

Filed Session of March 25, 2010
Approved as Recommended
and so Ordered
By the Commission

JACLYN A. BRILLING
Secretary

Issued and Effective March 25, 2010

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

March 1, 2010

TO: THE COMMISSION

FROM: OFFICE OF ELECTRIC, GAS AND WATER

SUBJECT: CASE 09-G-0567 - Filing by Orange and Rockland Utilities, Inc. to change the terms under which the company will release upstream pipeline capacity to its Marketers and to revise its Capacity Release Service Adjustment.

CASE 09-G-0568 – Filing by Consolidated Edison Company of New York, Inc. to change the terms under which the company will release upstream pipeline capacity to its Marketers and to revise its Capacity Release Service Adjustment.

SUMMARY OF

RECOMMENDATION: Staff recommends that Orange and Rockland Utilities, Inc. and Consolidated Edison Company of New York, Inc. be directed to cancel the tariff amendments listed in the Appendix and to file further tariff revisions as discussed in this memorandum.

SUMMARY

Orange and Rockland Utilities, Inc. (O&R) and Consolidated Edison Company of New York, Inc. (Con Edison) (together, the “Companies”) have filed tariff amendments to change the terms under which the Companies will release upstream pipeline capacity to Marketers to allow the Companies to release capacity at their

weighted average cost of capacity (WACOC). The Companies also propose to revise their Capacity Release Service (CRS) Adjustment that allows the Companies to surcharge or credit transportation customers the difference between the cost of capacity released to the Marketers and the Companies' WACOC. Staff recommends that the Companies' be directed to cancel the tariff amendments listed in the Appendix and to file further tariff revisions as discussed in this memorandum.

BACKGROUND

Capacity release is necessary for retail access programs to ensure that local distribution companies' (LDCs') procured upstream pipeline capacity is available to the Marketers participating in that LDC's retail market. In order to ensure equality in capacity costs, it is the Commission's policy to require that an LDC charge Marketers a cost of released capacity based on the LDC's WACOC for its system.¹ Prior to the Federal Energy Regulatory Commission's (FERC) issuance of Order No. 712 on June 19, 2008², LDCs participating in state mandated retail access programs were unable to release pipeline capacity above maximum rates set forth in the pipeline's FERC approved tariff and were also subject to FERC's bidding requirement for releases below the maximum rate. FERC's bidding requirement entails posting the release for bidding, which could potentially result in capacity being bid away from the Marketer. Therefore, the LDCs were unable to directly release capacity at their WACOC due to FERC's maximum rate and bidding requirements. As a result, the LDCs were forced to use other means to charge an equivalent WACOC, in order to comply with both FERC and Commission policy. The two most common means have been: (1) releasing "slices" of the LDC's capacity at maximum rates that, in combination, roughly equal the LDC's

¹ Case 93-G-0932 et al., Order Concerning Compliance Filings (issued March 28, 1996), p. 9.

² Promotion of a More Efficient Capacity Release Market, Order No. 712, 123 FERC ¶61,286 (2008).

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WACOC; and (2) releasing capacity at maximum rates, then applying a credit or surcharge to bills rendered to transportation customers for the difference between the Marketer's cost of released capacity and the LDC's WACOC. Currently, Con Edison and O&R are using the second approach to price the capacity released for their retail access programs.

Order 712 revised regulations concerning the release of firm capacity by shippers on interstate natural gas pipelines in order to enhance the efficiency and effectiveness of the secondary capacity release market. Of significance in O&R and Con Edison's filings, Order 712 modified the existing regulations by: 1) exempting capacity releases made from LDCs to Marketers, in conjunction with state approved retail access programs, from bidding requirements; and 2) allowing short term capacity releases at prices greater than maximum rates. Since releases made under state mandated retail access programs are now exempt from the bidding requirement, regardless of the rate at which the LDC releases the capacity, LDCs are permitted to release capacity to the Marketers at a rate equal to their WACOC without posting the release transaction for bidding.

