

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on July 17, 1996

COMMISSIONERS PRESENT:

John F. O'Mara, Chairman  
Eugene W. Zeltmann  
William D. Cotter  
Thomas J. Dunleavy

CASE 93-G-0932 - Proceeding on Motion of the Commission to  
Address Issues Associated with the Restructuring  
of the Emerging Competitive Natural Gas Market.

ORDER RESOLVING PETITIONS FOR REHEARING

(Issued and effective September 13, 1996)

BY THE COMMISSION:

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
CAPACITY RELEASE (STRANDED COST) ISSUES	1
LDC Recovery of Stranded Capacity Costs	2
Issues Concerning the Commission's Standard	4
1. The Three-Year Period	5
2. The Impact of Additional Contracts	6
3. The Definition of "Excess Capacity"	9
4. Definition of "Reasonable Efforts"	10
Conclusion	10
Operational Issues	13
1. New Customers' Access to Capacity	14
2. Right to a Specific Quantity	16

3. LDC Recall Rights	17
AGGREGATION PROGRAMS	18
ADMINISTRATIVE MATTERS	21
Backup Service	21
Operational Flow Orders	25
CONSUMER PROTECTIONS	26
The Filing of Contracts	26
CREDITWORTHINESS	30
BALANCING	31
Cash Out Price	31
Trading Imbalances	31
Penalty Liability	33
Citygate Balancing	34
Daily Balancing	37
Opportunities to "Game" the System	38
Con Edison's Proposed Tariffs	39
RATE ISSUES	41
Affordability Fee	41
Supply Basin Adjustments	43
Streaming	44
Orange and Rockland's Firm Transportation Rate	45
OTHER ISSUES	47
Affiliate Transactions	47
NYSEG's Energy Management Services	49
Next Steps	50
St. Lawrence Tariffs	51

State Administrative Procedure Act	52
ORDER	52
APPENDIX I	

## INTRODUCTION

Our opinion in this proceeding set forth the framework to guide the transition of New York's gas distribution utilities to a more competitive industry.<sup>1/</sup> A subsequent order granted certain aspects of petitions for rehearing and required utilities to submit compliance filings by November 9, 1995.<sup>2/</sup> After a collaborative process, we further refined our directions on the implementation of the opinion in this case on March 28, 1996.<sup>3/</sup>

Eleven entities have filed petitions for rehearing of the March 28 Order; we resolve those petitions in this Order. The parties filing papers, and the acronyms by which they may be referred to, are listed in Appendix 1. Some clarifications of and refinements to the March 28 Order are warranted, but, overall, the order effectively promotes competition in this market and balances fairly the interests of the parties and consumers.

## CAPACITY RELEASE (STRANDED COST) ISSUES

In order to provide sales service to their customers, local distribution companies entered into long-term contracts with pipelines to obtain transportation capacity. Due to a restructuring of the interstate pipeline system by FERC, most times of the year there is now cheaper capacity available; the

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<sup>1/</sup> Case 93-G-0932, Restructuring of the Emerging Competitive Natural Gas Market (Gas Restructuring Proceeding), Opinion No. 94-26 (issued December 20, 1994).

<sup>2/</sup> Cases 93-G-0932 et al., supra, Order on Reconsideration (issued August 11, 1995).

<sup>3/</sup> Cases 93-G-0932 et al., supra, Order Concerning Compliance Filings (issued March 28, 1996). The March 28 Order contains a more extensive description of the procedures used in this case.

responsibility for the extant capacity is a major issue in this case.

In the March 28 Order, we found

a need to provide a transition into an unbundled environment and [a need to] allow LDCs to require converting customers to take associated capacity for a three year period beginning with the effective date of this Order or until such time as a utility contracts for additional capacity or an existing pipeline contract expires, whichever occurs first.\* Prior to the start of the third year we will require that each utility demonstrate its efforts taken to relieve itself of "excess" capacity. We will address any issue of stranded cost then.<sup>1/</sup>

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\* In no event will an LDC retain any portion of capacity release revenue when a customer is required to take an assignment of LDC pipeline capacity.

#### LDC Recovery of Stranded Capacity Costs

The LDCs argue that we should determine now that customers converting from sales to transportation should be responsible for pipeline capacity held by companies on their behalf for the remaining life of the pipeline contract. Niagara Mohawk claims that FERC required LDCs to enter into long-term commitments in order to approve construction of capital-intensive pipelines and once the contracts were executed, there was no way for LDCs to extricate themselves from the contracts other than by releasing the capacity to customers using FERC's capacity release

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<sup>1/</sup> Case 93-G-0932, supra, March 28 Order, p. 7.

mechanism.<sup>1/</sup> It says the circumstances surrounding LDC acquisition of pipeline capacity are unrelated to a test that if not passed would allow converting customers to strand their associated pipeline capacity.

Brooklyn Union similarly argues that it should be allowed to recover stranded costs on an ongoing basis. It says that because it carries the burden of being provider of last resort and that unless it is permitted to recover stranded costs from converting customers, remaining sales customers will be required to bear such costs through an increase in rates and converting customers responsible for creating such costs will be able to avoid accountability.

The LDCs as a group make the same point, and add that the need for a transition period will continue until such time as material changes are made to the LDCs' obligation to serve to reflect changes in the restructured gas industry. They claim as well that we have provided no reason for deferring consideration of stranded cost issues for three years and that any such deferral is unwarranted. They argue that costs should be recovered on as current a basis as possible from customers responsible for such costs, and not deferred to future periods of uncertain market conditions where their impact may cause further market distortions.

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<sup>1/</sup> Niagara Mohawk's Petition for Rehearing, p. 6.

They next argue that stranded costs may not be limited to upstream capacity costs but may also include fixed payments to gas suppliers made under contracts entered into to assure the availability of gas to firm sales customers. They ask that we provide that LDCs may require transportation customers to take associated pipeline capacity.

ESPA replies that the utilities have not shown that stranded costs will, in fact, be incurred. It suggests the issue of actual stranded costs be monitored and addressed as restructuring evolves over the three-year period.

Columbia University suggests that we have adequately addressed the obligation to serve issue in Opinion No. 94-26. It supports the distinction drawn there that human needs customers should not be allowed to assume the risk of transportation and that non-core customers should be given the option to purchase utility backup service if capacity is available.

#### Issues Concerning the Commission's Standard

There are several more narrow issues concerning our determination to allow LDCs to require converting customers to take associated capacity for three years and to require that each utility demonstrate its efforts taken to relieve itself of excess capacity before the start of the third year.<sup>1/</sup>

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<sup>1/</sup> Case 93-G-0932, supra, March 28 Order, p. 7.

1. The Three-Year Period

The marketers claim the three-year period is too long; the LDCs claim it's too short.

The marketers claim that forcing upstream capacity on customers that choose to avail themselves of unbundling is contradictory: their point is that customers should not be forced to purchase upstream capacity that they do not want from the LDC. The Coalition claims that we essentially assume that there will be stranded costs but fail to recognize that there are many other means to avoid stranding, including capacity release, and that stranding will also be mitigated, if not eliminated, by load growth.

Columbia University criticizes the gas companies' petitions for rehearing, asserting that their recommendations imply that converting customers should remain forever responsible for the LDCs pipeline capacity commitments. It claims that if the companies are able to lock in core customers in that manner, they can unduly hinder the development of a competitive market.

Columbia University requests that we order the utilities to provide a timeline of pipeline contracts that will expire during the next three years, as well as advance notification of entry into additional capacity or storage contracts.

