

H. Larkin

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 11, 1980.

COMMISSIONERS PRESENT:

Charles A. Zielinski, Chairman
Edward P. Larkin
Carmel Carrington Marr
Harold A. Jerry, Jr.
Anne F. Mead
Karen S. Burstein
Richard S. Bower, concurring

CASE 27584 - Accounting and Rate Treatment for Land Acquired
in Anticipation of Construction

ORDER CONCERNING REVISION OF POLICY

(Issued August 1, 1980)

BY THE COMMISSION:

As part of our response to a complaint last year about the Consolidated Edison Company's mid-Hudson plant siting activities, we issued a notice requesting generic comments about ratemaking treatment of land acquired in anticipation of construction.^{1/} We explained that our objective was to determine what ratemaking policy

would be most nearly "neutral," in the sense that it would be the most likely to encourage [land] acquisitions truly beneficial to the company's customers while discouraging acquisitions of questionable value.^{2/}

^{1/}Case 27584, Notice Requesting Comments (issued July 6, 1979).
The complaint about Con Edison is the subject of Case 27507.

^{2/}Mimeo at pp. 4-5.

In today's order, we conclude that we can best serve this purpose by continuing our current policy of including land in rate base if it is part of a "plan." But we find it no longer realistic to assume, as we did in our 1970 Con Edison and New York Telephone rate decisions,^{1/} that land acquisition is inherently useful; if a party challenges the inclusion of a land parcel in rate base, the company should be prepared to show why it needs the land.

PARTIES' COMMENTS

In the Notice Requesting Comments, we suggested that we could either (1) continue the current policy of allowing acquisitions to be included in rate base pursuant to a "plan," construing that term liberally (as in the 1970 Con Edison and New York Telephone rate decisions) to recognize that an ambitious land acquisition program may itself be a type of plan; (2) treat the acquisitions in a manner analogous to the treatment of interest-bearing construction work in progress; or (3) revert to the pre-1970 policy, which was the same as the present policy except that the "plan" requirement was more narrowly construed so one had to determine in rate cases whether particular acquisitions reflected sufficiently specific planning objectives. In response, comments have been submitted by the original complainants; five combination electric and gas companies; eight telephone companies; and an association of 46 telephone companies.^{2/}

^{1/}Case 25342, Consolidated Edison Co., 10 NY PSC 434, 449 (1970); Case 25155, N. Y. Telephone Co., 10 NY PSC 345, 370 (1970), citing Case 19757, Consolidated Edison Co., 1 NY PSC 349, 368 (1961).

^{2/}Mid-Hudson Nuclear Opponents, Inc.; Central Hudson Gas & Electric Corp.; Consolidated Edison Co. of N.Y., Inc.; N.Y.S. Electric & Gas Corp.; Niagara Mohawk Power Corp.; Rochester Gas and Electric Corp.; Continental Telephone Corp. (on behalf of its five New York subsidiaries); Midstate Telephone Corp.; N.Y. Telephone Co.; Rochester Telephone Corp.; and the N.Y.S. Telephone Association, Inc.

All the companies responding, and the N.Y.S. Telephone Association, argue that Option (1) is best because it serves the interests of early planning and site acquisition, which are said to promote flexibility and enhance the utility's ability to bargain with prospective sellers. Niagara Mohawk suggests that we accept, as part of a "plan," any land that demonstrably will be used for a particular purpose within 5 or 6 years. Central Hudson says all "minor" acquisitions should go into rate base automatically. New York Telephone expresses pride in the quality of its plans under the current policy.

Six companies specifically oppose Option (2). However, Central Hudson (one of the six) suggests an accrual analogous to an "allowance for funds used during construction," during the period between acquisition and the first succeeding rate case, followed by a transfer to rate base. Con Edison, NYSEG, Midstate, and New York Telephone express concern about the uncertainty as to how an acquisition would be treated under Option (2) if it never entered rate base. The companies emphasize that this option would not produce cash earnings. NYSEG argues that non-cash earnings would have a financially undesirable effect, although perhaps only in a symbolic way because relatively little money is involved; and Rochester Telephone says the result would be unfair in view of the investors' added risk. Midstate claims that customers would be ill-served by Option (2) because, in the long run, it would result in more capitalization than Options (1) or (3); on the other hand, Midstate joins Con Edison in arguing that intergenerational equity (i.e., the tendency of Option (3) to excuse current customers from paying for future plant) is irrelevant because the amounts involved are so small.

