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July 19, 2004

VIA AIRBORNE EXPRESS

Hon. Jaclyn Brilling
Secretary
New York State Public
Service Commission
Three Empire State Plaza
Albany, NY 12223

Hon. William Bouteiller
Administrative Law Judge
New York State Public
Service Commission
Three Empire State Plaza
Albany, NY 12223

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Re: Case Nos. 03-G-1671 / 03-S-1672
Con Edison Gas & Steam Rate Cases

Dear Secretary Brilling and Judge Bouteiller:

Enclosed for filing are an original and fifteen copies of the Post-Hearing Brief on behalf of Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company").

Very truly yours,

Mary Krayeske

MLK/md
Enclosures

Cc: All Active Parties by
e-mail and Regular Mail

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Case No. 03-G-1671	Proceeding on Motion of the	:	
	Commission as to the Rates, Charges,	:	
	Rules and Regulations of Consolidated	:	
	Edison Company of New York, Inc.	:	
	For Gas Service	:	Before
		:	Hon. William Bouteiller
Case No. 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 Service	:	

**POST-HEARING BRIEF OF
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

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Dated: July 19, 2004
New York, New York

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 03-G-1671 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Gas Service.

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 Service.

**POST HEARING BRIEF OF
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

On May 28, 2004, a number of active parties to these proceedings entered into a Joint Proposal (“Proposal”) establishing gas rates for Consolidated Edison Company of New York, Inc. (“Con Edison” or the “Company”) for a three-year period, from October 1, 2004 through September 30, 2007, and steam rates for a two-year period, from October 1, 2004 through September 30, 2006. Fifteen parties, including Con Edison and Staff of the Department of Public Service (“Staff”), signed the Proposal (“Signatory Parties”).

The Signatory Parties filed statements supporting the Proposal on June 10, 2004, and three parties filed comments or testimony opposing the Proposal on June 17, 2004. In addition, an evidentiary hearing addressing certain contested issues was conducted over the two-day period ending June 23, 2004, resulting in a transcript of 600 pages of testimony and 14 exhibits that were entered into evidence.¹ During the evidentiary hearings, two of the Statements in Support of the Proposal, those filed by Con Edison and Staff, were

¹ References to the stenographer’s minutes will be set forth in parentheses, without prefix. Exhibits will be designated by the prefix “Exh.”

adopted by their respective witnesses as sworn testimony and subjected to cross-examination. Other parties submitting testimony into evidence included the City of New York ("City") (supporting the Proposal's allocation of the costs of jointly-used facilities between the electric and steam departments), Westchester County ("Westchester") (opposing the Proposal's allocation methodology), and UWUA Local 1-2 ("Union") (raising labor-related issues).

Upon completion of the hearing, the Administrative Law Judge ruled that participating parties would be permitted to file post-hearing briefs, limited to the facts and arguments raised at the evidentiary hearings with respect to the contested issues only (594-599).

At the outset, we would note that there are stark realities associated with Con Edison's steam system, and that the Proposal's continuation of the "incremental cost" methodology to allocate costs between the electric and steam systems reflects these realities. Westchester County urges the Commission to ignore these realities, and it claims that the demise of the steam system is not its desire (580-581). But, the reality is that Westchester's position does not represent a fair balance of steam and electric customer interests -- its proposal would more than double the steam rate increase embodied in the Proposal in favor of a relatively insignificant reduction in electric rates and would bring the steam system to the precipice of disaster (524). The record is clear that the circumstances in this case have changed little from those the Commission considered long ago in adopting the "incremental cost" allocation method in its Opinion 78-27² and again, more recently, in Opinion 00-15.³ None of the arguments advanced by Westchester provides a basis for the

² Case 27276, Con Edison Steam Rates, Opinion No. 78-27, 18 NYPSC 1764, 1768-70 (1978).

³ Case 99-S-1621, Con Edison Steam Rates, Opinion No. 00-15, December 1, 2000, pp. 18-20.

Commission to alter its policies on this matter.

As for the Union's issues regarding the Company's limited use of contract labor, there has been no demonstration that using in-house employees would be cheaper than outside labor. In fact, on cross-examination, the Union could not answer what possible motivation the Company would have in incurring higher labor costs when it could, in effect, retain any labor cost savings (48-49). Clearly, the Union's issues have no merit and should not be a basis for altering the Proposal.

