to ten years commencing in the first taxable year that the participant receives a certificate of tax credit, or the first taxable year listed on its preliminary schedule of benefits, whichever is later. If a participant fails to meet the program's performance criteria and is not issued a certificate of tax credit by ESD, the customer will lose the delivery rate discount.

COMMENTS

On April 25, 2012, ESD provided comments on the proposed EJP tariff revisions. ESD states in its comments that "The provision of discounted electric and gas delivery rates via these tariffs enhances the EJP and the State's competitiveness in the attraction of new business investment and job creation". ESD further states that it, "will work closely with the utility companies in the administration of the program, including the maintenance of strict accountability standards to ensure that businesses in the program are in compliance with the job and investment commitments". Lastly, ESD mentions that some of the utility companies have not filed discounted rates associated with the EJP due to their standard tariff rates being below marginal cost. ESD recommends that for such utilities this relationship be reviewed in their next rate case filing and the EJP rates be updated accordingly.

CONCLUSION

Staff has reviewed the Utilities' filings and has determined that all of the proposed tariff modifications are in accordance with the Commission's December 9th Notice as well as consistent with the discussions and correspondences between Staff, the Utilities and ESD. Therefore, Staff recommends that Commission allow the tariff amendments to become effective.

It is recommended that:

1. Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., KeySpan Gas East Corporation d/b/a National Grid, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Rochester Gas and Electric Corporation, St. Lawrence Gas Company, Inc., and The Brooklyn Union Gas Company d/b/a National Grid NY tariff amendments listed in the Appendix be allowed to become effective;
2. the requirements of §66(12)(b) of the Public Service Law, as to newspaper publication of the amendments listed in the Appendix are waived and NMPC's May 11, 2012 filing be allowed to go into effective on less than statutory notice on June 1, 2012;
3. utilities offering EJP discounted delivery rates not based on marginal delivery costs because no recent study was performed be directed to file a marginal cost of service study in their next major rate case proceeding and update their EJP rates accordingly;
4. utilities not offering EJP discounted delivery rates because their marginal delivery costs exceed their standard delivery rates be directed to review this relationship in their next major rate proceeding and update their EJP rates accordingly;
5. the deadlines provided for in this Order may be extended as the Secretary may require; and
6. this proceeding is closed.

Respectfully submitted,

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Approved by:

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Office of Electric, Gas and Water

SUBJECT: Filing by CENTRAL HUDSON GAS AND ELECTRIC CORPORATION

Amendments to Schedule P.S.C. No. 15 – Electricity

Original Leaves Nos. 163.5.33, 163.5.34, 163.5.35
Twenty-Third Revised Leaf No. 3

Issued: February 29, 2012 Effective: June 1, 2012

First Revised Leaf No. 163.5.35

Issued: April 30, 2012 Effective: June 1, 2012

Amendments to Schedule P.S.C. No. 12 – Gas

Second Revised Leaf No. 137
Third Revised Leaves Nos. 135, 136
Fourth Revised Leaf No. 138
Eighth Revised Leaf No. 3

Issued: February 29, 2012 Effective: June 1, 2012

Fourth Revised Leaf No. 136
Fifth Revised Leaf No. 138

Issued: April 30, 2012 Effective: June 1, 2012

SAPA: 11-M-0542SP2 – STATE REGISTER – March 21, 2012

NEWSPAPER PUBLICATION: Waived

SUBJECT: Filing by CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Amendments to Schedule P.S.C. No. 10 – Electricity

Original Leaves Nos. 459.1, 459.2, 459.3, 459.4

First Revised Leaves Nos. 205, 319

Second Revised Leaves Nos. 253, 349, 351, 446, 450, 458

Issued: February 29, 2012

Effective: June 1, 2012

First Revised Leaves Nos. 459.2, 459.3

Issued: April 30, 2012

Effective: June 1, 2012

Amendments to Schedule P.S.C. No. 9 – Gas

First Revised Leaf No. 181.1

Second Revised Leaf No. 125

Third Revised Leaves Nos. 126, 127, 128, 154.15

Sixth Revised Leaf No. 326

Seventh Revised Leaf No. 251

Ninth Revised Leaf No. 4

Fourteenth Revised Leaf No. 270

Fifteenth Revised Leaf No. 269

Issued: February 29, 2012

Effective: June 1, 2012

Third Revised Leaves Nos. 125, 129

Fourth Revised Leaves Nos. 126, 127, 128

Tenth Revised Leaf No. 4

Issued: April 30, 2012

Effective: June 1, 2012

SAPA: 11-M-0542SP3 – STATE REGISTER – March 21, 2012

NEWSPAPER PUBLICATION: March 7, 14, 21 and 29, 2012

Waived for April 30, 2012 filing.