Central Hudson, Con Edison, NYSEG, Midstate, and New York Telephone expressly criticize Option (3), chiefly on the ground that it requires a measure of regulatory effort not warranted by the modest savings to ratepayers that may

result. Mid-Hudson advocates Option (3) to prevent companies from making land acquisitions inconsistent with the Statewide Site Survey and the Energy Master Plan; that is, noncompliance with these programs would be evidence of imprudence which, in turn, would justify exclusion from rate base.

Most of the companies (Central Hudson, Con Edison, NYSEG, Niagara Mohawk, Midstate, and New York Telephone) object to the suggestion that inclusion in rate base would encourage imprudent acquisitions; they say they buy land for no reason other than sound planning purposes. In an effort to prove this point, many of them note how minimal their acquisitions have been under the current policy. According to Con Edison, land held for future use is less than 1/2 of one percent of net plant for each electric company except Orange and Rockland (1.03%) and Central Hudson (1.69%). Similarly, while Rochester Telephone did not perform an analogous computation, percentages ranging from 1/250 of one percent down to zero are reported by Continental, Midstate, and New York Telephone.

Mid-Hudson replies that these are not the relevant data for measuring the impact of rate base inclusion. It argues that we should instead consider New York Power Pool data showing that sites now being used for electric generation could absorb an additional 20,822 MW of capacity; sites wholly or partly owned by utilities (other than Central Hudson, discussed below) could absorb an additional 28,550 MW; and other sites where leases or purchases have occurred for study purposes could absorb still another 20,600 MW.^{1/}

^{1/}Mid-Hudson also argues that the Administrative Law Judge's recommended inclusion of the Ward Manor, Terry Brickyard, and Greene Point sites in Central Hudson's last rate case demonstrates superfluous sites are unlikely to be culled out under the current ratemaking policy; we note, however, that Mid-Hudson subsequently excepted on this issue in the rate case and prevailed on the merits. Case 27461 (Opinion No. 79-21, issued October 24, 1979).

Finally, we have received a wide variety of responses to our question

whether New York's electric and telephone industries, or the environment in which they operate, has changed since [the 1970 Con Edison and New York Telephone decisions] in such a way that the considerations we mentioned at that time have become less applicable.^{1/}

Among the companies, only Con Edison concedes that load growth has declined, and it says this is irrelevant because declining growth does not make the company's construction requirements any more predictable. RG&E finds that no relevant change has occurred. Con Edison, NYSEG and the Telephone Association argue that realty price increases, said to be accelerated by an energy shortage and by tendencies toward urban concentration, make Option (1) at least as sensible now as in 1970. Continental says the electric companies' land acquisitions have become a source of public conflict while the telephone companies' have not, so it would be a mistake to treat them similarly. Niagara Mohawk suggests that heightened public concern about plant siting so completely discourages land acquisition that there would be no purpose in changing the ratemaking policy. NYSEG adds that ratemaking policies will not diminish public concern or conflict; and it points out that in 1970, one of the reasons we cited in favor of liberal rate base inclusion was that "proposed sites for utility plant are scrutinized by the public with far greater concern than has previously been the case." In NYSEG's analysis, this apparently means utilities should acquire more land than might otherwise be necessary,

^{1/}Notice Requesting Comments, mimeo at p. 3.

to retain their flexibility in the face of public opposition. In Mid-Hudson's view, developments since 1970--particularly the enactment of P.S.L. Article VIII and the establishment of long-range plan proceedings, the Statewide Site Survey, and the Energy Master Plan--demonstrate a shift of public policy, in favor of scrutiny before final site selection rather than afterwards.

CONCLUSION

Our review of the comments does not convince us that inclusion of land in rate base encourages land acquisitions that would not otherwise occur. To reach a contrary conclusion, we would have to accept the doubtful premise that even if sound planning or engineering considerations did not require a particular land acquisition, the acquisition nevertheless would occur because of the prospect of earnings on this minuscule element of rate base. And we find that allocating revenue responsibility to future customers under Option (2), by treating land acquisitions as if they were construction work in progress, would create no significant economic benefits for current customers.

We recognize that land acquisition may substantially affect the public even if it does not substantially affect the rate base; for example, although Con Edison's land held for future use is less than a quarter of one percent of its total plant in rate base, it includes the hundreds of acres of land that have been a focus of public concern in the mid-Hudson area. But we find it implausible that companies would acquire land--and, in some cases, ill will in the community--merely for the sake of a proportionally negligible rate base increment. It is far more likely that land acquisitions, whether prudent or excessive, result from

factors other than a simple desire for earnings (which, under our ratemaking policies, would merely equal the cost of the money invested). We therefore disagree with Mid-Hudson's argument that the absolute quantity of land held, expressed in terms of how much generating capacity it could absorb, is more relevant to ratemaking policy than the quantity of land as a percentage of total rate base.

