

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**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.**

**Comments of Consolidated Edison Company of New York, Inc.
on The Report of Department of Public Service Staff on
The July 2006 Power Outages in the Long Island City Network**

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I. INTRODUCTION

Consolidated Edison Company of New York, Inc. (“Con Edison” or “the Company”) welcomes the opportunity to provide comments on the *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*, dated February 2007 (“Report”).

Con Edison realizes that the failure to recognize the extent of customer outages in Queens over a two to three day period exacerbated the hardships for our customers caused by the outages and is wholly unacceptable. Con Edison’s former dependence on customer calls to alert it to outages is the method used by almost all other utilities in the country with underground network systems. While there are various reasons for this uniform practice, Con Edison is well on its way to changing that practice. The events of July 2006 clearly demonstrate that while large-scale outages involving five thousand or more customers within portions of a network may only occur rarely, Con Edison needs a better system to detect them on the rare occasions when they occur.

The Staff has recommended that the Commission review the prudence of Con Edison's actions. We urge the Commission to refrain from such an exercise because it will detract from the work that is being undertaken by Con Edison and the Staff as a result of the Long Island City outages. Con Edison is currently implementing recommendations that have been made by the Staff, by an internal committee at Con Edison that investigated the outages, and by outside consultants that performed their own review. The work that is involved in this effort is extensive, and it is critical to the success of the endeavor that Con Edison be able to work constructively with the Staff throughout the process. A prudence proceeding, which by its very nature is backward-

looking and adversarial, will only detract from the forward-looking work that needs to be done. We strongly believe that Con Edison's and the Staff's time and resources are far better spent on ensuring that the Con Edison system is as strong and robust as it can be in the future.

Moreover, one of the major findings underlying Staff's recommendation that the Commission review the prudence of Con Edison's actions is Staff's conclusion that, at some point during the event, the Company should have shut down the network. However, as discussed later, Con Edison's operating decision was wholly consistent with its written operating procedure which focuses on the extent of feeder overloads, transformer overloads that cannot be mitigated by cooling, and cascading manhole fires (EO-4095). In suggesting that the network should have been shutdown, Staff focuses solely on manhole activity from Monday through Wednesday. (Staff appears to acknowledge that the condition of feeders and transformers did not warrant a network shut down.) Staff states that there were a "massive" number of manhole events, namely 85 through Wednesday, July 19, and this "massive" number dictated that the network be shut down. Yet, the total number of manhole events was only 28 as of midnight Tuesday – representing about 0.2% of all manholes and service boxes in the network – and 89 as of midnight Wednesday – representing about 0.6 %.

Staff includes smoking manholes in its "massive" total. However, cascading manhole fires are the manhole events that are most indicative of progressing secondary damage warranting a network shutdown. Indeed, Staff acknowledges that it is manhole fires and exploding manholes that are indications of serious damage to sections of the secondary. See Report at p. 14 fn. 12. On Monday, July 17, there were no manhole fires;

on Tuesday, July 18, there were two manhole fires; and on Wednesday, July 19, there were eight. The cumulative total of manhole fires through Wednesday, July 19, was about 0.065% of all manholes and service boxes in the LIC network.

There can be no question that had Con Edison shut down the network based on such a level of manhole activity together with no feeder overloads and very few overloaded transformers, the hue and outcry would have been enormous.

The suggestion that Con Edison's actions be further reviewed is inappropriate for another reason. With the Commission and Staff's support, Con Edison has created a record of providing the most reliable electric service in the state and in the country. Con Edison strives to be a customer and community focused company. While there is no doubt that we let down a large number of customers in a portion of this network and caused them significant hardship, Con Edison's record of continuous, dependable, reliable service is unmatched in the state and in the country. Our past performance in meeting the growing needs of our customers in the LIC network, one of Con Edison's 57 networks, is a good example. As Staff points out in its Report, in 2005, Long Island City network customers experienced a very high level of service reliability, e.g., the LIC network is in the top quartile of Con Edison's 57 networks, and its reliability was more than 400 times better than the average customer experience in New York State.