SUBJECT: Filing by KEYSpan GAS EAST CORPORATION D/B/A NATIONAL GRID

Amendments to Schedule P.S.C. No. 1 – Gas

Original Leaves Nos. 79.2.1, 79.2.2

Issued: February 29, 2012

Effective: June 1, 2012

First Revised Leaves Nos. 79.2.1, 79.2.2

Issued: May 1, 2012

Effective: June 1, 2012

SAPA: 11-M-0542SP4 – STATE REGISTER – March 21, 2012

NEWSPAPER PUBLICATION: Waived.

SUBJECT: Filing by NATIONAL FUEL GAS DISTRIBUTION CORPORATION

Amendments to Schedule P.S.C. No. 8 – Gas

First Revised Leaf No. 162

Third Revised Leaf No. 223

Sixth Revised Leaf No. 163

Seventh Revised Leaves Nos. 148.10, 222.1

Thirteenth Revised Leaf No. 211

Issued: February 14, 2012

Effective: June 1, 2012

Second Revised Leaf No. 162

Seventh Revised Leaf No. 163

Issued: April 30, 2012

Effective: June 1, 2012

SAPA: 11-M-0542SP5 – STATE REGISTER – March 21, 2012

NEWSPAPER PUBLICATION: Waived.

SUBJECT: Filing by NEW YORK STATE ELECTRIC & GAS CORPORATION

Amendments to Schedule P.S.C. No. 120 – Electricity

Original Leaves Nos. 117.39.1, 243.3, 243.4
First Revised Leaf No. 117.39
Fourth Revised Leaves Nos. 181, 181.1, 243.2
Fifth Revised Leaf No. 150
Sixth Revised Leaf No. 274.1
Ninth Revised Leaf No. 210
Thirteenth Revised Leaf No. 2.1

Issued: February 14, 2012 Effective: June 1, 2012

First Revised Leaves Nos. 117.39.1, 243.3, 243.4
Fifth Revised Leaf No. 181.1
Sixth Revised Leaf No. 150

Issued: February 28, 2012 Effective: June 1, 2012

Original Leaves Nos. 117.43, 117.44
Second Revised Leaves Nos. 117.39.1, 243.4
Third Revised Leaf No. 117.39
Fifth Revised Leaves Nos. 181, 243.2
Sixth Revised Leaf No. 181.1
Seventh Revised Leaves Nos. 150, 274.1
Tenth Revised Leaf No. 210
Eleventh Revised Leaf No. 2
Fourteenth Revised Leaf No. 2.1

Issued: April 30, 2012 Effective: June 1, 2012

Amendments to Schedule P.S.C. No. 119 - Electricity

First Revised Leaves Nos. 151, 152, 153, 154, 155
Second Revised Leaf No. 4

Issued: April 30, 2012 Effective: June 1, 2012

Amendment to Schedule P.S.C. No. 121

Eighth Revised Leaf No. 2

Issued: April 30, 2012 Effective: June 1, 2012

Amendments to Schedule P.S.C. No. 87 – Gas

Original Revised Leaf No. 11.4

First Revised Leaf No. 11.3

Fourth Revised Leaf No. 2

Issued: February 14, 2012 Effective: June 1, 2012

First Revised Leaf No. 11.4

Issued: February 28, 2012 Effective: June 1, 2012

Second Revised Leaves Nos. 11.3, 11.4

Issued: April 30, 2012 Effective: June 1, 2012

Amendments to Schedule P.S.C. No. 88 - Gas

Third Revised Leaves Nos. 50.31, 50.32

Tenth Revised Leaf No. 5

Eleventh Revised Leaf No. 2

Issued: April 30, 2012 Effective: June 1, 2012

Amendments to Schedule P.S.C. No. 90 – Gas

Sixth Revised Leaves Nos. 106, 107, 108, 109, 110

Eleventh Revised Leaf No. 3.1

Issued: April 30, 2012 Effective: June 1, 2012

Amendments to Schedule P.S.C. No. 88 – Gas

First Revised Leaf No. 50.32
Second Revised Leaf No. 50.31
Eleventh Revised Leaf No. 3

Issued: February 14, 2012 Effective: June 1, 2012

Second Revised Leaf No. 50.32

Issued: February 28, 2012 Effective: June 1, 2012

SAPA: 11-M-0542SP7 – STATE REGISTER – March 21, 2012

NEWSPAPER PUBLICATION: Waived

SUBJECT: Filing by NIAGARA MOHAWK POWER CORPORATION D/B/A
NATIONAL GRID

Amendments to Schedule P.S.C. No. 220 – Electricity

Original Leaves Nos. 194.6, 194.7, 194.8, 194.9, 194.10

First Revised Leaf No. 439

Second Revised Leaf No. 263.1

Seventh Revised Leaf No. 263.2

Issued: February 29, 2012

Effective: June 1, 2012

First Revised Leaves Nos. 194.8, 194.10

Fourth Revised Leaves Nos. 229.1, 263.7

Issued: April 30, 2012

Effective: June 1, 2012

Amendments to Schedule P.S.C. No. 219 – Gas

Original Leaves Nos. 111.1, 111.2

Second Revised Leaves Nos. 102, 104, 107

Fourth Revised Leaf No. 111

Issued: February 29, 2012

Effective: June 1, 2012

Second Revised Leaf No. 111.1

Issued: May 1, 2012

Effective: June 1, 2012

Third Revised Leaf No. 111.1

Issued: May 11, 2012

Effective: June 10, 2012*

*To go into effect on less than statutory notice on June 1, 2012.

