

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 00-M-0504 - Proceeding on Motion of the Commission  
Regarding Provider of Last Resort  
Responsibilities, the Role of Utilities in  
Competitive Energy Markets, and Fostering the  
Development of Retail Competitive  
Opportunities - Unbundling Track.

PROCEDURAL RULING

(Issued April 15, 2002)

JEFFREY E. STOCKHOLM, Administrative Law Judge:

The purpose of this ruling is to set forth a proposed process and schedule which will be the subject of a prehearing conference to be scheduled for April 25, 2002.

Discovery

As I ruled at the April 5 conference, the Commission's discovery rules will not be modified except that all parties are required to accept discovery requests served by fax. The parties are encouraged but not required to accept discovery requests and responses by e-mail. In addition, the utilities are encouraged to schedule informal discovery conferences at which parties can obtain rapid responses. All parties are urged to respond to discovery requests as rapidly as possible notwithstanding the response times permitted by 16 NYCRR.

The schedule in this proceeding will not permit delays due to discovery disputes. Accordingly, if disagreements arise concerning discovery, including requests to recalculate cost studies, I should be immediately informed. I will accept oral motions concerning discovery and will hear arguments by conference call in an effort to minimize any delays in the process. I am also prepared to impose sanctions for any abuse of discovery (16 NYCRR §5.10), including denying discovery if a party unreasonably delays in seeking enforcement of its discovery rights.

Position Statements

All parties desiring to express an opinion, offer oral argument, or provide testimony or other evidence at the hearings on a utility's study or tariff shall file, at a minimum, a statement of position.<sup>1</sup> These statements shall enumerate each issue to be raised, provide a brief (i.e., one to two paragraph) description of the issue, including the party's position and rationale, and list the witnesses (including qualifications) and documents the party intends to present for the record at the hearings.

Trial Briefs

Parties intending to present evidence or arguments at the hearings shall file a trial brief. The document should be brief (3-5 pages) and should explain what they intend to prove or argue at the hearings and how the evidence or arguments presented support their position. The documents should be designed to state clearly the party's view of the evidence and its theory of the case.

Rulings, Reconsideration, and Appeals

Rulings will be issued from the bench during the hearings following an opportunity to present witnesses and exhibits, to undertake cross-examination, and to offer oral argument. Petitions for reconsideration of the rulings will be due one week from the date on which hearings are concluded for each utility.<sup>2</sup> Replies will be due one week thereafter. Appeals to the Commission from rulings on reconsideration will be due one week from the issuance of rulings on reconsideration and replies to appeals will be due one week thereafter.

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<sup>1</sup> Parties may pre-file testimony and/or exhibits on these dates, if they prefer.

<sup>2</sup> In its March 21, 2002 Order Establishing Parameters for Lost Revenue Recovery and Incremental Cost Studies, the Commission directed (p. 31): " . . . to limit the number of appeals that may otherwise be necessary, we direct any aggrieved party to formally seek reconsideration of the Judge's ruling before submitting an appeal to us."

All filing dates in this ruling require in-hand service and the parties are encouraged to accept service via e-mail. I will accept service via e-mail.

Schedule

The following is the schedule proposed for New York State Electric & Gas Corporation (NYSEG) and Consolidated Edison Company of New York, Inc. (Con Edison).

Draft Tariffs	May 15
Statements of Position	
(All parties except utilities)	
Con Edison	June 6
NYSEG	June 10
Trial Briefs (All parties)	
Con Edison	June 18
NYSEG	June 20
Hearings	
Con Edison (NYC)	June 24 (10:30 am)- thru June 26
NYSEG (Albany)	June 27 (1:30 pm, continuing on subsequent days until completed)

Illustrative Post-Hearing Dates

Reconsideration Petitions	
Con Edison	July 3
NYSEG	July 8
Replies	
Con Edison	July 10
NYSEG	July 15
Reconsidered Rulings	July 22
Appeals	July 29
Replies	August 5
Appeals Decided	August 19
Final Tariffs Available	Late September

For the remaining utilities the following is proposed:

	RG&E	KeySpan	NFG	O&R (Elec)	NiMo	CH
Draft Tariffs	June 10	June 17	July 25	Aug. 12	Sept. 11	Sept. 25
Statements of Position	July 8	July 22	Sept. 4	Sept. 18	Oct. 16	Oct. 30
Trial Briefs	July 23	Aug. 6	Sept. 19	Oct. 3	Oct. 31	Nov. 14
Hearings	July 29-31 (Albany)	Aug. 12-14 (New York)	Sept. 25-27 (Albany)	Oct. 9-11 (New York)	Nov. 6-8 (Albany)	Nov. 20-22 (Albany)
Appeals Decided (Illustrative)	Sept. 16	Sept. 30	Nov. 1	Nov. 22	Dec. 20	Jan 2, '03
Final Tariffs Available (Illustrative)	Late October	Early November	Early December	Late December	Late January 2003	Mid-February 2003

This schedule does not completely meet the Commission's mandate to have tariffs available for implementation by year-end, but it is anticipated that joint proposals would be more likely later in the process thereby eliminating or greatly reducing the need for reconsideration of rulings and appeals. If such agreements prove unattainable, a brief extension of the deadline can be sought from the Commission later in the year, if necessary.

All of the above may be discussed at the April 25 prehearing conference. Parties who cannot attend that conference in person may submit comments on the above proposals via e-mail by close of business on April 23.

(SIGNED)

JEFFREY E. STOCKHOLM