Finally, even if there were some basis for believing Con Edison's imprudence was the cause of the extraordinary event that triggered these outages, which is not then case, a prudence proceeding is not needed to allocate costs arising from the LIC event. The Company has already absorbed \$60 million in costs and penalties relating to the LIC event and has voluntarily committed to not seek recovery of those costs and to ensure that

they are not reflected in future electric rates. The principal focus of the Company and the PSC Staff should be on promoting improved service for the state's consumers, including the identification of improvements to utility service and systems to be undertaken to make an already highly reliable distribution system even more reliable.

II. CON EDISON'S INVESTIGATION AND RECOMMENDATIONS

Con Edison's ethos includes striving for continuous improvement and using rare events such as the LIC event as an opportunity to make the state's most reliable system even more reliable. To that end, the Company's investigation of this event has been substantial and has resulted in numerous recommendations contained in its October 2006 Report. Many of these recommendations have already been implemented. The Company is also implementing by summer 2007 the priority recommendations contained in Staff's February 2007 Report, even before they have been considered by the Commission. Since the event and continuing toward the summer of 2007, enormous Company engineering resources have been committed and will continue to be committed to implementing both the Company's recommendations and Staff's priority recommendations. Both Staff and the Company's investigations and recommendations have focused on and address the root causes of the events in addition to examining peripheral issues. In the Long Island City network, the Company has not only replaced all equipment that was damaged last July, but has also made numerous improvements unassociated with damaged equipment that enhance the network's future reliability and resilience.

III. IMPACT OF THE EVENT ON THE ELECTRIC DELIVERY SYSTEM

An important fact that the Commission needs to consider is the extent to which the LIC network was damaged during the event and the cost incurred to repair that damage.

Con Edison designs, maintains and operates its network systems using protective devices that help minimize the damage that high currents can cause to both high voltage feeders and low voltage cables. These protective devices often cause the high voltage feeders and low voltage cables to disconnect from the network so as to minimize damage to these components. For example, on Con Edison's high voltage feeders, breakers detect high current levels and shut down a feeder before more significant damage can occur. If significant currents occur on Con Edison's low voltage cables, limiters, installed along the length of the secondary cables, act as fuses and "open" the cable before significant damage occurs.

During the LIC event, these devices worked to reduce damage to both the primary and secondary cables while at the same time allowing Con Edison to continue to operate the network for the benefit of those who were receiving electric service. Because limiters (fuses) isolated many of the overloaded secondary cables before they could be damaged, only 3.7%% of the 120 volt secondary cables were damaged during the event notwithstanding the very high loads they experienced. The primary high voltage feeders suffered no damage due to excessive loading. As for transformers, of the 1,194 transformers in the LIC network, only 10 were damaged due to excessive loading and needed to be replaced.

It is important to keep in mind that Con Edison's expenditures during and after the event included not only expenditures to replace network components damaged due to

overloaded conditions, but also expenditures to perform reinforcement work not related to damaged equipment. During and following the LIC event, as work crews were deployed throughout the network, they often used the fact that they had mobilized in a certain area to repair damaged equipment to also perform upgrade and reinforcement work.

As for equipment that needed to be replaced due to excessive loading, all of this equipment was significantly depreciated. As noted in Staff's Report (App. F, p.3), the capital cost to replace these partially depreciated items of equipment with new equipment has been about \$13.6 million. These capital costs are not currently included in the rates charged to our customers, and will not be until electric rates are reset by the Commission.

IV. THE JULY HEAT WAVE AND CON EDISON'S PREPARATION

A. Con Edison's Design Criteria

The Con Edison underground network system is designed, operated and maintained to function well in the face of the strains placed on electric systems by intense heat waves. The system is designed for an 86° temperature variable ("TV"). In more easily understood terms, a TV of 86° is equivalent to, for example, a temperature and humidity heat index of 105°F. The network is designed and maintained to continue to provide reliable service with the loss of any two feeders at peak design temperatures equivalent to the 86° temperature variable.¹ Con Edison's network system is unique in