As was demonstrated in the Company's Statement in Support, the Proposal is clearly reasonable when taken in its entirety. Westchester and the Union complain about two discrete elements of the Proposal, without addressing the Proposal in its entirety. As we noted in our Statement in Support, however, the arguments advanced by parties that urge rejection of the Proposal must be measured against the numerous compromises that were negotiated in order to reach an agreement. Moreover, as will be demonstrated below, the Proposal's methodology to allocate costs between the steam and electric departments is proper and reasonable and the specific labor-related issues raised by the Union are without merit. Accordingly, the Proposal should be approved in its entirety.

A. STEAM-ELECTRIC COST ALLOCATION

1. The Proposal's Treatment of the Costs of Steam/Electric Plants is Consistent With Commission Policy

In Con Edison's steam system, steam is generated in either steam-only plants (producing "live" steam) or in steam-electric plants, which first use the steam to produce electricity in a turbine-generator and then exhaust it to the steam distribution system. This joint use of facilities requires the allocation of capital and O&M costs and property taxes as well as the allocation of fuel savings from the cogeneration process (i.e., the fuel required

to produce electricity and steam together is less than the total fuel required to produce equivalent electricity and steam in separate facilities).

Until a few years ago, the Company's steam-electric stations included Waterside, East River, 74th Street, 59th Street and Hudson Avenue. The electric production facilities at the latter three stations have been retired, leaving only Waterside and East River as steam-electric stations (Hudson Avenue's steam-electric unit was reactivated in 2001, but will be shut down before the Proposal would go into effect). At each of these plants, the capital costs are assigned to the electric department, and the steam department pays to the electric department interdepartmental rents to cover steam's allocated share of capital costs (e.g., for water treatment facilities necessary for steam production, but not for electric production). The steam department also pays the electric department processing charges to cover steam's allocated share of O&M costs, which consist primarily of the costs of water and water treatment chemicals and associated labor, required for steam production. Fuel is charged to each department based on a "heat rate" contribution, which represents the portion of the heat input to the boiler that is assigned to the production of steam or electricity, respectively.

While there is no single unique method for allocating joint costs (224), the Commission has since 1978 (and prior to 1975) used the "incremental cost" method to allocate costs to steam; i.e., only incremental costs required for the production of steam are allocated to the steam department, while common costs or those only required for the production of electricity are allocated to the electric department (Exh. 3, p. 21).

Under the Proposal, this longstanding method for allocating costs is continued for existing facilities (e.g., Waterside) and is also applied to the East River Repowering Project

("ERRP"). Appendix F to the Proposal specifies how the capital and operating costs of ERRP are to be allocated between the electric and steam departments. Specifically, the capital cost and related property taxes for the heat recovery steam generator ("HRSG") and their associated piping, water treatment plant, and steam-related interconnections are allocated to the steam system. All other costs, which would be required for electric production absent any steam production, are allocated to the electric department (Exh. 3, p. 21). It should be noted that ERRP differs from the other steam-electric plants in that it uses a gas turbine ("GT") and HRSG instead of a conventional boiler and steam turbine. Thus, electricity is first generated in the GT and its waste heat is captured in the HRSG and used to produce steam (131, 196-197). Additional steam is produced in the HRSG by means of duct burners. Nevertheless, as explained by Mr. Shansky, differences in plant design or technology can be taken into account when applying the incremental cost method and the Proposal does just that (139, 214).

Westchester argues that the incremental method can be used to allocate costs to steam production only when steam is a byproduct (449), but that argument misses the point of the method. Under the incremental cost method, steam is *treated* as a byproduct because that is the approach that results in an economically efficient allocation of costs (312). The Company does not dispute that the primary purpose of ERRP is to replace Waterside's steam capacity (129-130), although the replacement of Waterside's electric capacity is no less important (561) and the additional electric capacity at the East River location provides added benefits to the electric system (180). Westchester fails to recognize, however, that its proposal will produce unintended rate impacts that could ultimately add costs to the electric system. That unintended result was recognized in Opinion 78-27 when the

Commission confirmed benefits to all consumers of the incremental cost method:

The record here is clear enough. There has been an exodus from the steam system attributable to conversions and it is also undisputed that lower rates would aid in stemming the tide of conversions. If the ultimate result of ever-increasing rates is the departure of all steam customers from the system, it will be disadvantageous to Con Edison's electric and gas customers. The ultimate benefit of retention of steam customers, flows, therefore, to all of Con Edison's customers and not merely to steam customers.

