



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO  
Attorney General

March 30, 2007

Hon. Jaclyn A. Brillling  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, NY 12223-1350

RE: Case 06-E-0894 – Proceeding on Motion of the Commission to Investigate the Electric Power Outages in Consolidated Edison Company of New York, Inc.'s Long Island City Electric Network.

Dear Secretary Brillling,

Enclosed please find an original and ten copies of the "Reply Comments of the Office of the Attorney General of the State of New York, Andrew M. Cuomo, on Public Service Commission Staff Report," in the above-entitled matter. A hard copy and a copy by email are also being sent today to Administrative Law Judge Eleanor Stein, Commission Staff Assistant Counsels Kimberley A. Harriman and Guy R. Mazza, and all Active Parties to the proceeding.

Thank you very much.

Sincerely,

L/S

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Special Counsel

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cc: ALJ Eleanor Stein  
Kimberley A. Harriman  
Guy R. Mazza  
Active Parties

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

----- X  
Proceeding on Motion of the Commission  
to Investigate the Electric Power Outages  
in Consolidated Edison Company of New  
York Inc.'s Long Island City Electric Network.  
----- X

Case No. 06-E-0894

**REPLY COMMENTS  
OF THE OFFICE OF  
THE ATTORNEY GENERAL OF THE STATE OF NEW YORK,  
ANDREW M. CUOMO**

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*Of Counsel*

March 30, 2007

## BACKGROUND

The Office of the Attorney General of the State of New York respectfully submits these Reply Comments regarding the Department of Public Service Staff's ("Staff's") final report on the July 2006 Queens Outages,<sup>1</sup> pursuant to a Public Service Commission ("Commission") Notice issued on February 13, 2007, and in response to the initial comments submitted by the parties to this proceeding on March 2, 2007.

This Office, as stated in our Initial Comments, submits that the record shows that Con Edison's performance both before and after the July 2006 Long Island City blackout was utterly deficient and grossly negligent, and that the company failed to operate reliably, maintain, and manage the network, and failed to respond effectively to an escalating emergency. As a result, the Office of the Attorney General continues to recommend strongly that the Commission immediately institute an evidentiary proceeding to further explore the deficiencies in Con Edison's construction, maintenance, operation and repair of its Long Island City ("LIC") network before, during and after the July 2006 LIC network power emergency, to determine that the Company acted imprudently, and to determine that it must absorb all related costs and carry out all recommended actions for change.<sup>2</sup>

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<sup>1</sup> Department of Public Service Staff Report On Its Investigation Of The July 2006 Equipment Failures And Power Outages In Con Edison's Long Island City Network In Queens County, New York, February 2007 ("Staff Report").

<sup>2</sup> See Initial Comments of the Office of the Attorney General, Andrew M. Cuomo ("OAG Comments").

Many parties join in this office's position. Staff, calling Con Edison's performance "a gross disservice to its customers," has specifically called for a prudence proceeding.<sup>3</sup> In addition, numerous other parties also recommend this course of action.<sup>4</sup> Such a proceeding would determine whether Con Edison's actions and inactions were prudent and whether the Company is entitled to any cost recovery from ratepayers. The proceeding would also enable the Commission, the Staff, the parties to the proceeding, and the public to identify further the Company's deficiencies, as set forth in the Staff Report and in the comments by parties to the instant proceeding, and to develop and enforce efficacious remedies. It is important that the Commission hold a full and open proceeding on these issues rather than addressing the issue through settlement discussions without a full hearing and public record.

Also as urged by many parties and by the Office of the Attorney General in the Initial Comments,<sup>5</sup> Queens residents and businesses affected by the outages should not wait until the conclusion of a prudence proceeding to receive reimbursement for equipment and other damages sustained as a result of last summer's power emergency. The scope of such reimbursement

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<sup>3</sup> "Con Edison's performance in preparing for, and responding to, the outage event was deficient, a gross disservice to its customers. The Commission should initiate a proceeding to consider the prudence of the Company's actions, or lack thereof. The Company failed its responsibilities under the Public Service Law." Staff Report at 9.

<sup>4</sup> See Initial Comments of the Office of the Attorney General, Andrew M. Cuomo ("OAG Initial Comments"); Initial Comments of Western Queens Power for the People Campaign ("PFP Initial Comments"); Initial Comments of the New York State Consumer Protection Board, March 2, 2007 ("CPB Initial Comments"); Initial Comments of the Public Utility Law Project of New York, Inc. ("PULP Initial Comments"); Initial Comments of Assemblyman Richard L. Brodsky, Chair, New York State Assembly Standing Committee on Corporations, Authorities, and Commissions ("Assemblyman Brodsky Initial Comments").