¹ The system is designed for an 86° temperature variable. The temperature variable is a measure of sustained high temperatures and humidity over a three-day period. It is calculated as an average of the highest three-hour wet and dry bulb temperatures each day over a three-day period. In order to capture the heat buildup effect, the current day's weather forecast is weighted 70%, the prior day 20% and the day prior 10%. The composition of the 86-degree temperature variable typically consists of a 94-degree dry bulb temperature and a 78-degree wet bulb temperature, which corresponds to a relative humidity of 50%. In more easily understood terms, a TV factor of 86° is equivalent to a temperature and humidity heat index of 105°F.

that regard in that almost all other electric utility companies design their underground networks to operate upon the loss of just a one feeder. In fact, Con Edison is often able to avoid service interruptions when even four, five and six network feeders are out of service. While Con Edison's system is only funded and designed for the loss of up to 2 network feeders, our customers expect that we will continue to operate a network with multiple feeders out of service and Con Edison has historically met the challenge of operating the system beyond design conditions with minimal if any service interruptions.

B. The July Heat Wave and Con Edison's Preparation

Con Edison prepares in advance to meet the challenges presented by heat waves. By Sunday, July 16, 2006, all 57 networks were put on a state of high readiness. Starting Wednesday, July 12, Brooklyn/Queens Electric Operations ceased any operations that could reduce the capability of the distribution system to meet maximum delivery capability and restored all primary feeders to service. On Sunday, July 16, the Brooklyn/Queens region mobilized at 18:00 and held its initial status update meeting on Monday, July 17, at 07:30. The organization established an around-the-clock work schedule (12 hours on / 12 hours off) for control center personnel and field workers to increase support and reduce response time to events during the upcoming critical, high-demand period.

On Sunday, July 16, the Company also activated the Distribution Engineering Command Post. The Command Post, located at Con Edison's headquarters building, is equipped with all system-monitoring equipment that is available at the four regional control centers and is staffed by experienced engineering personnel. The Command Post acts as a centralized coordination center to monitor system conditions throughout the 57 networks, provide engineering support, coordinate response with regional control centers,

and provide periodic system updates. The Company also placed the four regional control centers and the Command Post under the Incident Command System (“ICS”). The ICS is a widely utilized structure for responding to emergency events. It establishes standardized supervisory authority and reporting relationships and assigns specific titles and duties to employees during the emergency event. It provides a command structure for managing planning, operations, logistics, and communications during emergency events of any nature throughout the 57 networks. Trained managers and engineers staffed the ICS at the control centers and the Command Post. .

On Monday, July 17, Substations Operations increased the staffing of operators and maintenance crews in each of the Queens-area distribution substations, including the North Queens substation supplying the LIC network. It also assigned personnel to the Brooklyn/Queens Control Center and the Energy Control Center to facilitate feeder processing throughout the event. Con Edison’s Energy Control Center, which has operational authority over all primary feeders in the 57 networks, assigned dedicated personnel to each shift to expedite feeder processing, and the Company proactively assigned support staff for maintaining critical data and feeder processing management systems in the event of a system problem.

V. CON EDISON’S ENGINEERING JUDGMENT TO OPERATE THE NETWORK WAS THE CORRECT DECISION

For seven months, Staff has diligently studied the event and reviewed and re-reviewed all of the data. The engineering decision as to whether system conditions require that a network be shut down is extremely complex and requires operational experience and the exercise of engineering judgment. The complex nature of this issue and the difficulty of concluding that a network must be shut down is demonstrated by the

fact that despite seven months of study, Staff is still unable to identify at what hour and on what day engineering judgment required that all electric service be terminated to this section of Queens, consisting of 115,000 metered customers, the majority of whom were receiving electric service without difficulty and the hundreds of thousands of others who rely on the continuous supply of electric service in this network (such as commuters, workers, etc.).

Based on Con Edison's experience in operating networks during multiple contingencies, and guided by Specification EO-4095, the Company strongly believes that its decision to maintain electric service to the Long Island City network was the right one. While more than 25,000 customers in that network were out of service during that time, the impact of shutting down the network entirely would have been even more severe. All 115,000 customers would have been out of service. Several subway lines and the Long Island Railroad would have been without power, and all streetlights and traffic signals would have been disabled. A shutdown of the entire network would have had an enormous impact on the people living, working and commuting through the Long Island City network.