Case 27276, supra, 18 NY PSC at 1770.

At the time of its 1978 order and for several years thereafter, the Commission was attempting to discourage steam customers from switching to electric service, because such conversions would require additional large capital investments in electric facilities that would disadvantage the other customers using the Company's electric system, including customers residing in Westchester County. In the subsequent Phase II of that proceeding, while expressing its continued concerns with the long-term stability of the steam service, the Commission determined that the steps taken in the first phase of the proceeding had, in fact, decreased the number of customers departing from the steam system.⁴

Since that time, the Commission has, on several occasions, expressly considered the reasonableness of continuing this allocation method and consistently required electric customers to pay the common costs of the steam-electric plants to ensure that, in the long-term, electric customers, including those in Westchester County, would not be required to incur even higher costs that would be caused by the transfer of customers from steam service to electric service. See, e.g., Case 27877, Con Edison Steam Rates, Opinion No. 81-16, 21 NY PSC 2065, 2075-2076 (1981); Case 90-S-0938, Con Edison Steam Rates, 1991 NY PUC LEXIS 42 (1991); Case 99-S-1621, supra, p. 18.

⁴ Case 27276, Con Edison – Phase II – Steam Rate Design, January 15, 1981, p. 2.

Another issue raised by Westchester involves the transfer of costs from electric to steam associated with the retirement of electric production facilities at steam/electric stations. Concerned that the abrupt transfer of stranded electric costs to the steam department would have unacceptable impacts on steam customers, the Commission determined that the transfer of these costs should be accomplished gradually. Thus, although more than \$30 million in potential stranded costs were transferred to steam along with associated operating expenses when electric generation facilities at 59th Street and Hudson Avenue were retired in the mid-1990s, certain operating costs associated with electric generating facilities retired on December 31, 1999 were continued to be included in electric rates until these costs could be reasonably absorbed in steam rates.

Significantly, in the Steam Plan proceeding conducted in 1998-99, the Commission addressed the viability of the incremental cost method in light of the introduction of deregulation and competition into the electricity market. It found that the replacement of Waterside with ERRP would reduce both steam and electric costs and that the retirement and sale of Waterside would eliminate any stranded costs at that facility. In endorsing the ERRP plan, the Commission agreed that the greater efficiency of ERRP (i.e., it will triple the electric generation associated with the steam it is replacing (190)) will make the transfer to steam of the remaining stranded costs more sustainable.⁵

In its Opinion No. 00-15, the Commission again rejected Westchester's insistence that the "subsidy" should be terminated immediately. After thoroughly considering Westchester's arguments, the Commission concluded:⁶

As to Westchester County's argument that the steam subsidy should be eliminated immediately, we are not persuaded to

⁵ Case 96-S-1065, Order Concerning Phase II Steam Plant Report, December 2, 1999, pp. 11-12.

⁶ Opinion No. 00-15, supra, pp. 18-19.

disturb the electric rate plan for this result, particularly when the effect would be only a 1% rate reduction for electric customers, while increasing steam base rates by 20%. The depression of steam system demand might well have a negative impact on electric ratepayers, particularly at a time when the demand for electricity in New York City is already high relative to supply. Regardless, we are generally opposed to abrupt rate changes when they can be avoided, and waiting until the First Avenue Properties are sold and the benefits of the [repowering of a steam/electric plant] can be factored into steam rates does just that. The fact that the First Avenue Properties are no longer producing electricity does not alter this conclusion, for as NYC suggests, the long-standing allocation of cost between electric and steam has been reasonable, and the discontinuance of electric production at these plants effectively means that the electric department's portion of the investment can be regarded as "stranded" investment in appropriate circumstances.