Con Edison replies that the burdensome requirement is unnecessary, as Con Edison routinely files its firm pipeline contracts in accordance with existing regulations.

Turning to the decision to defer consideration of stranded costs issues to the third year, Columbia University argues that allowing the three-year transition period and restricting the phase in of small customer aggregation programs properly balances consumers' interests in having an open competitive marketplace with the LDCs' needs to restructure their portfolios and limit exposure to stranded costs. It says initiating a proceeding now would more than likely prove an exercise in speculation.

2. The Impact of Additional Contracts

As noted above, the March 28 Order allowed LDCs to require converting customers "to take associated capacity for a three year period beginning with the effective date of this Order or until such time as a utility contracts for additional capacity or an existing pipeline contract expires, whichever occurs first." <sup>1/</sup>

Orange and Rockland states that it is currently planning to add capacity for a limited period of time so as to interconnect storage capacity with firm transportation to its citygate. It says that the transportation capacity is needed to use existing storage capacity already under contract but that it has no incremental impact on capacity available at the citygate. Thus, it concludes that the new capacity does not alter its need

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<sup>1/</sup> Case 93-G-0932, March 28 Order, p. 7 (emphasis supplied, footnote omitted).

to assign upstream capacity to converting sales customers. It requests clarification that at least in those instances where an LDC's acquisition of capacity will not add any incremental transportation capacity to the citygate the LDC not be penalized with regard to its ability to assign capacity to converting sales customers.

The LDCs argue that there is no basis for reducing the three-year period in the event an LDC's contract for additional capacity or an existing pipeline contract expires. They say that it appears that we believe that an LDC that requires additional capacity or has an existing contract that expires does not need to impose upstream capacity on converting customers. They claim that the limitations penalize LDCs that have worked to match closely their upstream capacity commitments to firm customer requirements. They argue as well that:

Losing the right to require a converting customer to take associated capacity may also unfairly penalize an LDC with a pipeline contract portfolio designed to meet the needs of customers in different parts of its service territory which may be isolated geographically or operationally from other customers. An example is Con Edison's reliance on Algonquin pipeline to serve customers in portions of its Westchester service territory, which is operationally distinct from the New York Facilities System; other LDCs, like NYSEG, have geographically distinct service territories and use different pipelines to meet customer needs in each area.

Finally, these limitations could create disincentives for an LDC to take steps to reconfigure its capacity portfolio, by replacing an existing contract with one or more contracts that better meet

the needs of its customers over the short and/or long term.<sup>1/</sup>

Niagara Mohawk similarly asks that we clarify that LDCs are permitted to act reasonably to substitute new pipeline capacity or other alternatives for existing capacity to reduce costs for customers without losing the opportunity to recover such costs. It says that if an LDC merely substitutes one form of capacity for another, by substituting storage for transportation capacity or by exchanging more expensive transportation capacity for less expensive, or if the LDC acquires capacity to serve a new market, we should not penalize the LDC or the LDC's remaining sales customers by denying recovery of pipeline costs. It claims that in order to take advantage of efficiencies brought about by FERC orders, development of new pipeline systems and storage facilities, and other new opportunities, the LDC must contract for additional capacity and that the March 28 Order should not be read as precluding it from doing so. It says that we should determine recoverability on a case-by-case basis, based on factors such as the benefits of new capacity, the LDC's attempts to dispose of existing capacity in conjunction with its acquisition of new capacity, the terms and notice period of the contract for the existing capacity, the period for the construction of the new capacity, and the overall costs and benefits of the new capacity.

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<sup>1/</sup> LDCs' Petition for Rehearing, pp. 4-5.

CNG argues that the Order is unclear:

. . . the [Order] could be interpreted to require converting customers to take upstream pipeline capacity from the incumbent LDC supplier for three years, unless that LDC happens to have a contract -- no matter how small -- that expires during the three year period. If an LDC has even one pipeline contract in its portfolio that expires between now and March 28, 1999, then it appears from the Commission's language that the LDC would become ineligible for the three-year protection from stranded cost liabilities that the March 28 Order otherwise would provide. Or, even more troubling, the language could be interpreted such that an LDC that enters into a new contract with a pipeline supplier during the three-year transition period would lose the stranded cost protections otherwise properly provided by the March 28 Order.<sup>1/</sup>

Columbia University replies that it makes perfect sense for us to point to any acquisition of additional capacity or renegotiation of a pipeline contract during the three-year period as a sound reason for reducing that period. It says it is clear that a utility must accommodate itself to the dynamics of a competitive marketplace and manage its assets effectively.

### 3. The Definition of "Excess Capacity"

Niagara Mohawk requests that the phrase "excess capacity" within the phrase "demonstrate its efforts taken to relieve itself of 'excess' capacity" be defined as capacity in excess of an LDC's needs prior to conversions. It says that capacity required for customers, whether they convert or remain,

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<sup>1/</sup> CNG's Petition for Rehearing, pp. 1-2.

cannot be considered excess and that capacity stranded by the choice of a converting customer cannot equitably be deemed "excess" from the perspective of the LDC that prudently contracted for that capacity.

4. Definition of "Reasonable Efforts"

Niagara Mohawk asks that we state that an LDC that seeks to shed excess capacity by posting it on electronic bulletin boards and by terminating contracts consistent with contractual limitations will have adequately demonstrated its efforts to relief itself of excess capacity.

Conclusion

Recovery of stranded capacity costs has the potential to prevent the development of competition in this market, a goal that we will continue to foster. Our March 28 Order struck an appropriate balance between utilities and competitors, and we will not upset that balance. We expect utilities to plan for competition now and will take whatever steps are required to allow competition to continue to develop.

The arguments made by the parties are resolved according to that framework. The LDCs have provided no reason for altering the March 28 Order in this case. Resolving the issue now would ignore the possibility that load growth may prevent some capacity from being stranded or that the companies may be able to take other actions to prevent that occurrence.

The LDCs have been placed on notice by the March 28 Order that they need to work to resolve this situation over the next three years and we reinforce the importance of that directive here. Similarly, Niagara Mohawk's attempt to limit the impact of our decision, by defining "reasonable efforts" and "excess capacity" narrowly, is rejected -- it should not be allowed to free itself from the obligation to plan for the transition to competition, and to take any and all steps to address stranded capacity costs that are reasonable in light of the circumstances. No party has shown any need to alter our three-year standard and we will not modify the March 28 Order. That time period allows utilities a reasonable time to react without unduly burdening consumers.

The discussion of how to account for additional contracts raises refinements that need to be evaluated based on individual circumstances. Utilities need to adapt to competition, and procuring additional capacity if they are already burdened with excess capacity is inherently suspect, but is not per se unreasonable. On the other hand, requiring that utilities cease requiring converting customers to take capacity as soon as the utility obtains new capacity unfairly burdens the companies. That is especially true where additional capacity is needed to protect the integrity of the distribution system. We will evaluate the reasonableness of the LDCs' actions in light of all the relevant circumstances.

In order to ensure that rates are not unreasonably anti-competitive, local distribution companies shall notify

affected customers and marketers within thirty days if an LDC's pipeline contract expires or if the LDC arranges for new capacity. Those customers may then petition us for a finding that they should no longer be responsible for the associated capacity. On July 1, 1997, LDCs shall submit, to the Director of our Gas and Water Division, a showing of what contracts have expired during the preceding 18 months and what capacity has been purchased over that period. The submission is to be served on any party requesting it.

We do not credit the LDCs' claim that those companies that have capacity appropriate for firm customer requirements are somehow unfairly penalized by our decision. That claim is inaccurate: those companies should not be permitted to be somehow more lax now because of their status.