<sup>5</sup> See, e.g., OAG Initial Comments, PFP Initial Comments, CPB Initial Comments, Assemblyman Brodsky Initial Comments.

should be determined by the Commission expeditiously and should be paid by Con Edison before the end of Summer 2007.

## DISCUSSION

### **I. The Record in This Proceeding Confirms That A Prudence Proceeding Is Necessary And Required By The Public Service Law.**

All the Initial Comments, except those of Con Edison, agree that the Staff Report amply substantiates Con Edison's mismanagement of its LIC network and the Company's failure to respond effectively last July to the network's escalating emergency.<sup>6</sup> As a result, most parties explicitly call for a prudence proceeding to examine the issue of whether Con Edison must bear its own costs with respect to the blackout.<sup>7</sup> The Staff Report demonstrates gross mismanagement before, during and after the power emergency, and in many areas of Con Edison's operations and decision making. The conclusions and recommendations contained in the Staff Report strongly support the institution of a prudence proceeding and, as noted above, the Staff Report recommends that a prudence proceeding be initiated.

Such a proceeding is well within the authority of the Commission and, indeed, is legally required. Public Service Law ("PSL") §72 authorizes the Commission to "order such improvement . . . in the manufacture, transmission or supply of electricity or in the methods employed by such person or corporation, as will in [the Commission's] judgement be adequate,

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<sup>6</sup> See, e.g., OAG Initial Comments at 5-29, 31-33 ; PFP Initial Comments at 4-5, 8-13; CPB Initial Comments at 1-4, 6-18; PULP Initial Comments at 10-11, 14-17, 18-21; Initial Comments of the City of New York ("City Initial Comments") at 5-17; Initial Comments of TransGas Energy Systems LLC ("Transgas Initial Comments") at 2-3, 7-8; Initial Comments of Utility Workers Union of America, AFL-CIO, Local 1-2 ("Utility Workers Initial Comments") at 1-14; Assemblyman Brodsky Initial Comments at 1-6.

<sup>7</sup> See footnote 4.

just and reasonable.” PSL §66(1) provides the Commission with general authority to supervise electric utilities under its jurisdiction and PSL § 66(2) provides it with the authority, inter alia, to investigate the quality of a utility’s service. PSL § 66(12) requires the Commission, in considering any automatic increased rate or charge, to determine whether it is just and reasonable and to inquire as to whether the utility exercised reasonable care in providing the service.<sup>8</sup>

Indeed, given the Staff Report’s fact finding and recommendations concerning Con Edison’s extremely deficient actions and omissions regarding the outages, the Commission has a legal duty to institute a prudence proceeding.<sup>9</sup>

Con Edison asserts in its comments that a prudence proceeding is not needed because, among other reasons, the Company has agreed to absorb many costs and has paid for spoiled food claims. The Company states that a prudence proceeding would “divert” the attention that it must pay to operations and customers, and argues that the Commission has examined other power emergencies without instituting prudence proceedings, where it has focused on “forward-

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<sup>8</sup> It must also be noted that the City’s implication that a prudence proceeding would only examine Con Edison’s decision to keep the network running as compared to shutting it down (City Initial Comments at 24-27) does not capture the breadth of the required inquiry, which must include an examination of all the Company’s actions and inactions that led to the situation in which the choices were to destroy substantial parts of the secondary system to keep the network running or to create a network-wide blackout.

<sup>9</sup> See, e.g., Case 00-E-1750- Joint Petition of the American Association of Retired Persons and the Public Utility Law Project et al. For an Investigation of the Electric Rates of Consolidated Edison Company of New York, Inc., Order Denying Petition For Rehearing And Clarification (issued and effective January 3, 2002) at 14: “Where evidence of imprudent acts is discovered, a prudence proceeding should be conducted.” See also LILCO v. Public Service Commission, 134 A.D. 2d 135, 143 (3<sup>rd</sup> Dept., 1987), articulating the rationale and authority for prudence reviews.

looking system and operating requirements,” rather than on questions about the imprudence of past behavior.<sup>10</sup>

