

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Petition of the City of New York For An Order
By the Commission Waiving Penalties For
Failure to Comply With Natural Gas Service
Interruption Notices and Request For
Emergency Action

Case No. 05-G-1602

PETITION

The City of New York (“Petitioner” or the “City”) respectfully submits this Petition to the New York State Public Service Commission (“Commission”) in support of its request that the Commission issue an order directing KeySpan Energy (“KeySpan”) and Consolidated Edison Company of New York (“Con Edison”) (collectively, the “Utilities”) to waive all applicable penalties for failure to comply with natural gas service interruption notices occurring on and after December 16, 2005 for the duration of any strike or work stoppage affecting the Metropolitan Transportation Authority (“MTA”). As set forth below, although the City will use its best efforts to comply with interruptions requirements during a period of MTA strike, the resulting lack of public transportation will substantially impair its ability to comply. Further, the public health, safety and general welfare of City employees may be compromised by efforts to comply with interruption notices given the potential that employees will be exposed to extreme weather conditions as a result of the lack of public transportation.

Pursuant to Section 202(6) of the State Administrative Procedure Act (“SAPA”), Petitioner respectfully requests emergency adoption of the requested order, as it is necessary for the preservation of the public health, safety and general welfare and is in accordance with the public interest.

I. BACKGROUND

1. As publicly reported, on December 10, 2005, a system-wide strike vote was authorized by the membership of the Transport Workers Union (“TWU”) pursuant to the terms of the governing contract between the MTA and the TWU. Consequently, a strike of the MTA could take place as early as 12:01 a.m. on Friday, December 16, 2005, the date of expiration of the existing MTA/TWU contract.

2. A strike or work stoppage by the MTA would result in the stoppage of all bus and subway operations provided by MTA in New York City and would severely strain the availability of alternative means of transportation. Additionally, the ability of traffic to travel on the roadways in the metropolitan area would be substantially limited by the City.

3. Currently, the City has approximately five hundred (500) interruptible gas accounts provided by both KeySpan and Con Edison pursuant to which it is provided natural gas service. According to information provided by the Department of Citywide Administrative Services (“DCAS”), many of the City’s interruptible accounts require manual employee action in order to make the necessary changeover from natural gas to fuel oil for the continued operation of the heating systems.

4. Pursuant to the Commission-approved tariff rules of KeySpan and Con Edison for interruptible natural gas service, interruptions in the natural gas service provided by the Utilities to the City can result from severe weather conditions in the New York City area. (See, e.g., KeySpan Tariff, S.C. No. 4; Con Edison Tariff, S.C. No. 12.) In the event of a required interruption in natural gas service, the Utilities must provide the City with notice in advance of the requested curtailment, thereby allowing the City time to make any required adjustments. A penalty is imposed upon the City by the Utilities in the event that it fails to comply with such notice.

5. Typically, the MTA system energy demand peaks in January, with December demand close to the peak level. The average year-round MTA peak demand is 611 MW, with a monthly peak of 640 MW experienced in January 2005. MTA reports that approximately 85% of its overall energy demand is for traction services.

II. REQUEST FOR RELIEF

6. The Commission should issue an order waiving all penalties for failure of the City to comply with natural gas interruption notices for the duration of a strike or work stoppage by the MTA. In the event that a strike of the MTA, occurring on or after December 16, 2005, coincides with typical winter weather conditions in New York City, it would impose a severe hardship on those City facilities that are currently served under interruptible natural gas provisions and would potentially jeopardize public health, safety and welfare.

7. The City's ability to comply with a notice of interruption of natural gas services would be substantially impaired, or rendered impossible, in the event of a strike of

the MTA. The City currently has approximately 500 interruptible gas accounts that potentially could be affected by a notice to interrupt natural gas delivery, many of which require manual employee action to change from natural gas to fuel oil. A strike by the TWU of the MTA, resulting in the work stoppage of the MTA bus and subway operations in the New York City area, would substantially impair commuting in and around New York City. Thus, an MTA strike could prevent necessary personnel from taking action in response to a curtailment call by the Utilities.

8. Additionally, the inaccessibility of MTA bus and subway services would substantially impair the ability of City employees to be present for fuel oil deliveries required to replace the fuel used during the days leading up to a MTA strike. Moreover, these fuel oil deliveries will also be impeded throughout the City because of sharply increased road traffic, and in particular because of the extensive restrictions on commercial vehicles operating in Manhattan for the duration of any strike, which have been publicly announced by the Mayor.