Resolution of these stranded cost issues raises the question of whether utilities' obligation to serve customers should be modified. The utilities' service obligation and possible alternatives are currently being discussed in the ongoing Competitive Opportunities case,<sup>1/</sup> and we expect that the principles developed there will inform our decision here. Inasmuch as the industries and unbundling processes differ, however, additional or different analyses may be required. Further, the utilities should use this time frame to develop

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<sup>1/</sup> Case 94-M-0952, Opinion and Order Regarding Competitive Opportunities for Electric Service, Opinion No. 96-12 (issued May 20, 1996, pp. 67, 69).

programs, some of which may suggest a need to modify existing regulations or statutes, to address the obligation to serve issue.

Operational Issues

MI asks that we require that customers taking upstream capacity be granted access to all of the LDC's interconnection points. It says that in order for unbundling to achieve its intended purpose, customers taking upstream capacity from an LDC should receive all of the LDC's rights and privileges with respect to that capacity.

MI claims that the state's LDCs should be required to develop and implement a fair process for allocating over-nominations at a particular interconnection point. It asserts that without such a standard LDCs could give preference to their own upstream capacity.

This aspect of MI's petition is denied. We have stated that an LDC's firm customers have a right to lower cost gas, and MI has not justified departing from that practice. Nonetheless, the allocation of upstream capacity is important if unbundling is to work, and utilities should develop fair processes for upstream allocation of capacity.

We require utilities to offer pipeline capacity at the weighted average cost of capacity to protect non-utility suppliers and customers from being assigned the highest cost pipeline capacity. We never contemplated that customers would

actually be required to take a pro rata share of the pipeline capacity where multiple pipelines serve the utility service territory, because such assignments impose an unnecessary burden on customers. Rather, a customer should assume **cost responsibility** for a portion of each of the various capacity sources, even though it would actually take service from only one source.

1. New Customers' Access to Capacity

The order requires that Con Edison modify "the capacity release provisions so that new customers and existing sales customers have the same access to Con Edison's pipeline capacity."<sup>1/</sup> The LDCs note that they never incurred upstream costs for transportation customers who never subscribed to the company's sales service and that requiring that new customers have access to that capacity is inconsistent with our rationale for requiring capacity release, which was that such release would enable the utility to reallocate costs or credits to the customers on whose behalf such costs were incurred.<sup>2/</sup> The LDCs argue that the March 28 Order is designed simply to implement Opinion No. 94-26, and should not be used to change that underlying opinion.

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<sup>1/</sup> March 28 Order, p. 38.

<sup>2/</sup> Id., quoting Case 93-G-0932, supra, Opinion No. 94-26, p. 33.

Turning to the policy considerations, the LDCs assert that requiring an LDC to procure upstream capacity for transportation customers further tilted the playing field in favor of unregulated marketers and increases the prospect of stranded costs.

As a disfavored alternative in the event that we require LDCs to provide upstream capacity to new transportation customers, the LDCs argue that we should ensure that the LDCs' sales customers are not harmed:

Such protection could take the form of permitting an LDC to (1) allocate to new transportation customers the higher of the LDC's average cost of capacity or any higher incremental costs incurred by the LDC to serve these new markets or (2) require a commitment of the transportation customer at least coincident with the term of any incremental capacity acquired on its behalf.<sup>1/</sup>

First, our basic premise is that transportation customers be treated the same as sales customers. That is, if the utility would seek new capacity for a new sales customer, it must do so for a transportation customer.<sup>2/</sup>

Second, the first place the utility should look for additional capacity is among its current customers. There may well be current customers that may not want the capacity they

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<sup>1/</sup> LDC's Petition for Rehearing, p. 8 (footnote omitted).

<sup>2/</sup> And if the cost of that new capacity is rolled-in with the cost of all capacity for sales customers, transportation customers should be treated the same.

have been required to take. Thus, this requirement would seem to alleviate the concerns that LDCs have expressed about stranded investment. Either this potential new demand would absorb surplus capacity or other customers who prefer transportation without being assigned an allocation of upstream capacity could waive their rights to those assets.

There is no reason to modify this requirement of the March 28 Order.

2. Right to a Specific Quantity

The March 28 Order required that utilities must offer marketers no less capacity "than average day usage during the peak month," normalized for weather.<sup>1/</sup> Niagara Mohawk asks that we state that if the level of unbundling exceeds a certain aggregate level, LDCs may revise the mix of pipeline capacity, storage and peak shaving assigned to such customers. The utility's argument is that it provides service to its customers through a combination of all of those tools, and that it may need to deviate from the methods specified in the order by, perhaps, including an allocation of peak shaving and additional storage.

We would not preclude this especially where companies serve a large portion of winter demand from storage. However, the allocation should be rational, taking into account customer needs.

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<sup>1/</sup> March 28, Order, p. 9.

The Coalition also seeks rehearing, asserting that by limiting the amount of upstream capacity a converting customer can take from an LDC, and by not requiring the unbundling of storage, we force customers to take a balancing service at an additional charge. It says the customer should be provided a menu of services, not simply forced to take a one-size-fits-all balancing service.

The balancing charges are not in addition to pre-unbundling costs, except where other customers were subsidizing such service. However, balancing alone does not meet the needs of all and some allocation of storage may be necessary.

Staff has scheduled collaborative meetings to work through a solution; it should report back to us on the development of this issue.

### 3. LDC Recall Rights

The March 28 Order required that a utility could recall released capacity in *force majeure* situations when it is needed to stabilize the system reliability, and that compensation was warranted in such cases.<sup>1/</sup> The Coalition endorses the decision "presuming that the compensation is for damages incurred, not just the cost of capacity;"<sup>2/</sup> Columbia University asks that the formula for compensation be defined.

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<sup>1/</sup> Case 93-G-0932, supra, March 28 Order, p. 10.

<sup>2/</sup> Coalition's Petition for Rehearing, p. 15 (emphasis supplied).

This issue is being considered as part of the collaborative process on curtailment; it should be resolved there.

AGGREGATION PROGRAMS

The March 28 Order determined that aggregation programs would extend the benefits of unbundling to as many end users as possible and required each utility to file an aggregation program and supplier service tariff. The Order also set limits on the size of some aggregation programs (5% of core customer sales in the first year, 10% of such sales in the second year, and 15% in the third year) and declined several utilities' requests for the imposition of administrative fees. Finally, we determined that the percentage of any one service class that may switch from sales to transportation may be limited to 25% of the current sales of that class in each of the first three years.

The Coalition asserts that the limitations render the New York market unattractive because suppliers and marketers will shy away from costly marketing efforts for so small a pool of customers. It suggests that to the extent the limitation is intended to avoid stranded costs or administrative burdens on LDCs, we let the LDC petition for needed relief. The Coalition argues as well that the limitation on the programs "does not follow the intent of the Commission's past orders nor the expectations created by the Commission's publicity concerning the

March 28 Order." <sup>1/</sup> Wilson similarly argues that the limitations hinder competitive market development and customer choice, and that larger aggregators may quickly fill up the limits, to the detriment of smaller companies.

The Coalition has not shown the existence of any harm; we properly stated that we would revisit the limitations as we gained experience. The Coalition is wrong in implying that we adopted certain restrictions because of the stranded cost issue. Our concern here was that the companies could not physically respond to customers' demand and provide a transition. If the demand develops and we find that the utilities for which we allowed limitations can adequately meet customer demands, we will take the steps needed to foster fair competition in this market. The Coalition -- or any party -- should petition if it can show that the limitations are unwise.