Thus, in Opinion No. 00-15, the Commission thoroughly explained its reasons for phasing out, rather than immediately discontinuing, the "subsidy." First, steam customers would face an unacceptably large rate increase (in comparison to the relatively minor rate decrease that would result for electric customers). Second, increasing rates for steam service would cause steam customers to convert to electricity, which would strain the already tight electricity supply in New York City -- a continuing concern to the Commission, the Company, and customers. And, finally, the Commission found that the "subsidy" was justified because electric customers were paying for the costs of facilities that were required for the production of electricity even if such costs were "stranded" because the facilities no longer produce electricity.

Significantly, Westchester challenged in New York's courts the Commission's use of the "incremental method" in allocating costs of jointly-used facilities as well as its treatment of the transferred costs, but the courts found no reason to disturb the Commission's decisions. After considering the issue of whether it was proper for electric customers to bear a share of the costs that would be required for electric production in an

electric-only plant, the Appellate Division concluded:

Since 1978, the PSC's rate orders have mandated that certain costs related to the production of steam within Con Ed's Manhattan steam plants be apportioned among electrical consumers elsewhere in the Con Ed service area. Petitioners contend that the continuation of this practice is unfair and should be eliminated. The record indicates, however, that immediate elimination of the steam subsidy would result in a mere "1% rate reduction for electric customers, while increasing steam base rates by 20%." The PSC maintains that such a drastic increase in steam rates would, additionally, depress the market for steam, driving steam consumers to electric power and thereby increasing an already high demand for electricity in New York City. Since, as previously stated, the PSC "can validly set differential rates based upon considerations other than cost, as long as they are otherwise rationally based," . . . we find no reason to disturb this determination.

County of Westchester v. Helmer, 296 AD2d 68, 74 (3d Dept 2002). Westchester's request for leave to appeal was denied by the Court of Appeals. County of Westchester v. Helmer, 99 NY2d 502 (2002).

In short, the Proposal properly continues the Commission's well-established methodology for allocating both the existing steam/electric plants and the ERRP in that, except for costs directly related to the production of steam (such as feedwater treatment chemical costs), electric customers would incur the costs of those units even if they were not used to produce steam. Westchester's suggestion, that there are alternatives to ERRP that would better serve electric customers does not alter the fact that the existing units, as well as ERRP, are necessary for both electric and steam production. Similarly, the Proposal properly defers the transfer to the steam department of the remaining operating costs at 74th Street and 59th Street reflected in electric rates until ERRP has begun commercial operation and the sale of the First Avenue properties has been consummated.

2. **The Proposal Properly and Reasonably Allocates
The Costs of ERRP Between The Steam and Electric
Departments**

There can be no question that the Proposal properly applies the incremental cost method and the resulting allocated costs are reasonable. Westchester raised a number of objections to the allocation procedure described in Appendix F as well as to the resulting electric costs. However, as explained in detail below, none of Westchester's arguments withstand scrutiny.

First, Westchester objected to the convention used in Appendix F that assigned certain explicitly defined costs to steam and "All Other" costs to electric (452). By Westchester's logic, had the Signatory Parties omitted any true steam costs, such costs would have been improperly charged to electric. Of course, the reason for this convention is to assure that no costs go unrecovered. Where it was feasible to explicitly identify all costs (i.e., fuel costs), Appendix F includes such explicit identification. During cross-examination, Westchester pointed to certain HRSG-related costs that were not specifically assigned to steam and, hence, will be charged to electric. These costs include maintenance charges for the HRSGs, painting of the HRSGs (a cost well outside of the rate year as they are just becoming operational), the cost of the concrete foundation for the HRSGs, and for equipment lighting (190-204). However, there is no basis for condemning the allocation procedure described in Appendix F based on these four instances – the only shortcomings in Appendix F pointed out by Westchester. As Mr. Bozgo explained, the first two items are de minimus, amounting to \$200,000, or less than one percent of the total ERRP operating and maintenance budget (\$19-20 million) (198). The last two items are classic common costs for which the portion associated with steam equipment is not readily identified (199). Any attempt to reallocate these categories would be an exercise in futility. Thus, the

allocation of these costs to electric under Appendix F is fully proper.