PROPOSED TARIFF FILINGS

The Companies are proposing to revise their tariffs to enable them to release capacity at their WACOC³ to Marketers, which are described as "Sellers" in their tariffs. The Companies will calculate a capacity release rate to become effective each November 1st for a 12-month release term. The capacity release rate will be set at the Companies' projected WACOC, which includes all rates that the Company pays for firm pipeline capacity as published in the pipeline's FERC tariff rate and/or as negotiated with the pipeline. Sellers will pay directly to the Companies' pipeline suppliers the WACOC

³ Con Edison uses the acronym "WACOC", whereas O&R uses the acronym "AdjustedWACOT" (weighted average cost of transportation). Both Companies adjust (reduce) TransCanada demand charges to the extent necessary to result in comparability between Canadian and domestic commodity costs. For readability purposes "WACOC" is used herein for both Con Edison and O&R.

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established for that twelve-month release term for all interstate pipeline capacity released to them during the twelve-month term. Each pipeline will credit or debit the LDC the difference between that amount and its maximum FERC pipeline rate, which would be flowed back or billed to firm sales customers by the LDC.

Both Con Edison and O&R currently have Capacity Release Service (CRS) Adjustments that allow the Companies to surcharge or credit firm transportation customers the difference between the cost of capacity released to Sellers (as agents for customers) and the Companies' WACOC. If the cost of the capacity on the pipeline is currently lower than the Companies' WACOC on all pipelines, firm transportation customers are surcharged an amount equal to the difference between the pipeline's maximum rate and the Companies' WACOC. If the cost of the capacity release is currently higher than the WACOC, transportation customers are credited with an amount equal to the difference between the pipeline's tariff maximum rate and the WACOC. The adjustment is included in the Monthly Gas Adjustment (for O&R) and the Monthly Rate Adjustment (for Con Edison). Any difference between the amounts surcharged or credited to firm transportation customers through the CRS adjustment and the actual difference between the pipeline rates and the companies' WACOC is reconciled annually and included in the monthly adjustments.

The Companies propose to revise their respective CRS Adjustments by defining each adjustment as the difference between the projected WACOC and the actual WACOC for each 12-month period commencing November 1st. In addition, tariff language has been added to allow for a final reconciliation of the Companies' current CRS programs.

NOTICE AND COMMENTS

Notices of the proposed tariff changes were published in the State Register on August 12, 2009. Comments were received from the Small Customer Marketer Coalition, Hess Corporation, and Consumer Power Advocates. These comments were submitted prior to postponement of the effective date of the tariff filings to April 1, 2010.⁴

The Small Customer Marketer Coalition (SCMC) filed comments in both cases on September 29, 2009. It did not object in principle to modifying the capacity pricing mechanism. However, it noted that the (originally) proposed effective date of November 1, 2009 was too short of a time for implementation. SCMC stated that a change of this magnitude requires a longer transition period during which Energy Services Companies (ESCOs) can assess the cost impact and begin reflecting this material change in the contracts signed with retail customers. The SCMC also expressed concern with the “informal” process being used by utilities to present proposed changes to their capacity release programs, e.g., a conference call with interested parties followed by a regulatory filing and SAPA notice. According to the SCMC, a formal collaborative process involving all interested parties would be more structured and useful. In conclusion, the SCMC requested that the effective date of the proposals be delayed from November 1, 2009 to November 1, 2010.

Hess Corporation (Hess) filed comments in both proceedings on September 25, 2009. It noted that it is one of the largest ESCOs serving customers in both the Con Edison and O&R service areas. Hess stated that implementation of the new pricing mechanism just three months after the tariff filings would subject ESCOs to

⁴ On October 7, 2009 the Commission approved the requests of Con Edison and O&R to postpone the effective date.

additional, unrecoverable costs of serving customers. It requested that the Commission “delay implementation of the new pricing mechanism until at least November 1, 2010, which would allow ESCOs to price the additional costs of acquiring capacity into their customer contracts and mitigate the harm the proposed implementation date would impose.” Further, it noted that the requested delay would not be harmful to customers or the LDCs, but without it Hess would experience a substantial financial impact due to its inability to recover increased costs.