NFG notes that several LDCs (not including NFG) proposed limitations on the aggregate volume of throughput that may be transferred from sales to transportation service and that we allowed only those companies to adopt the size limitations. It says that its filing included a charge to recover the costs for administration of transportation service that also established a "de facto" limitation on sales migration. It says that, based on its filing, small customer aggregation programs posed little threat as long as they were administered according

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<sup>1/</sup> Coalition's Petition for Rehearing, p. 12.

to its November 9 filing. It says that its administrative charge is a mechanism to limit migration, just as other mechanisms filed by other companies, and that it is entitled to the same protection against stranded cost liability that the other LDCs have been granted.

NFG's attempt at picking and choosing is denied. Each of the filings was evaluated and we did not require uniformity among them. More broadly, we note that the limitations are not the anti-competitive gesture contemplated by the Coalition and NFG, but are simply a reasonable means to assure a transition for those companies that claimed an administrative need for them. If customers are unnecessarily prevented from availing themselves of the opportunity to make choices, we stand ready to eliminate roadblocks.

MI asks that the order be clarified to expressly permit large transportation customers to aggregate gas supplies.<sup>1/</sup> It claims as well that our rationale for establishing limitations on the number of customers that should be permitted to convert to transportation service is not applicable to existing transportation and that the limitations in the order should apply only to existing sales customers who wish to convert to aggregated transportation service.

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<sup>1/</sup> The 5%, 10% and 15% limits on the volume of sales that can migrate from sales to transportation service applies only to those customers that must aggregate to be eligible for transportation service.

MI's proposed clarifications are reasonable and pro-competitive, and are adopted.

ADMINISTRATIVE MATTERS

Backup Service

We traditionally have prohibited human needs transportation customers from going without backup service from the local distribution company. The Order suggested that the existing definition of human needs customer may be overly protective and could prevent some entities from achieving all the benefits of competition.<sup>1/</sup>

The Coalition complains that the addition of yet another charge on to the full margin rate further erodes the competitiveness of unbundled supplies. It says that because LDCs can force customers to take capacity and have the right to recall the capacity in the event a supplier does not bring gas to the citygate, the only standby costs would be the cost of reservation charges for production, which it claims are rare. It claims as well that customers should have the right to choose and structure services to meet their energy requirements and that any charge only be applied to true human needs customers and only to the human needs portion of a mixed load.

Columbia University, responding to our suggestion that the parties propose an alternative definition of human needs

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<sup>1/</sup> Case 93-G-0932, supra, March 28 Order, pp. 25-26.

customer, suggests that it "be anyone who chooses to subscribe to backup service offered by the utility."<sup>1/</sup> It says customers who choose that program would be assured delivery of gas on the coldest days and that those customers who choose not to avail themselves of that option would be subject to balancing charges under ordinary system conditions, and penalties on peak days.

Brooklyn Union's petition claims that we eliminated a tariff requirement that dual-fueled interruptible customers who are also human needs customers take standby service.<sup>2/</sup> (The problem is said to arise because a significant portion of this load is hospitals and apartment buildings that have dual-fuel capability and many fuel oil suppliers are said to give priority to their oil customers when supplies are short in cold weather.) It says that on rehearing of the opinion in this case, we allowed Brooklyn Union to impose a standby service requirement on its temperature-controlled customers.<sup>3/</sup> Brooklyn Union's argument is that:

In responding to Brooklyn Union's Rehearing Petition, the Commission explained in its Order on Reconsideration that Brooklyn Union "requests a clarification to the effect that the alternate fuel capacity must make the customer 'practically capable' of meeting all loads served by its LDC with other fuels,

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<sup>1/</sup> Columbia University's Petition for Rehearing, p. 22.

<sup>2/</sup> Brooklyn Union's Petition for Rehearing, p. 5, quoting Case 93-G-0932, supra, March 28 Order, p. 35.

<sup>3/</sup> Id., p. 6, citing Case 93-G-0932, et al., supra, Order on Reconsideration (issued August 11, 1995).

both in terms of amount (total demand) and duration." Order on Reconsideration, mimeo at 2-3. The Commission then declared that "Brooklyn Union may reasonably use the extent of customers' back-up capabilities as a basis for distinguishing between core and non-core services" and therefore as a basis for determining whether or not a customer may be required to subscribe for standby service. Order on Reconsideration, mimeo at 3. On further elaboration, the Commission stated that "Opinion No. 94-26 allows a great deal of flexibility in this area, and we do not intend to prescribe a particular standard." <sup>1/</sup>

Brooklyn Union argues that its temperature controlled customers (some of whom are human needs customers) may have a failure of gas supply and a failure of oil supply, in which case it would have to provide service.

Brooklyn Union should structure its gas supplier services to require that suppliers serving human needs TC customers have an obligation to bring gas to the citygate or incur penalties. TC customers that burn gas during unauthorized periods already are subject to penalties, and additionally, TC customers taking transportation service should be notified prior to each heating season of their obligation to have adequate supplies of oil on hand and provisions to resupply drawn-down inventories throughout the winter.

ESPA replies, concerning the more general issue of backup service, that there is no need to mandate costly

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<sup>1/</sup> Brooklyn Union's Petition on Rehearing, p. 7 (footnote omitted).

stand-by-service for human needs or transportation customers. It says the decision to obtain additional protection should be left to the customer, not mandated by the utility, and that the imposition of stand-by service essentially treats such customers as full firm customers and obviates this rate classification.

Columbia University argues that Brooklyn Union has failed to redefine human needs customers as requested by the Commission and inappropriately required that all temperature controlled, dual fuel human needs customers buy backup service without consideration of the extent of their backup capabilities. It says that there are competitive alternatives available in the market and that Brooklyn Union backup service should be offered competitively as well. Arguing the alternative, Columbia University claims that if Brooklyn Union is permitted to mandate backup service it should be permitted only if the customer has inadequate storage capabilities which must be defined in advance. It claims, for these purposes, that a three-day supply of fuel oil is adequate backup for dual-fuel customers downstate.

Niagara Mohawk sees the requirement to take backup service as largely a stranded cost issue. In support, it says the Order indicates that "should a marketer discontinue supply, the customer will continue to receive gas service from the LDC."<sup>1/</sup> An LDC must have access to the pipeline capacity that it has used to serve that customer. It says that the obligations

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<sup>1/</sup> Niagara Mohawk's Petition for Rehearing, pp. 11-12, quoting Case 93-G-0932, supra, March 28 Order, p. 21.

to shed unneeded capacity and to serve returning converting customers are inconsistent.

MI replies, disputing what it claims is Niagara Mohawk's assertion that a converting customer should have no automatic right to return to the LDC's sales service. It says that Niagara Mohawk has an obligation to serve the public on a nondiscriminatory basis and that it must treat a returning customer no differently than a new customer.

We have the obligation to ensure that service is safe and adequate. Our policy of requiring human needs customers without alternate fuel capability to take back-up service ensures those customers are not without gas, and that policy should generally be continued. It is not clear that marketers provide all the services -- such as storage -- that a customer needs to have in order to ensure provide continuous service. Unless they are able to show that they do, we will continue to require that human needs customers take -- and pay for -- backup service.

#### Operational Flow Orders

Columbia University notes a lack of uniformity among LDCs as to when an operational flow order (OFO) may be appropriately used. It requests that we clarify the differences among OFOs, curtailments, and interruptions, so the customers can be assured that the imposition of an OFO will occur only in a real emergency.

MI asks for clarification that OFOs only should be used for operational (e.g., reliability, safety) reasons and that LDCs should not be permitted to issue OFOs for economic or other reasons.