Second, Westchester objected to the allocation of ERRP fuel costs to electric. Notwithstanding that the allocation is the same one used at Waterside today -- and that the resulting electric heat rate is the same as Waterside's, equal to that of a new gas turbine, and comparable to that of other in-City plants -- Westchester claims that electric customers would be better served if the allocated heat rate more closely approximated that of a new combined-cycle plant (essentially ERRP with a steam turbine and condenser to convert the steam to additional electric output). In effect, Westchester wants to assign some of ERRP's efficiency benefits to electric. However, the Commission has long and consistently assigned all cogeneration benefits to steam; and, as Mr. Shansky and Mr. Chernick pointed out, and even Mr. Berry acknowledged (558), electric customers will receive other substantial benefits from ERRP. Westchester claims that ERRP incurs incremental fuel costs relative to a combined-cycle plant because steam system considerations prevented the Company from installing the additional electric equipment. This claim is without merit. First, because the ERRP is a joint facility, it is a mere abstraction to separate the fuel used for steam production from the fuel used for electric production and imagine two separate plants. Second, the type of plant which Mr. Berry advocated could not have been built on any site available to Con Edison for less overall cost than ERRP (Case 99-F-1314, Pre-Application Report, September 27, 1999, pp. 30 and Table 2.3, and Exh. 1, Table 4-1).

More importantly, as Mr. Shansky explained and Mr. Berry conceded, ERRP actually has a higher efficiency than a combined-cycle electric plant (563-65). Mr. Berry estimated that reducing the fuel allocated to electric by 37% would save electric customers at least \$45 million per year, depending on the price of fuel. Mr. Berry's arithmetic is

probably correct, but handing electric customers such a windfall would easily double the steam rate increase under the Proposal, a result clearly unacceptable to steam customers.

Third, Westchester objected to the fixed costs allocated to electric. Westchester observed that these charges exceeded the current electric market prices on a \$/kW-year basis. If Westchester's point is that the current market prices are inadequate to support new plants, there is little dispute that developers are reluctant to build new plants under today's market conditions although the record does show that ERRP's costs compare favorably to that of the new KeySpan plant (134). Nevertheless, the proper comparison for determining ERRP's benefits is ERRP versus the plant that it is replacing, Waterside. When comparing ERRP and Waterside, the benefits of ERRP are easily seen -- ERRP is projected to produce electricity at \$318/kW-year, while Waterside will produce electricity at \$450/kW-year (566-569). In fact, Appendix F allocates a greater fraction of capital costs to the steam system (33 percent) than are currently allocated at Waterside -- only 5 percent (554).

Fourth, Westchester argues that electric customers will pay higher rates with ERRP than with Waterside. This argument is based on flawed reasoning. Mr. Berry's analysis omits two significant benefits that electric customers will receive from ERRP. First, as he acknowledged on cross-examination (558), Mr. Berry failed to include the real estate benefits arising from the sale of Waterside. By any measure, the bulk of these benefits will flow to electric customers through the repayment of the book cost of Waterside, which is currently allocated 95% to electric customers (553-55). In addition, Mr. Berry entirely discounted the significant benefits which electric customers will receive from ERRP's effect in lowering market prices for all of the capacity and energy purchased on their behalf from the NYISO (518).

Mr. Berry argued that the market price benefits are not exclusive to ERRP and that “market forces” would have brought forth a replacement plant that could offer the same or similar benefits. However, on cross-examination, he admitted that the market was not currently providing sufficient incentives for plants to be built and that the energy price benefits of a merchant plant would accrue to the developer rather than customers (511). Mr. Berry then stated that what he really meant was that Con Edison would have entered into a long-term power purchase contract to obtain at “market prices” the equivalent electric output that will be received from ERRP (513, 540-41), although he reluctantly acknowledged that, absent ERRP, Waterside would continue to operate (558).

Clearly, the notion that Con Edison would have contracted with third parties for the extra 125 MW to be produced by ERRP cannot be reconciled with Westchester’s insistence that ERRP is being built to meet steam needs. Furthermore, Mr. Berry did not explain why or how a developer would build a plant to replace the incremental 125 MW of ERRP at the prevailing market prices for capacity and energy, when market prices are insufficient to support new plants, or why Con Edison would enter into long-term contracts for the purchase of the output of such new plants given, as Mr. Berry acknowledged, the significant stranded costs that previous long-term electric contracts have imposed on Con Edison’s electric customers. Whether Mr. Berry’s theory about a replacement plant is inapplicable or Mr. Berry’s hypothetical contract would impose still greater costs on electric customers, the fact remains that Westchester’s denial of ERRP’s market price benefits simply ignores the realities associated with the operation of the market and the risks associated with contracting for generation.