Equally as important, a network shutdown was not justified from an operational standpoint, based on the conditions experienced by Con Edison's equipment during the event. Con Edison operated the Long Island City network pursuant to its specification, EO-4095, which sets forth the conditions in which a network shutdown is appropriate. Under EO-4095, a network shutdown is appropriate if it will prevent extensive damage to Con Edison's electric distribution equipment. The purpose of the specification is to prevent a disaster in which, as a result of damage to equipment, an entire network is

without power for an extended period of time in the order of weeks or even months. As a result, the specification calls for network shutdown when there is evident damage to equipment in a substation (like the substation fire experienced in Washington Heights in 1999), extensive primary feeder overloads, extensive transformer overloads, or cascading manhole fires (which demonstrates extensive damage to the secondary network is taking place). None of these conditions were present during the Long Island City event and, as a result, Con Edison properly maintained service to the Long Island City network.

Staff claims that EO-4095 does not provide clear enough guidance regarding when network shutdown is appropriate. Con Edison disagrees, and believes that the specification very specifically describes conditions in which network shutdown is appropriate. What in fact appears to be the case is that the Staff believes the network should have been shut down, even though the conditions cited in EO-4095 were not met. In particular, the Staff believes that the damage that occurred to the secondary network was in fact substantial enough to justify network shutdown. The Staff points to what it characterizes as a “severe” and “massive” number of manhole events in the network – 141 events over 9 days – and also to what it claims to be the \$100 million cost to repair the network.

Con Edison recognized during the event and continues to recognize that there was damage to the secondary cable during the Long Island City event. It is known at Con Edison and in the utility industry generally that during a multiple contingency event like Long Island City, local 120 volt secondary cables may and do experience damage. Here, the actual number of secondary cables affected was not a significant portion of the network – 3.7% of the secondary cable in the network. There are approximately 20,750

sections of secondary cable in the Long Island City network. During the restoration and recovery process in Long Island City, 764 sections of secondary cable were replaced due to failure during the event or conservative condemnation after an inspection following the event.

It was Con Edison's judgment during the event, which it stands by today, that the decision to keep the network in service was correct and in accordance with the Company procedure. First, service to the network as a whole was not jeopardized by the damage that occurred. While there were significant outages, the core of the network and the majority of customers continued to have service. This included the transportation systems that were previously discussed.

Second, there was no identifiable point in time at which an operator could or should have recognized that a network shut down was required, and when network shutdown would have prevented further substantive damage – the stated purpose of a network shutdown. It is significant to note that while the Staff Report takes the view that the network should have been shut down, it does not point to a date and time when that decision should have been made. The Report refers to reports of manhole events, and guesses that much of the damage occurred Tuesday evening and Wednesday morning. But as the Staff well knows, that is speculative, even in hindsight. And, Staff does not point to a time on Tuesday when the information known at that point should have led the operators to shut the network down.

In fact, the reported manhole activity was light throughout the event. As Staff points out, it is manhole fires and explosions which indicate that low voltage secondary cable is being damaged (Report at p. 14, fn 12). Con Edison has about 15,400 manholes

and service boxes in the LIC network. During Monday, July 17, there were no manhole or service box fires or explosions; during Tuesday, July 18, there were a total of two; and during Wednesday, July 19, a total of eight. Thus, manhole fires or explosions happened at a slow rate over the course of a number of days. EO-4095 calls for network shutdown where cascading manhole fires are observed in a network, because this is evidence of a rapidly deteriorating condition on the secondary grid that could cause very significant damage to the secondary. Network shutdown, in that circumstance, can prevent additional damage to the secondary grid. Such a condition never occurred in Long Island City and thus, network shutdown was not the proper operational response.

Instead, the proper operational response was precisely the response that was implemented by Con Edison. The Company focused on restoring primary feeders in the network, which is the backbone that provides the necessary support to the secondary, and by reducing demand for electricity in the network. By restoring primary feeders to service and reducing the demand for electric service, Con Edison was able to relieve the strain on the secondary, which in fact was largely accomplished by mid-day, Thursday, July 21, when all but three feeders were in service. The restoration of feeders also increased voltage in the secondary and improved service to customers who experienced low voltage. Once the secondary was no longer strained, Con Edison was able to turn to the task of replacing the secondary cable that had been damaged and replacing blown fuses and blown limiters, all of which resulted in restoring customers to service in the network.