MI's understanding is generally reasonable, although it is possible to envision a circumstance -- such as extremely high gas prices -- where an OFO could be used for other than operational reasons. This issue should be considered in the curtailment issues phase of this proceeding.

#### CONSUMER PROTECTIONS

##### The Filing of Contracts

We required that:

Each utility shall file tariff provisions that require any marketer, aggregator or non-utility provider seeking to sell gas to residential customers to meet the residential service standards listed herein.<sup>1/</sup>

Columbia University notes that we also ordered that a dispute resolution process be established for non-residential customers; it asks that customers be able to participate in the establishment of the process and that their views be considered.

The utilities' tariffs will require that the non-utility gas supplier establish the dispute resolution

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<sup>1/</sup> Case 93-G-0932, supra, March 28 Order, p. 33.

process<sup>1/</sup> we ordered and, absent a showing that some problem exists, we do not see a need for additional procedures beyond those specified by our rules or the Public Service Law.

The Coalition objects to the prospect of having marketers' contracts on file with us. It says the requirement implies that a standard contract will be used, where in a free market, the contract is negotiated.

Our requirement is an appropriate approach to protecting customers while allowing them the benefits of competition and a reasonable exercise of our power to compel unbundling and allow marketers to enter the resulting market. The Coalition has not substantiated its claim that the filing of a standard contract is anti-competitive, nor has not shown how the requirement will harm competition. Marketers will still be able to compete for customers, and the requirement to file imposes only a slight burden that is fully outweighed by the associated consumer benefits. That requirement is completely supported by our power to impose reasonable conditions on the use of transportation services. Filing of standard contracts allows us to monitor developments in this market and supports our determination not to require that the marketers file tariffs, discussed below.

PULP asserts that gas marketers must file with us the rates, terms and conditions of their sales to retail customers

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<sup>1/</sup> The process will be contained in the gas marketers' standard contract.

pursuant to Public Service Law Section 65.5. This contention is untimely. The marketers' objection to having standard contracts on file was made in a petition for rehearing,<sup>1/</sup> and was procedurally proper. PULP's response, that marketers are required to file "rates and contracts,"<sup>2/</sup> does not respond to the marketers, but instead seeks an outcome different from that ordered by the Commission. PULP had to petition for rehearing of the order if it wanted to raise this argument.

In any event, PULP's position ignores Public Service Law 66(12), which gives us discretion to require that gas corporations file contracts and tariffs. Unlike the traditional, monopoly local distribution companies we regulate, the marketers do not possess monopoly power over gas sales. They simply arrange for the purchase of the commodity in a competitive market and the transportation of that commodity from the wellhead to the customer. Indeed, end users remain the customers of the utility for transportation,<sup>3/</sup> and thus the marketers are not, for instance, analogous to resellers in the telecommunications area. Therefore, subjecting marketers to regulation as if they were monopoly utilities is unnecessary.

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<sup>1/</sup> Coalition's Petition for Rehearing, p. 14.

<sup>2/</sup> PULP's Response to Petitions for Rehearing, p. 13.

<sup>3/</sup> Page 21 of our Order Concerning Compliance Filings should not be read to make marketers/aggregators the customers for transportation; the LDCs' tariffs make the end users the transportation customers.

Further, regulating marketers in the manner envisioned by PULP would severely hamper the development of competition in the residential class.<sup>1/</sup> That is, such regulation would inhibit customers' ability to buy their own gas by undermining the Legislature's goal in Public Service Law Section 66-d(2) that customers have competitive alternatives to receiving gas from the LDCs.

We will continue to evaluate all the circumstances in determining how best to protect customers. We recently required that parties collaborate on consumer safeguard issues in our proceeding on restructuring the electricity industry<sup>2/</sup> and we will continue to review these issues as competition develops in the gas industry as well. In both industries, we will recognize the characteristics of the providers in considering what consumer protections are applicable. Thus, for example, our Order Concerning Compliance Filings explained that marketers need not comply with the provisions of the Home Energy Fair Practices Act (HEFPA). Public Service Law Section 30 et seq. Those entities are not utilities in the traditional sense and are not providing "utility service"<sup>3/</sup> as envisioned by those sections of the Public Service Law. For instance, they cannot either terminate

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<sup>1/</sup> E.g., comments of the Empire State Petroleum Association, reported in Comment Summary, p. 42.

<sup>2/</sup> Cases 94-E-0952, et al., Competitive Opportunities Regarding Electric Service, Opinion No. 96-12 (issued May 20, 1996), pp. 75-76.

<sup>3/</sup> See, e.g., Public Service Law, §§30-34.

or initiate receipt of gas by residential end users, which will continue to receive gas from LDCs if the marketer/customer relationship is ended. Application of HEFPA's requirements to marketers was not addressed by the Legislature, since marketers do not have control over the distribution of gas. Requiring that marketers comply with HEFPA would, indeed, be perverse, would provide little benefit to residential customers (because customers will continue to receive HEFPA's protections from the gas utility<sup>1/</sup>) and could harm them because they could lose savings available from marketers if those companies are discouraged by HEFPA's requirements from serving customers in New York.

#### CREDITWORTHINESS

The March 28 Order discussed the guidelines to be used by the LDCs in evaluating marketers' creditworthiness;<sup>2/</sup> and no party has petitioned for rehearing of that discussion. In order to foster smooth operation of this process, however, we will require that utilities respond to a grievance of a marketer

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<sup>1/</sup> For purposes of HEFPA, gas utility service includes sale of the gas itself (the "commodity") as well as the transportation of that gas. Customers obtaining both services from the utility have HEFPA protections on both services. Customers purchasing the commodity from a marketer have HEFPA protection on only the utility transportation segment. Accordingly, customers desirous of availing themselves of the HEFPA rule on, for example, deposits, may do so by remaining a utility service customer.

<sup>2/</sup> Case 93-G-0932, supra, Order Concerning Compliance Filings (issued March 28, 1996), p. 23.

denied service within ten days and that a statement to that effect appear on the application for transportation service. Marketers dissatisfied with the LDCs resolution should be directed to petition the Director of the Office of Accounting and Finance for relief.

BALANCING

Cash Out Price

MI proposes that the LDC's weighted average cost of gas (WACOG) should be used as the basis for the cashout of daily differences between nominations and deliveries at the citygate as well as the monthly difference between deliveries and consumption.

Con Edison replies, correctly, that we have already considered and rejected the establishment of generic terms for balancing programs; and that, in any event, the use of WACOG for all cash outs may grossly understate the cost of supply that an LDC must procure when a marketer underdelivers. This aspect of MI's petition is denied.

Trading Imbalances

In the March 28 Order, we determined that imbalance trading between customers of a single aggregator or multiple

aggregators, if prearranged, should be allowed, subject to the tolerance conditions specified in our order.<sup>1/</sup>

MI argues that the fact that one customer over-delivers does not necessarily mean that additional costs have been imposed on the system since that over-delivery could be compensated for by another customer's under-delivery. It says that LDCs should not be permitted to frustrate our clear intentions by imposing unduly restrictive requirements or charges on imbalance trading, or failing to provide customers with adequate information to engage in imbalanced trading.

Con Edison replies, properly, that MI's interest in information and a hypothetical example it used indicate an impression that customers may trade imbalances after the fact, a situation that it says is contrary to the order, which provides for imbalance trading "if prearranged by customers or marketers."<sup>2/</sup>

Columbia University notes that in order for a viable system of trading imbalances to develop, it will be necessary for customers to learn of other customers that are interested in trading. To that end, it proposes that the utilities be required to provide electronic bulletin boards so customers can prearrange appropriate groupings. Columbia University also notes that the Order provides that imbalance trading would be allowed "subject

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<sup>1/</sup> Case 93-G-0932, supra, March 28 Order, p. 14.