Lastly, Westchester advocates that electric customers pay only for the market cost

of electricity. However, in addition to the drastic increase in steam rates that would result, which the Commission has sought to avoid in the last twenty-five years, Staff witness Van Cook also explained that such a proposal would burden steam customers with unjustified risks should market prices decline, as well as deny electric customers protection from market volatility (238-241).

In the final analysis, as concluded by the courts of this State, Westchester provides no basis for abandoning the Commission's longstanding methodology for allocating joint costs between the electric and steam departments, nor has Westchester given the Commission any reason to change its conclusion that a small electric rate decrease, no matter how meritorious, cannot justify rate shock to steam customers.

B. LABOR-RELATED ISSUES

Based on several unsupported claims, the Union opposed the Proposal, purportedly because it wrongfully reflects the Company's use of contract labor, the application of the Commission's productivity adjustment, the Company's management structure, allocation of common charges, and level of O&M expenditures. The Union also voiced concerns regarding the configuration of the First Avenue steam main (an issue raised for the very first time in Mr. Koda's supplemental direct testimony). As Mr. Koda acknowledged, however, a settlement should be based upon its overall reasonableness (80). The issues raised by the Union, neither individually nor collectively, provide a basis for questioning the overall reasonableness of the Proposal. The Commission should therefore reject the Union's requests to reject or modify, in any manner, the Proposal.

The Union's primary objection is to the Company's use of per diem labor for work the Union alleges could otherwise be performed at a lower cost by weekly

employees. The Union's interests in this regard were recently, and properly, addressed in the collective bargaining agreement negotiations concluded last month. In any event, the record in this proceeding does not support the Union's claims that the Company's use of per diem labor has any adverse impact on customers. In fact, the hearing served to reaffirm that the Union's pursuit of this issue was no more than a wholly transparent attempt to gain improper leverage in the then-ongoing collective bargaining negotiations, by seeking to elicit information otherwise unavailable to it and use such information in a manner that could only serve to increase the Company's revenue requirement.⁷

The Union's claim that the Company has inflated its revenue requirement by using per diem labor in lieu of weekly employees is both unsupported and in stark contradiction with the Company's obvious interest in maximizing its earnings by taking advantage of proper opportunities to reduce its costs, including labor costs. Mr. Williams not only agreed that it is in the Company's interest to do so, he was unable to provide any possible reason why the Company would ignore the opportunity to achieve the savings that Mr. Williams claimed are available to the Company by using weekly employees in lieu of contract labor (48-49).

The Company did provide to Staff, on a confidential basis, information comparing the hourly cost of union labor to per diem labor (112-113). As demonstrated by Staff's unqualified support for the Proposal, the Union's allegations that the Company is inflating its revenue requirement through its use of contract labor were obviously unfounded in Staff's mind. And even assuming, arguendo, Mr. Williams' proffered calculations of the hourly rates of comparable per diem and weekly employees, the conclusion he draws does not support his claim that the Company's revenue requirement

⁷ Such efforts were properly rebuffed during the discovery phase of this proceeding (113).

is inflated, as Mr. Williams admitted that Company employees are paid for every hour of the year, whether or not they work, while contract employees are only paid for hours worked (46-47).

Nor is there any merit to, or support for, Mr. Williams' claim that the Company could save \$5 million by reducing per diem labor (48). Mr. Koda admitted that there are valid reasons for the Company to use per diem labor in lieu of contract labor (91-92). Yet, without offering any analysis or study as to the level of per diem labor that would be required by the Company to address such situations, Mr. Williams calculates his \$5 million of savings on the basis of Mr. Koda's unsupported recommendation that the Company hire 90 gas and 25 steam workers to replace the equivalent number of per diem employees (48-49), which would represent replacement of more than 70% of the combined number of per diem employees the Company projects it will use in its steam and gas operations during the first rate year. In fact, Mr. Koda's recommendations were based on mistaken assumptions. For example, as respects Mr. Koda's testimony that "total contractor expenditures went from a substantial \$353,493,500 in 2001 to a whopping \$462,818, 500 in 2002 or a 31% increase" (66), Mr. Koda acknowledged on cross-examination that these figures clearly reflected more than per diem labor, and there is nothing in the record to indicate whether any portion of this increase is attributable to per diem labor (89-90).