9. Absent the public transportation provided by the MTA bus and subway services, City employees will be severely delayed, if not unable to reach, those City facilities affected by the notice of interruption. Further, because of the inaccessibility of the MTA bus and subway operations and the additional strain it will create upon alternative means of transportation, e.g., taxi services, transportation within the City is likely to be extremely limited. Additionally, restrictions will be imposed on the roadway traffic in the New York

City area, further exacerbating a potential transportation crisis and creating a *force majeure* event.¹

10. Importantly, the public health, safety, and welfare may be jeopardized by City employees' efforts to reach City facilities in the event of a notice of interruption resulting from severe weather conditions. Because the affected City facilities are located in all five Boroughs of New York City, and are in some instances virtually inaccessible without public transportation in harsh weather, City employees, unable to access public transportation, may be exposed to the elements for extended periods of time under winter weather conditions. Given the constraints to public transportation that New York City will experience upon the occurrence of a MTA strike or work stoppage, City employees may be forced to seek alternative means of transportation, i.e., walking long distances, during extreme weather conditions. The imposition of penalties during this time of public emergency therefore would be contrary to the public interest as it would risk the general health, safety and welfare of City employees in their efforts to comply with interruption notices.

11. Finally, the need for the Utilities to issue a notice of interruption during a period of strike by the MTA would be minimal, if not unnecessary. Upon information and belief, an MTA work stoppage would reduce in-City electricity demand by more than 500

¹ For example, if there is a MTA strike, by Mayoral directive all commercial traffic south of 96th St. in Manhattan will be banned from 5 am to 11 am on weekdays, and all commercial deliveries of any kind will be prohibited on portions of Madison and Fifth Avenues, as well as on 26th, 29th, 50th and 59th Streets, on weekdays between 5 am and 8 pm as these are designated restricted access streets that are to be kept clear for emergency vehicles. In heavily congested Lower Manhattan, the designated restricted access thoroughfares are Church, Cortlandt, Nassau, Rector, Vesey and Warren Streets.

MW, and any natural gas consumption by gas-fired generation units would therefore be proportionately reduced from the level normally expected under prevailing weather conditions at this time of year. Moreover, overall New York City demand likely would be reduced by the reduction in business operations caused by a lack of public transportation.² Accordingly, the relief sought herein is unlikely to have a material impact on utility operations in the City.

III. REQUEST FOR EXPEDITED REVIEW

12. Approval of this Petition prior to December 16, 2005, the earliest date by which a strike of the MTA could occur, is necessary for the preservation of the public health, safety and general welfare and compliance with the general SAPA notice requirements set forth in SAPA section 202(l) would be contrary to the public interest.

13. If the Petition is not granted prior to December 16, 2005, public health, safety and general welfare will be jeopardized. City facilities potentially affected by a notice of curtailment exist in all five Boroughs of New York City, and are in some instances virtually inaccessible without public transportation. Actions required to avoid penalties for failure to comply with curtailment notices may expose City employees to the elements under extreme weather conditions, as traditional means of public transportation will be unavailable.

² The City also supports efforts by the Commission and its Staff to work with regulated utilities to limit their use of interruptions to the maximum extent that is feasible for the gas distribution system during any MTA strike period. An MTA work stoppage would by definition eliminate almost all MTA energy demand, and would therefore radically change the load calculus that would ordinarily apply during this time of year under the prevailing weather conditions - a fact important for consideration of the need to make interruptible calls.

Thus, the health, safety and welfare of City employees will be adversely affected upon the concurrence of the MTA strike or work stoppage and a curtailment event. Moreover, the welfare of the City at large would be adversely affected if the City is forced to seek fuel oil deliveries during a potential transportation crisis or, worse, if the Utilities refuse to deliver natural gas to critical City facilities.

15. The Commission has previously approved requests for emergency action under similar circumstances. In the Matter of Emergency Restoration of Utility Service to New York City,³ the Commission, in an Order issued September 14, 2001, suspended service incentive provisions applicable to electric and telephone utilities in an effort to “allow utilities to use their resources to restore service to New York City in as rapid and efficient a manner as possible” during a time of emergency.⁴ The Commission found that the availability of power service is essential to the health, safety, and general welfare of the public and, therefore, immediate approval under SAPA Section 202(6) was granted.⁵

16. Compliance with the notice requirements of SAPA Section 202(1) may result in the imposition of penalties to the City caused by its failure to comply with notices of curtailment events during the occurrence of a MTA strike or work stoppage. The potential penalties imposed on the City for failure to comply at a time of public emergency would be contrary to the public interest, as it would create the risk of needlessly exposing citizens to

³ Case 01-M-1263, In the Matter of Emergency Restoration of Utility Service to New York City, Order Concerning Restoration of Utility Service to New York City, issued and effective September 14, 2001.

⁴ Id. at 2–3.

⁵ Id. at 2.

the harsh winter conditions found in New York City at this time of year. Finally, a strike of the MTA could occur as early as December 16, 2005, thereby providing insufficient time in which to comply with the formal notice requirements of SAPA Section 202(l). Accordingly, emergency action under SAPA Section 202(6) is in the public interest and necessary to preserve the general welfare and avoid serious risk to public health, safety and welfare.

IV. CONCLUSION

Wherefore, Petitioners respectfully requests that the Commission issue an order waiving penalties for failure to comply with notices of interruptible natural gas service by KeySpan and Con Edison during any MTA strike or work stoppage, as described herein. Petitioner also requests that the Commission issue such order on an expedited basis and waive the SAPA notice requirement pursuant to the emergency exception set forth in SAPA Section 202(6).

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Albany, New York

Respectfully submitted,

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