<sup>2/</sup> Con Edison Reply Comments, p. 7 quoting Case 93-G-0932, supra, Order Concerning Compliance Filings, p. 14.

to the tolerance conditions we previously specified." <sup>1/</sup> It says the tolerance conditions specified previously in the Order were 2% at the citygate, but that the order should be clarified to apply, as it assumes was intended, to imbalance trading at both the citygate and to daily or monthly imbalances at the customer's meter.

Con Edison complains that Columbia University does not explain what information should be posted or how it would be useful in prearranging trading groups.

Columbia University's proposed clarification (that imbalance trading could apply at the citygate or the meter) is reasonable and the order is so clarified. More broadly, its proposal that the LDCs foster imbalance trading is also reasonable, and we direct utilities to take steps -- such as publicizing the program and posting the names of customers willing to trade imbalances on the electronic bulletin boards (for those companies that have them) or on a sheet to be distributed to those asking for it -- to achieve that goal.

#### Penalty Liability

The Coalition reads the Order to require that upstream *force majeure* situations will relieve a party of LDC penalty liability.

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<sup>1/</sup> Columbia University's Petition for Rehearing, p. 12, quoting the March 28 Order, p. 14.

The Coalition's proposal is rejected; this issue is part of the much broader issue of curtailment policies, currently the subject of a collaborative process.

Citygate Balancing

We required a 2% tolerance band for daily deliveries at the citygate with penalties for deliveries outside of that band. <sup>1/</sup>

MI proposes several clarifications:

- Daily delivery requirements for large customers for an upcoming month should be set in conjunction with the customer's projected level of consumption and customers should have the opportunity to advise their LDC, on at least a weekly basis, of plant operating conditions that might affect previously-established daily delivery requirements.
- There will be no daily balancing requirements or penalties with respect to consumption at the burner tip for customers electing citygate balancing.
- LDCs do not possess unlimited discretion in establishing penalties greater than the \$10/dt during critical periods and should be required to justify both the level of

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<sup>1/</sup> Case 93-G-0932, supra, March 28 Order, p. 14.

maximum penalties requested and the periods which are being deemed critical.

Columbia University petitions for rehearing as well, noting that our use of the word "transporters" in this section of the Order is ambiguous. It says that if we mean customers by that term, the Order is not clear as to when citygate imbalance penalties apply to marketers and when they apply to customers. It says that because the marketer arranges for transportation, it should be penalized in the event of an under-delivery. It asks that if we intend the penalties to apply to customers there be a phase-in period to enable customers to renegotiate their contracts with marketers. Columbia University also asks that the utility acting as a marketer be held to the same standards as other marketers and that we not allow an LDC to impose imbalance penalties for imbalances it (the LDC) causes, and that a customer be allowed to purchase additional gas over the course of a month from a marketer rather than the LDC. Finally, it asks that we incorporate a requirement that citygate balancing penalties be imposed on the marketer who arranges deliveries.

Con Edison sees no need to phase in the application of citygate and balance requirements to customers. It says that Columbia University takes either interruptible or off-peak firm transportation service and elects monthly whether to take service from a marketer or Con Edison sales service. "Accordingly, a marketer's agreement or disagreement to be responsible for

citygate imbalances can simply be made part of Columbia's next monthly negotiation." <sup>1/</sup>

Finally, Columbia University states that it is unclear whether, if an LDC files tariffs that may require specified daily deliveries to the citygate, it may also charge imbalance penalties at the meter.

MI's first two proposals are a reasonable gloss on the order, and the order is clarified as MI suggests. Its third proposal -- to limit penalties during critical periods -- seems unfair, given that the magnitude of the problem is unknown. MI has not shown that this discretion is abused, and we will not so limit the LDCs' discretion. MI -- and any party -- may notify us of any abuse once it becomes known. Similarly, Con Edison is right that there is no need to phase-in these requirements. Columbia University's analysis concerning the application of penalties seems to pose an unrealistic situation: customers meeting the utility's citygate delivery requirement cannot be charged a penalty for on-system imbalances. <sup>2/</sup> Columbia University's next point -- that the marketer should be penalized for underdeliveries -- is valid for aggregated groups, where placing the burden on the end user may not be feasible, but need not apply to individual customers, where the responsibility is properly a matter of contract between the marketer and its

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<sup>1/</sup> Con Edison Reply Comments, p. 8.

<sup>2/</sup> This would be penalizing the customer for doing exactly what the utility required.

customer. Finally, Columbia University is right in suggesting that utilities be held to the same standards as other marketers when acting as a marketer.

### Daily Balancing

The March 28 Order required a minimum tolerance level of 10% with increasing or decreasing levels of payments for deficiencies or surpluses for daily balancing.<sup>1/</sup> MI makes several points.

- The Commission should clarify that large customers will have the option to elect daily or monthly balancing.

This is a matter of individual utility tariff; customers have that option where it exists.

- The Commission should clarify that there will be no citygate balancing or delivery requirements, cashouts or penalties imposed on customers electing daily, or on-system balancing.

Since daily balancing is by definition an on-system comparison between actual burn and gas delivered to the utility citygate, there is no need for citygate requirements or penalties for this service.

- The Commission should reexamine the 10% tolerance band based on experienced gained in the upcoming year.

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<sup>1/</sup> Case 93-G-0932, supra, March 28 Order, p. 16.

There is no need to commit to do this now. Any party is free to petition if the limitation is being abused or gamed.

- LDCs should not be allowed to recover imbalance penalties from customers electing daily balancing if the LDC is not able to provide an adequate level of service.

If MI is suggesting that its members should not be responsible for delivery failures resulting from distribution system constraints, it has a valid point and the order is so clarified.

Columbia University asks that the Commission require LDCs to provide daily confirmations of gas deliveries. It hasn't shown the need for this requirement.

#### Opportunities to "Game" the System

The March 28 Order noted that the volatility of gas demands, as evidenced by the soaring gas prices this past winter, required some balancing requirement that specified the daily delivery quantity of gas to the citygate in order to avoid "gaming" deliveries based upon daily gas costs.<sup>1/</sup> Columbia University states that costs imposed on a utility's system in that manner should be borne by the party causing them. It asks that we clarify that all relevant costs be set out by the LDCs in detail in their compliance filings.

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<sup>1/</sup> Case 93-G-0932, supra, March 28 Order, p. 15.

This argument will be considered in the context of the Commission's review of the LDCs' compliance filings.

Con Edison's Proposed Tariffs<sup>1/</sup>

Columbia University also surmises that we intended to make daily balancing an alternative to the load following service that Con Edison proposed to establish for firm transportation customers. It argues that balancing services for firm customers should also include monthly balancing similar to what will be offered for interruptible and off-peak firm transportation customers. It asserts as well that monthly balancing charges should be lower than existing charges to reflect lower costs.

Con Edison replies that its load following service meets our criteria for monthly balancing service and that Columbia University's request for an additional monthly balancing service should be rejected.

Columbia University's petition for rehearing recites that Con Edison distributed to its large transportation customers a summary of the revised transportation and sales service tariffs which it expected to file to become effective on May 1, 1996. It says that the monthly balancing service outlined by Con Edison completely redesigned the monthly balancing service in

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<sup>1/</sup> Columbia University's extensive discussion of matters in Con Edison's compliance filing, which is merely summarized here, is inappropriate for a petition for rehearing of the underlying order; these issues should be raised in relation to Con Edison's filing.

contravention of our requirement that such changes be proposed in rate cases. Columbia University explains at some length why the revisions go beyond the scope of what it says was intended by our March 28 Order.