It bears mention that the Company's position that it uses a combination of union and contract labor as dictated by need and to minimize costs (without any underlying plan to reduce union labor) is further supported by its recent electric rate filing (Case 04-E-0572), which reveals the Company's plans to hire more than 1000 new employees (115).

The Union's other concerns, including those regarding the application of the Commission's productivity adjustment, the Company's management structure, the allocation of common charges, and level of O&M expenditures, proved equally unfounded upon further examination at the hearing. For example, as respects the Union's objection to the application of the Commission's productivity adjustment, Mr. Koda admitted that the Union was a signatory in support of the current steam rate settlement, which contained the identical productivity adjustment (80), thereby vitiating its unfounded claim that such adjustment is, per se, detrimental to a utility's operations.

As respects Mr. Koda's criticisms of the Company's management structure, and his call for a management audit to investigate the level of the Company's management ranks, the self-serving nature of his recommendation became obvious when he was reluctant to agree that union ranks should be similarly reduced if that was the conclusion reached by an independent auditor of the use of union labor (95-97). In fact, even Staff, who conducted extensive and widespread discovery in these proceedings, affirmatively rejected the need for a management audit of the Company (98-99).

As respects the Union's concerns with the allocation of common costs among the Company's electric, gas and steam operations, Mr. Koda acknowledged that he neither performed a study of such allocations nor pursued this issue through the discovery process (108). He premised his concerns solely on the fact that the Company had not conducted a very recent study, neither alleging that the overall level of common costs was not appropriate nor concluding that there would likely be a material impact on the allocation of such costs as a result of such a study (62).

Regarding the variations between the Company's budgeted and actual O&M expenditures, Mr. Koda admitted to misinterpreting a Company data response, and, as a result, attributing the amount of Company-wide O&M expenses solely to the Steam department. When apprised of his mistake, Mr. Koda acknowledged that the variance of actual expenditures from the overall Company budget was no more than 4%, and further acknowledged that such reduction could very well have been attributable to costs outside of the Company's control, like interference or pensions costs (82-85). Mr. Koda also accepted that the variation between actual and budgeted steam O&M expenses was negligible (85-86).

Finally, as respects the Union's 11th hour concern regarding the configuration of the First Avenue steam main, the hearing established that Mr. Koda's assertions were grounded solely on unsupported statements of union members that work in steam operations with whom Mr. Koda had spoken; that Mr. Koda had conducted no investigation to verify these concerns; and that Mr. Koda's ill-founded comparison of the First Avenue steam main to the Gramercy Park incident was premised upon his erroneous assumption that the type of joint that collapsed in the Gramercy Park steam main is also being utilized in the First Avenue steam main (100-107). Moreover, since Mr. Koda acknowledged that his concerns could be addressed by requiring the Company to institute special procedures (notwithstanding the absence of any record evidence demonstrating the need for such procedures), the Union's concern regarding the configuration of the steam main provides no basis for rejection or changes to the Proposal (94-95; 107-108).

C. CONCLUSION

For all the reasons set forth in the Company's Statement in Support, at the hearings and in this brief, the Proposal balances the interests of a variety of parties and produces

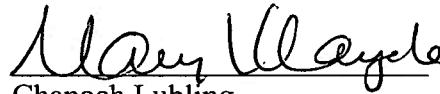
results within the range of reasonableness that would have been achieved through a fully-litigated proceeding, reflects agreements by normally adversarial parties and comports with the Commission's policies. No evidence adduced at the hearings alters this conclusion. As such, the Commission should approve the Proposal in its entirety and in the public interest.

Dated: New York, New York
July 19, 2004

Respectfully submitted,

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of New York, Inc.

By Its Attorneys



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