On the other hand, wholly apart from the question how we may choose to influence companies' land acquisition practices, the principle remains that rate base should include only "used and useful" items; and, accordingly, land should be included in rate base only if it is part of a plan for future use in the rendition of public service. All land held for future use is continually subject to challenge according to this criterion,^{1/} and therefore the question arises how specific the company's intentions must be in order to support a determination that the company has a "plan." We shall consider this problem in particular cases where parties seek to have land removed from rate base. As a general matter, however, we no longer are prepared to assume that a company's policy of acquiring ample land as early and cheaply as possible is, without more, a sufficiently specific "plan." A company still may demonstrate that such a policy is sound in view of its particular circumstances, for reasons such as those mentioned in our 1970 orders and

^{1/}Con Edison asks whether a prospective Commission policy regarding future land acquisitions also would pertain to land that drops out of active use by the company sometime in the future, and Central Hudson says we should not remove items from rate base if they were acquired pursuant to a relatively liberal policy in effect at the time of the acquisition. But there is no justification for a rule that might guarantee the company a perpetual return on its investment, regardless of usefulness, merely because the investment occurred on a particular date. Our policies concerning land held for future use do not depend on when the land was acquired or on when it ceased to be held for a purpose other than future use.

in some of the comments in this proceeding, if a party challenges a rate base item in a rate case. But we decide today that there no longer will be a presumption in favor of rate base inclusion.

The Commission orders:

This proceeding is closed.

By the Commission,

(SIGNED)

SAMUEL R. MADISON
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 27584 - ACCOUNTING AND RATE TREATMENT FOR LAND ACQUIRED
IN ANTICIPATION OF CONSTRUCTION

RICHARD S. BOWER, Commissioner, concurring:

I agree with the majority that land held for future use should be in rate base if challenges to its value as an element in a company's plan for the future can be refuted. I agree because individual land parcels are such very small rate base items and because of the difficulty in estimating the market value of a land parcel for other purposes when it is about to become a utility construction site. Were it not for these two factors I would argue that land held for future use should be treated as a below the line item, that it should enter rate base only when put into use, and that its rate base value on entry should be its market value at that time. Were it treated in this way and any impact on cost of capital to the company neutralized both the return and the risk of the land speculation would belong to the shareholders. As it is the ratepayers bear the risk and get the gains or losses that attach to early acquisition and ultimate disposition of land. I believe that better investment decisions are made when owners rather than customers get the return and take the risk. Therefore, I think the Commission should give investments below the line treatment in every instance where return to the investment can be established with an error and a cost that is small relative to the investment. Land investment is a case where neither is small relative to the investment and it is for this reason, not because I believe that the risk and return is beneficially borne by ratepayers, that I concur with my fellow Commissioners on its rate base inclusion.

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

State Plaza, Albany, NY 12223

FOR FURTHER INFORMATION CALL:

Albany (518) 474-7080

FOR RELEASE

IMMEDIATE

CON EDISON--COMPLAINT ON LAND
ACQUISITION--DISMISSAL

80211/MH/C.27507, 2758

Albany, July 31 -- The Public Service Commission denied today petitions asking it to reconsider a 1979 order in which it concluded that Consolidated Edison did not violate Commission orders in its activities at two potential generating plant sites in Dutchess and Columbia Counties.

At the same time, the Commission dismissed the original complaint of Mid-Hudson Nuclear Opponents, Inc., and other parties.

In denying rehearing, the Commission concluded that: (1) the Plant Siting provisions of the Public Service Law do not preclude all plant-siting activities until a statewide site survey is completed; (2) questions whether Con Edison's particular activity is unnecessary should be resolved in a rate case, or, if the utility seeks a State permit to build a plant, in the hearings on that application; and (3) affidavits filed by the complainants were not convincing that it should require the company to change the way it deals with local communities.

The Commission vote to dismiss the complaint was 5-2.

Anne F. Mead and Karen S. Burstein said they would have adopted the complainants' petition.

In a related case, the Commission ruled that in future rate cases it no longer would presume that a utility is entitled to recover in cash the cost of the money invested in land held for future use, but instead would require the company to prove that it is entitled to include the land in its rate base, if any party in the case challenges its treatment.

The Commission had sought comments last year on various proposals to make its ratemaking policy toward land held for future use most nearly neutral.

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-30-