Additionally, Columbia University asks that we clarify that daily balancing was to be an alternative to the load following service that Con Edison proposed to establish for firm transportation customers<sup>1/</sup> and that no change be permitted in Con Edison's current monthly balancing tariff until Con Edison makes the appropriate filing.

Con Edison replies that Columbia University relies on our statement that rate cases are the logical forum for rate design changes to establish its position that an LDC's ability to propose changes to existing balancing services is prohibited. Con Edison says that the language relied on by Columbia is in the section of the order entitled "Distribution Costs" which opens with the language "[i]n addition to citygate costs, . . . ." <sup>2/</sup> It says that because all of the costs included in balancing services are upstream of the citygate, the deferral of rate design issues to rate cases has nothing to do with balancing services.

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<sup>1/</sup> Columbia University's Petition for Rehearing, p. 19, citing Case 93-G-0932, supra, March 28 Order, p. 38.

<sup>2/</sup> Con Edison Reply Comments, p. 2, quoting Case 93-G-0932, supra, Order Concerning Compliance Filings, p. 12.

Turning to the merits, Con Edison renews its arguments that existing balancing programs do not recover the costs of providing service and that unless we approve a new program, the firm sales customers will continue to subsidize the upstream costs associated with providing service to transportation customers.

Finally, Columbia University notes that we ordered Con Edison "to conduct a study of the feasibility of permitting aggregators to combine both firm and interruptible customers and notify the parties of the results of this study within six months of the issuance of this Order."<sup>1/</sup> Columbia University requests that we require that both customers and marketers be consulted in setting up the parameters of the study.

Staff is directed to monitor the study at issue. As noted above, the other issues are properly considered as comments to Con Edison's compliance filing.

#### RATE ISSUES

##### Affordability Fee

Brooklyn Union seeks rehearing of our determination to require it to eliminate its proposed "affordability fee."<sup>2/</sup> On rehearing, Brooklyn Union suggests that rather than harming

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<sup>1/</sup> Id., quoting Case 93-G-0932, supra, March 28 Order, p. 38.

<sup>2/</sup> The "affordability fee" is a charge designed to increase the costs of an alternative supplier because that supplier's services are not subject to the same taxes as LDC bundled sales services. Case 93-G-0932, supra, March 28 Order, p. 26.

competition the fee would in fact benefit competition inasmuch as it would level the playing field.

Brooklyn Union contends as well that the decision to deny the fee is inconsistent with a recent decision where we allowed Niagara Mohawk Power Corporation to impose a "competitive entry fee" on Sithe/Independent Power Partners, Inc. Brooklyn Union states that we determined that "the transition from monopoly to competitive service dictates some sort of a means of avoiding the transfer of the burden of common costs to the captive ratepayers. Niagara Mohawk is not unfairly advantaged in the regulatory regime in which it operates."<sup>1/</sup> Brooklyn Union then reiterates its arguments that the fee would promote full and fair competition and that it is consistent with the Commission's past pronouncements regarding the transition to competition.

MI argues, correctly, that Brooklyn Union has failed to allege any errors of law or fact or new circumstances that warrant rehearing. Turning to the merits, it says that there is no way that the proposed fee would benefit competition and that its sole purpose would be to remedy what Brooklyn Union perceives to be an inequitable tax differential. It says that there is no evidence for that proposition and that even if there was, the issue would be for the appropriate legislative body, not the Commission. Turning to Sithe, MI says that we recognized there

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<sup>1/</sup> Brooklyn Union's Petition for Rehearing, p. 4, quoting Case 94-E-0136, Sithe/Independent Power Partners, L.P., Order on Certification and Remand for Further Comment on Appropriate Equalization Fee, p. 32 (issued September 8, 1994).

that the facts presented were unique and stated that, in any event, the excerpts from the order relied upon by Brooklyn Union addressed factual circumstances different from those present here. It says that the excerpts from Sithe pertained to our desire to avoid inequitable transfers of costs from customers with competitive alternatives to captive customers and at correcting a perceived inequity in tax loss. ESPA also opposes Brooklyn Union's petition, claiming that the notion that a significant increase in transportation rates would promote competition is absurd on its face; it too sees Sithe as inapplicable here.

#### Supply Basin Adjustments

The Coalition says that we have properly recognized the importance of fostering fair competition when we limited the recovery of upstream capacity costs to the weighted average capacity cost of that capacity. It argues that we should apply the same premise with respect to supply basin adjustments to foster competition.

The Coalition argued for a weighted average cost of capacity so that the utility could not assign it only higher priced pipeline capacity. We agreed. Now it argues against the weighted average cost of capacity in seeking to exclude the relatively high cost of pipeline capacity related to Canadian supply. The Coalition's position is inconsistent and unreasonable.

Streaming

The March 28 Order affirmed our streaming standard and directed each LDC that contemplates the streaming of gas to prevent alternative fuel bypass to file an operating procedure to identify potential alternate fuel bypass situations, a means by which the situation can be verified, and a broad outline of the terms of such arrangements.

The Coalition questions why dual-fuel customers should be an exception to this streaming rule. It claims the market to serve those customers will be highly competitive and there is no reason why streaming should be necessary to serve them. It says that streaming to prevent dual-fuel customer bypass should occur only after the LDC has lowered its transportation rate as far as possible -- it suggests variable costs plus one cent -- and only when the market could not respond to the ultimate fuel price.

Con Edison replies that the Coalition's proposal is an unwarranted and untimely attack on our streaming policy which has been fully debated and resolved before. It says that the Coalition's argument is designed simply to deny it the same tools that marketers use to meet customer's needs.

Dual-fuel customers pose a greater risk of flight from the system, and we may properly treat them differently. There is no need to modify the March 28 Order as proposed by the Coalition.

Orange and Rockland's Firm Transportation Rate

The March 28 Order required, for Orange and Rockland, that:

The rates to be charged individual (customers whose annual consumption exceeds 3,500 dt annually) firm transportation customers must continue to be based on the tailblock rate of its general service classification . . . .<sup>1/</sup>

On rehearing, Orange and Rockland says that our proposed transportation rate would provide a lower rate for transportation than that which the same volume sales customer would pay for the transportation component of its bundled sales service. It says that unfairly disadvantages its sales service, and discourages the development of aggregation groups to the detriment of small volume customers seeking firm transportation service on its system.

Orange and Rockland says that the Order distinguishes between large customers taking transportation service directly and those acting through an aggregation group, with the former getting a tailblock rate and the latter required to pay the higher, full margin rate. It says there is thus no reason for a large individual customer to join an aggregation group.

Orange and Rockland claims that its existing firm transportation rate (for customers whose annual usage is over

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<sup>1/</sup> Case 93-G-0932, March 28 Order, p. 45.

5000 Dt) should be changed to increase the rate from a tailblock-based rate to a full margin rate.<sup>1/</sup>

Orange and Rockland's claim has merit. In the March 28 Order, we affirmed the use of full margin rates "as a surrogate transportation rate for aggregation service until all costs can be examined in detail in a utility's next rate case,"<sup>2/</sup> but lowering the threshold for applying the lower rate from 5,000 dt to 3,500 dt was something the utilities did not contemplate, and they should not be held accountable for the lower revenues that would result from charging the tailblock rate on those sales. We will modify the Order to allow them to charge the higher, full margin rate on sales between 3,500 dt and 5,000 dt.