Consumer Power Advocates (CPA), a membership organization of large energy customers in Con Edison’s service territory, filed comments on October 5, 2009 in Case 09-G-0568. It noted that the current contracts that its members signed with suppliers, which typically have a term of one year or more, were negotiated based on the capacity release rules which are currently in effect, and that any change in pricing rules is a concern and potential cause for contract renegotiation. Further, CPA expressed concern with the regulatory process followed here; the filing was noticed in July 2009 and (originally) proposed to go into effect November 1, 2009, which CPA alleged is too brief a period of time to understand the implications of the changes and to renegotiate responsibly. CPA asserted that “in order to afford ESCOs and customers the opportunity to negotiate fair contracts based on new rules, and to allow current contracts to continue without the possibility of disruptive renegotiation, the Commission should delay the effective date of the proposed changes until November 1, 2010.”

DISCUSSION

The proposed tariff revisions are supported by FERC Order 712 and will result in an administratively simpler process for ensuring that Con Edison’s and O&R’s capacity release pricing is done at the weighted average cost of capacity, which is consistent with Commission policy.⁵ Specifically, the LDCs currently release capacity to

⁵ Similar changes were approved by the Commission for National Fuel Gas Distribution Corporation. Case 08-G-1503, National Fuel Gas Distribution – Capacity Release, Untitled Order (issued March 12, 2009).

marketers who are billed at maximum FERC pipeline rates. A reconciliation to the WACOC is subsequently performed by the LDC, and customers are directly surcharged or credited the required reconciliation amount. Under the proposed filings, all releases will be made and billed to marketers at the full WACOC established at the beginning of each capacity release year.⁶ Customers will not experience any additional costs due to this change in methodology.

The three entities that filed comments in these proceedings (SCMC, Hess and CPA) have all requested that the effective date of the changes be delayed until November 1, 2010. This would allow marketers to mitigate any potential impacts by incorporating the capacity release changes into their customer contracts for the upcoming 2010-11 winter and beyond. They have presented some valid reasons for such a delay, and Staff recommends that it be adopted.

It is recommended that:

- 1) Orange and Rockland Utilities, Inc. and Consolidated Edison Company of New York, Inc. be directed to file supplements, on not less than one day's notice, to become effective April 1, 2010 cancelling the tariff amendments listed in the Appendix;
- 2) Orange and Rockland Utilities, Inc. and Consolidated Edison Company of New York, Inc., be directed to file tariff revisions to their gas tariff schedules, as discussed in this memorandum, on not less than one day's notice, to become effective November 1, 2010; and
- 3) special permission be granted to Orange and Rockland Utilities, Inc. and Consolidated Edison Company of New York, Inc. waiving the requirement of Section 66(12)(b) of the Public Service Law as to newspaper publication of the tariff revisions directed in Clause 2 above.

⁶ A reconciliation will still be performed at the end of each year, but the variance should be de minimis.

Respectfully submitted,

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SUBJECT: Filings by:

ORANGE AND ROCKLAND UTILITIES, INC.

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

Tenth Revised Leaf No. 80.2
Twelfth Revised Leaf No. 152.1
Thirteenth Revised Leaf No. 80.3

Received: July 20, 2009 Effective: November 1, 2009*

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

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

Fourth Revised Leaf No. 390.4
Tenth Revised Leaf No. 303

Received: July 20, 2009 Effective: November 1, 2009*

Eleventh Revised Leaf No. 303

Received: July 30, 2009 Effective: November 1, 2009*

*Effective date postponed to April 1, 2010.

S.A.P.A. 09-G-0567SP1 – State Register – August 12, 2009

S.A.P.A. 09-G-0568SP1 – State Register – August 12, 2009

NEWSPAPER PUBLICATION: Orange and Rockland’s filing: August 3, 10, 17, 24, 2009
Con Edison’s filing: August 10, 17, 24, 31, 2009