



Consolidated Edison Company of New York, Inc.
4 Irving Place, New York, N.Y. 10003

petition

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February 2, 2001

VIA EXPRESS MAIL

Honorable Janet Hand Deixler
Secretary
State of New York
Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 01-G-0045 – Petition of Hudson Valley Gas Corporation Seeking a
Declaratory Ruling for Lightened Regulation as a Gas Corporation

Dear Secretary Deixler:

In the Petition of Hudson Valley Gas Corporation Seeking a Declaratory Ruling for Lightened Regulation as a Gas Corporation dated January 12, 2001 ("Petition"), Hudson Valley Gas Corporation ("Hudson Valley") has requested that the Commission issue an order: (i) declaring that Hudson Valley is exempt from regulation as a gas corporation except with respect to certain safety and environmental matters; and (ii) notwithstanding the exemption sought, certifying that the Commission has regulatory jurisdiction over the rates, service and facilities of Hudson Valley and that it is exercising such jurisdiction. By this letter, Orange and Rockland Utilities, Inc. ("Orange and Rockland") responds to the Petition.

As noted in the Petition, on December 27, 1999, Southern Energy Bowline, L.L.C. ("Southern Energy") filed an Application pursuant to Subpart 85-1.3 of the Commission's Rules of Procedure to construct a 4.2 mile, 24-inch natural gas pipeline ("Pipeline") in the Towns of Haverstraw, Clarkstown, and the Village of West Haverstraw, Rockland County, New York ("Article VII Application"). The proposed 24-inch outside diameter intrastate gas transmission line will extend from the Bowline Generating Station property to an interconnection at or near the existing Buena Vista Gas Measuring Station in the Town of Clarkstown, Rockland County, New York, which is adjacent to Columbia Gas Transmission Corporation's pipeline. The Pipeline will be located entirely within Orange and Rockland's gas service territory. No other public utility provides natural gas service to retail customers located adjacent to the proposed route of the Pipeline.

In a separate petition to the Commission, Southern Energy has moved to substitute Hudson Valley for itself as the applicant in the Article VII Application. In response, Orange and Rockland has submitted a letter dated February 2, 2001, in which it requested that the Commission impose a "no-bypass" tariff provision on Hudson Valley.

In the Petition (p. 4), Hudson Valley states that the Pipeline will provide transportation service to Southern Energy, which owns Bowline Units 1 and 2 and has filed an Article X Application for the construction and operation of Bowline Unit 3. Hudson Valley goes on to declare that "[i]n recognition of the long-standing franchise rights of Orange and Rockland Utilities, Inc. to provide natural gas transportation service in Rockland County, Hudson Valley intends to use the pipeline to transport natural gas only to existing or future facilities at the Bowline generating station property in Rockland County." Indeed, Orange and Rockland and Southern Energy/Hudson Valley currently are engaged in discussions regarding Orange and Rockland's construction of a gas regulator station at Bowline to connect the Pipeline to Orange and Rockland's gas distribution system. Orange and Rockland would utilize this gas regulator station to reinforce its distribution system. The Petition also states that, "Hudson Valley will transport natural gas for less than 20 customers."

Orange and Rockland supports Southern Energy's Article X Application for the construction and operation of Bowline 3. One only has to consider California to appreciate the chaos that results from insufficient generation. Plainly, such a scenario must be avoided in New York State.

Orange and Rockland also supports, in the qualified manner described below, Hudson Valley's request for lightened regulation set forth in the Petition. To the extent that Hudson Valley is providing gas service solely to the Bowline Generating Station and Orange and Rockland, such lightened regulation is consistent with Commission precedent and should be readily granted. In the Petition (p. 5), Hudson Valley cites to the Commission's order in the North Country Gas Pipeline Corporation proceeding¹ as precedent supporting its position. In the North Country Order, the Commission determined that an exemption was justified since North Country was proposing to serve only two customers, a generating facility and the major local gas distribution company. The Commission also determined in the North Country Order (p. 11), however, that such an exemption is inappropriate "where it was unclear whether several potential customers would be provided access to service on equal terms."

In order to prevent any confusion, Orange and Rockland hereby requests that Hudson Valley revise its Petition to delete the "less than 20 customers" reference. To the extent granted, the Commission should make clear that such lightened regulation applies only to Hudson Valley's provision of service to the Bowline Generating Facility and


¹ Case 92-M-0322, Petition of North Country Gas Pipeline Corporation and Saranac Energy Company, Inc. for a ruling that Saranac will not be subject to regulation as a gas corporation pursuant to § 66(13) of the Public Service Law, "Declaratory Ruling and Order Granting Exemption (issued August 27, 1992) (hereinafter "North Country Order").

Orange and Rockland. To the extent that Hudson Valley seeks to provide service to additional retail customers at a later date, it also can seek an extension of any lightened regulation.

Alternatively, and assuming that the Commission agrees to grant the more expansive lightened regulation requested by Hudson Valley, if Hudson Valley attempts at some future date to provide gas service from the Pipeline to any customers other than Southern Energy or Orange and Rockland, the Commission should revoke immediately its determination according Hudson Valley lightened regulation as a gas corporation. As the local distribution company in the area surrounding the Pipeline, Orange and Rockland either would already be providing service, or would be available to provide service, to said customers. In the event that it attempts to serve such additional customers, Hudson Valley would be in direct competition with Orange and Rockland. To the extent that these customers receive natural gas service from Hudson Valley rather than through Orange and Rockland's facilities, Orange and Rockland is denied revenue that would be used to cover its fixed costs. Such costs would need to be recovered from Orange and Rockland's remaining firm customers. Under such circumstances, and particularly in light of the pernicious effects on the rates of firm customers, the Commission should not tip the competitive scales in favor of Hudson Valley. In order to promote a "level playing field", the Commission should refrain from providing Hudson Valley with a regulatory advantage in serving these additional customers. Indeed, the Commission should require that Hudson Valley seek approval for a gas franchise pursuant to Section 68 of the Public Service Law in order to ensure that the public interest is properly served.

For the reasons set forth above, Orange and Rockland hereby requests that the Commission grant Hudson Valley's Petition in the qualified manner described above.

Respectfully submitted,


John L. Carley
Assistant General Counsel

cc: Service List