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<sup>1/</sup> The tailblock rate includes little if any contribution to administrative and customer costs; the full margin rate, on the other hand, reflects an assignment of these costs.

<sup>2/</sup> Case 93-G-0932, supra, March 28 Order, p. 12. It warrants mention that MI, in a broader context applicable to all the companies, notes again that the Commission has held that full margin rates are a temporary, stop-gap measure until cost-based transportation rates can be established. It asks that the Order be revised to direct each LDC that currently charges full margin transportation rates to present a detailed cost of service study as part of its next rate filing. Columbia University asks that the compliance filings include detailed cost information. MI's request is reasonable: full margin rates were only intended to be a interim proxy -- their continued use should be justified.

OTHER ISSUES

Affiliate Transactions

The March 28 Order established interim standards for affiliate transactions.<sup>1/</sup> The Coalition recommends that the Commission monitor market penetration by marketing affiliates and non-affiliates alike as a means of testing the efficacy of both the marketing affiliate rules and the access programs generally. It recommends as well a provision requiring LDCs to affirmatively state that they cannot favor their affiliates in any way, as well as monthly reports of activity commencing July 1, 1996.

Con Edison replies that a proposal for monthly reports neither meets any of the criteria for rehearing nor adequately explains the type and breadth of information to be included in such reports or how the information would be useful to the Commission. It says that the marketers have in no way justified establishing an additional administrative burden on LDCs.

Orange and Rockland seeks rehearing as well, claiming a conflict in the interim standards:

On one hand, the only express separation of employees required by the Commission's Standards is that of operating employees. On the other hand, the related companies cannot provide non-tariff services for each other. Arguably, then, an LDC and its affiliate could share a non-operating employee, such as a payroll employee, but if that same employee was employed by the LDC, with specific time "billed" to the affiliate at a market rate,

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<sup>1/</sup> Case 93-G-0932, supra, March 28 Order, p. 31.

the arrangement would be impermissible. The distinction appears unfounded.<sup>1/</sup>

Orange and Rockland claims analogous FERC regulations were directed at reaching a balancing between preventing the affiliate from obtaining an undue competitive advantage versus depriving the customers of the economic efficiencies that could be achieved through vertical integration. It says that FERC balanced the goals by restricting the sharing of operating employees, defined as those with the "day-to-day duties and responsibilities for planning, directing, organizing, or carrying out gas-related operations, including gas transportation, gas sales or gas marketing activities."<sup>2/</sup> Orange and Rockland concludes that the restriction in our standards appears overly broad and requests that the Commission clarify that its interim standard prohibiting LDCs from purchasing any services from their affiliates or providing affiliates with non-tariff services be limited to services related to the acquisition, sale, transportation and storage of gas and not applied to administrative or support services for which a market rate is charged.

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<sup>1/</sup> Orange and Rockland's Petition for Rehearing, p. 15.

<sup>2/</sup> Orange and Rockland's Petition for Rehearing, p. 16, quoting FERC Order 497-E, Inquiry Into Alleged Anti-competitive Practices Related to Marketing Affiliates of Interstate Pipelines and Ozark Gas Transmission System, Order on Rehearing and Extending the Sunset Date, III F.E.R.C. Stats. & Regs. (CCH) ¶¶ 30,987, 30,996 (1993).

We have reviewed the FERC standards and have relied on them, in part, in developing our own rules, although not all of the FERC standards, designed for pipelines, are readily applicable to local distribution companies. Our rules properly safeguard end use customers against affiliate abuses while allowing regulated companies to engage in unregulated businesses and strike an appropriate balance.

Orange and Rockland's point may be reasonable: non-operational transactions (such as matters related to corporate governance) may provide net efficiency gains without the potential harm of other affiliate transactions. We will, however, not now limit the interim rules as Orange and Rockland requests to exclude administrative or support services. If this practice of providing administrative services has been ongoing prior to the Commission's March 28 Order and it can be shown that it does not harm ratepayers, Orange and Rockland should confer with our staff about the possibility of amending the rules.

NYSEG's Energy Management Services

The March 28 Order directed NYSEG to cancel the tariff leaves for its "energy management services," and stated that consideration of such services would be deferred pending the resolution of this issue in the Competitive Opportunities proceeding.<sup>1/</sup> (Under its energy management service, NYSEG

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<sup>1/</sup> Case 93-G-0932, supra, March 28 Order, pp. 42-43

would advise customers of gas pricing issues, transportation and service contract matters.) On rehearing, NYSEG says we have provided no justification for deferring the company's proposed service until the completion of an electric proceeding, which may not deal with the issue for some time. It says its proposed tariff is designed to provide customers with services they want now and that the market for energy management services has long been competitive. It claims that to delay consideration of the company's tariff would unfairly exclude it from that market.

NYSEG is right. We have not yet decided this issue in Competitive Opportunities, and we should not hold up a decision in this case until we do. NYSEG is free to make a filing to show that its cost allocations and operating practices prevent anti-competitive behavior or do not stifle competition, and that the program benefits non-participating ratepayers. If it can make that showing, we will allow the tariff to become effective.

#### Next Steps

The Coalition notes that there are numerous tariff and rate issues that need to be resolved. It asks that there be a forum for addressing such issues as the pricing of balancing and backup service, the allocation of upstream capacity and supply basin cost differentials. It proposes that rather than reviewing all eleven LDC tariffs at once, three be taken up in technical meetings in each calendar quarter. It suggests as well that the Commission institute a proceeding to derive cost-based

interruptible rates and open access tariffs for interruptible customers.

Several of the issues pressed by the Coalition have been litigated for years, and our resolution of those issues and existing policies remain sound. Most broadly, we see no reason to alter our existing goal of value-based pricing for natural gas service. Cost-based interruptible rates and several of the other proposals advanced by the Coalition are beyond the scope of this proceeding. The ongoing collaborative process is designed to take reasonable next steps concerning unbundling issues (e.g., storage). Any party can petition for additional proceedings.

#### St. Lawrence Tariffs

St. Lawrence filed tariffs with unbundled rates but claims its billing system cannot bill those rates. It asks for permission to bill the bundled rates<sup>1/</sup> for sales service while it will manually bill customers that request transportation service until its billing system can be modified.

St. Lawrence is granted the relief it seeks for a reasonable time -- to November 1, 1996. During that time, it is directed to show, to any entity that asks, that the bundled rate equals the sum of the unbundled rates.

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<sup>1/</sup> The bundled rate equals the sum of the unbundled rates.

State Administrative Procedure Act

We hereby grant the petitions to the extent described above because the modifications are in the best interest of ratepayers. Inasmuch as there has been no Notice of Proposed Rulemaking under the State Administrative Procedure Act (SAPA), we will do so on an emergency basis under SAPA §202(6). We find that immediate adoption preserves the general welfare by, inter alia, allowing the modifications to become effective so as to foster the development of competition in the industry before the winter heating season.

The Commission orders:

1. The petitions for rehearing in this case are granted to the extent described in the foregoing Order and are in all other respects denied.
2. This action is taken on an emergency basis under Section 202(6) of the State Administrative Procedure Act for the reasons noted in the body of this order.
3. On July 1, 1997, each local distribution company shall submit to the Director of the Gas and Water Division a report on capacity as described in the foregoing order.
4. St. Lawrence Gas Company, Inc. may bill the bundled rate for transportation service as described in the foregoing order until November 1, 1996.

5. This proceeding is continued.

By the Commission,

(SIGNED)

JOHN C. CRARY  
Secretary