Even though the City of New York’s own report identifies instances of Con Edison mismanagement not included in the Staff Report,<sup>11</sup> and the City “agrees with Staff’s overall conclusion that Con Edison’s response to the LIC Outages was lacking in many respects,”<sup>12</sup> the City nonetheless argues against a prudence proceeding. The City asserts that “it could distract” Con Edison from focusing on immediate improvements to its system before Summer 2007 and that a proceeding to allocate costs is unnecessary in light of Con Edison’s offer to absorb many outage-related costs.<sup>13</sup> The City further urges Con Edison to agree to the treatment of certain costs so that an immediate prudence proceeding is not required.<sup>14</sup>

Con Edison’s and the City’s arguments are without force for the following reasons. First, Con Edison has not in fact offered to absorb all costs related to the outage. The Company has stated that it will not seek recovery of about \$40 million of operation and maintenance costs it deems connected to the outages, and will not seek to recover some \$15 million it asserts it has

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<sup>10</sup> Initial Comments of Consolidated Edison Company of New York, Inc. (“Con Edison Initial Comments”) at 38-42.

<sup>11</sup> For example, the City’s report states that Con Edison’s implementation of voltage reduction contributed to the damage to LIC network’s secondary distribution equipment and caused low voltage conditions even after the network’s feeders were returned to service. Investigation by the City of New York into the Northwest Queens July 2006 Power Outages, March 2, 2007 (Appendix to City Initial Comments) at 6-7.

<sup>12</sup> City Initial Comments at 6.

<sup>13</sup> Id. at 27-29.

<sup>14</sup> Ibid.

paid in food spoilage claims.<sup>15</sup> But the Staff Report states that Con Edison reported costs totaling \$91 million related to the outages through November 30, 2006 and further states that “Staff expects that costs related to the network failure will likely continue to be incurred for the foreseeable future.”<sup>16</sup> Inquiry as to what expenses, past, present, and future, are properly deemed to result from the outage will likely expand existing estimates. For example, equipment repair or upgrading is a cost of the outage that should not be borne by the ratepayers. So it is not the case that the cost can be agreed upon without an evidentiary prudence proceeding.

Second, such a proceeding will not only determine recovery of costs but will also shine needed light on service reliability, safety and the entire gamut of Con Edison’s operations, maintenance, capital investment, and management decision making.

Third, an evidentiary proceeding, with the testimony of witnesses subject to cross-examination and the introduction of documentary and other evidence, will best illuminate what remedies to enforce against the Company in terms, not only of cost recovery, but also of future operations and maintenance, the very “forward-looking” actions that the City, and indeed all parties, seek.

Finally, contrary to Con Edison’s and the City’s claims, a prudence proceeding would not render Con Edison unable to provide the “safe . . . adequate . . . and reasonable” service that PSL §65(1) requires it to provide its customers. The concerns expressed by the Company and the City are either unfounded or an indication of even more serious problems at Con Edison. PSL §66(2) authorizes the Commission to investigate an electric utility’s operations and PSL §65(1) requires

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<sup>15</sup> Con Edison Initial Comments at 39-40.

<sup>16</sup> Staff Report at 138-139.

the utility to provide “safe . . . adequate . . . and reasonable” service. A utility is required to handle both obligations at the same time: a utility’s service obligation is not contingent on whether the Commission is conducting an evidentiary proceeding, such as a prudence review, concerning the utility’s actions and inactions.

Neither Con Edison nor the City has provided any specific description, example or quantification of how an evidentiary proceeding such as a prudence proceeding would inhibit the Company’s ability to carry out the repairs, construction and other efforts that Con Edison needs to undertake to prepare for Summer 2007. Thus, no justification exists for delaying an evidentiary proceeding to investigate in detail why thousands of Long Island City residents went without power or suffered low voltage for days last July.

**II. The Comments of the Parties Confirm That Con Edison Must Further Reimburse Residents And Businesses For Losses.**

As urged in this Office’s Initial Comments and in the comments of other parties,<sup>17</sup> the issue of the damage that the 2006 power emergency did to LIC residents and businesses deserves special attention. In many instances, the power emergency caused more damage than the \$350 per household and \$7000 per business amounts that Con Edison is willing to compensate.<sup>18</sup> This is not acceptable. Thus, the Commission should institute a separate expedited proceeding limited to the questions of what damages Con Edison should pay for and the amount to be paid.

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<sup>17</sup> See footnote 5.

<sup>18</sup> See, e.g., PFP Initial Comments at 5-7.