SAPA: 11-M-0542SP6 – STATE REGISTER – March 21, 2012

NEWSPAPER PUBLICATION: Waived

SUBJECT: Filing by ORANGE AND ROCKLAND UTILITIES, INC.

Amendments to Schedule P.S.C. No. 2 – Electricity

Fifth Revised Leaf No. 23Z-5-1
Sixth Revised Leaves Nos. 22I, 22L-23A, 22L-32
Seventh Revised Leaf No. 22H, 23Z-5
Ninth Revised Leaf No. 22G, 22J, 22L-24
Thirty-Third Revised Leaf No. 2B

Issued: February 29, 2012 Effective: June 1, 2012

Amendments to Schedule P.S.C. No. 3 – Electricity*

First Revised Leaves Nos. 151, 152, 153, 154, 155, 259, 260
Second Revised Leaf No. 4, 180

Issued: April 30, 2012 Effective: June 1, 2012

Amendments to Schedule P.S.C. No. 4– Gas

First Revised Leaves Nos. 94.22, 94.23, 94.24, 94.25
Second Revised Leaf No. 113.1
Twelfth Revised Leaf No. 4

Issued: February 29, 2012 Effective: June 1, 2012

Original Leaf No. 94.24.1
Second Revised Leaves Nos. 94.22, 94.23, 94.24

Issued: April 30, 2012 Effective: June 1, 2012

SAPA: 11-M-0542SP8 – STATE REGISTER – March 21, 2012

NEWSPAPER PUBLICATION: March 28, April 4, 11, and 18, 2012.
Waived for April 30, 2012 filing.

*P.S.C. No. 2 has been superseded by P.S.C. No. 3 per Commission Order issued March 20, 2012 in Case 10-E-0362.

SUBJECT: Filing by ROCHESTER GAS AND ELECTRIC CORPORATION

Amendments to Schedule P.S.C. No. 19 – Electricity

Original Leaves Nos. 199.3, 199.4, 213.1.1
Second Revised Leaves Nos. 84.1, 199.2
Third Revised Leaf No. 84
Sixth Revised Leaves Nos. 169.1.1, 193.1.1
Eighth Revised Leaf No. 169.1
Ninth Revised Leaf No. 3
Tenth Revised Leaf No. 193.1

Issued: February 14, 2012 Effective: June 1, 2012

First Revised Leaves Nos. 199.3, 199.4, 213.1
Third Revised Leaf No. 84.1
Seventh Revised Leaves Nos. 169.1.1, 193.1.1
Eighth Revised Leaf No. 165
Ninth Revised Leaf No. 169.1
Eleventh Revised Leaf No. 193.1

Issued: February 28, 2012 Effective: June 1, 2012

Second Revised Leaf No. 199.3
Ninth Revised Leaf No. 165
Thirteenth Revised Leaf No. 2

Issued: April 30, 2012 Effective: June 1, 2012

Sixth Revised Leaf No. 169.2

Issued: May 1, 2012 Effective: June 1, 2012

Amendments to Schedule P.S.C. No. 16 – Gas

Original Leaves Nos. 83.2, 83.3

Issued: February 14, 2012 Effective: June 1, 2012

First Revised Leaf No. 83.3

Issued: February 28, 2012 Effective: June 1, 2012

First Revised Leaf No. 83.2
Second Revised Leaf No. 83.3

Issued: April 30, 2012 Effective: June 1, 2012

SAPA: 11-M-0542SP9 – STATE REGISTER – March 21, 2012

NEWSPAPER PUBLICATION: Waived

SUBJECT: Filing by ST. LAWRENCE GAS COMPANY, INC.

Amendments to Schedule P.S.C. No. 3 – Gas

Original Leaves Nos. 191.2, 191.3
Second Revised Leaf No. 191.1
Third Revised Leaf No. 4

Issued: March 5, 2012 Effective: June 1, 2012

First Revised Leaves Nos. 191.2, 191.3

Issued: May 1, 2012 Effective: June 1, 2012

SAPA: 11-M-0542SP9 – STATE REGISTER – March 21, 2012

NEWSPAPER PUBLICATION: Waived.

SUBJECT: Filing by THE BROOKLYN UNION GAS COMPANY D/B/A NATIONAL
GRID

Amendments to Schedule P.S.C. No. 12 – Gas

Original Leaves Nos. 114.1, 114.2, 114.3
Third Revised Leaf No. 114

Issued: February 29, 2012 Effective: June 1, 2012

Fourth Revised Leaf No. 114
First Revised Leaf No. 114.1

Issued: May 1, 2012 Effective: June 1, 2012

SAPA: 11-M-0542SP1 – STATE REGISTER – March 21, 2012

NEWSPAPER PUBLICATION: Waived