One of the reasons that the damage to the secondary grid was limited to localized areas is because the Con Edison networks have a built in system that protects the

secondary network from extensive damage. The network is equipped with what are called “limiters” that open – stopping the flow of electricity – when a section of secondary cable operates substantially above its design limits. Limiter operation is not perfect for a host of reasons, including age, prior damage, and defects and thus the loss of 764 sections of secondary cable in this event. Con Edison has run models that demonstrate that 1,028 sections of secondary cable were protected from failure by limiters that opened during the event. It is important to note that when limiters open, they can result in customer outages. The Company found that in many instances power was restored to customers by replacing limiters, rather than by replacing cable.

The Staff has suggested that Con Edison did not properly consider the option of shutting down and then restarting the network. However, this option was considered, and a number of factors caused Con Edison not to take this step. First and foremost, as already discussed, the conditions justifying a network shutdown did not exist. Secondly, restart and restoration following a network shutdown is a complex and substantial undertaking that can take a considerable period of time.

If the network had been shut down, the analysis performed during the event showed that 18 primary feeders would have had to be in service in order to restart the network. An analysis after the fact performed by using sophisticated computer models shows that a successful restart would have required 20 feeders to be in service. At two points during the Long Island City event, 10 of the 22 primary feeders in the network were out of service. If a network shutdown had occurred at either point, then 8 or 10 primary feeders would have had to be completely repaired and tested. This restoration may have taken days.

In addition, when the network is shut down, practically no repair of the secondary can take place, since the Con Edison crews would have no ability to measure energy flow and voltages in order to identify the areas that need to be repaired. As a result, in Long Island City, the network would have been shut down, then restarted, and then the restoration process to the secondary would then take place, adding to the time customers would be out of service.

Another factor impacted Con Edison's decision not to consider a shutdown and restart of the network, and that is the "close in open autos" (or CIOAs) that were experienced during the event. In Long Island City, operators repeatedly had the experience of a primary feeder faulting, a crew identifying and repairing the fault, but when the feeder was restored to service, the feeder immediately tripped again without apparent reason. As stated in Con Edison's October 2006 Report, analysis after the fact has identified the cause of several of these feeder trips to be "in rush" current. During the event, the operators did not know the cause, and they were concerned that if they shutdown the network and tried to restart it, multiple feeders would CIOA, causing the restart to be unsuccessful. If this had occurred, the delay would have been even greater.

Significantly, Staff implies that much of the cost incurred by Con Edison as a result of the event could have been avoided by a network shutdown. In fact, much of the damage to the network would likely have already have occurred by the time a network shutdown would have taken place, and the shutdown itself would have resulted in an unknown additional monetary cost, not to mention the social upheaval that would have been caused.

Staff points out that the decision making process within the Brooklyn/Queens Control Room was a collaborative effort of engineers, involving input by general managers and the regional vice president. Staff suggests, however, that the decision should have been made by employees whom Staff calls “operators” rather than the “managers” (74). No electric utility would function in that manner.

The operation of the Long Island City network is run out of the Brooklyn/Queens Control Center. The Control Center is equipped with state of the art technology that monitors system conditions in the Brooklyn and Queens networks. It is staffed with experienced people who each play a critical role in operating the network systems. During the event, the Control Center was fully staffed 24 hours a day. In addition, experienced managers with operational experience during multiple contingency events were brought in from the Brooklyn/Queens region and all over the Company so that the best and most experienced people were on hand.

The decisions that were made were collaborative, pooling information from all available resources, including engineering and the field. As EO-4095 specifies, both the Vice President of the region and the General Manager were involved in the operational decisions that were made, including the decision not to shut down the network. EO-4095 properly requires that where possible, senior management make the difficult decisions that are required during a multiple contingency event. Those decisions must be made at a high level, precisely because they are so important and because they must take into account all available information, not just a narrow picture that one operator may have.

The Staff points to audio tapes that were made of the dispatch desk’s telephone calls with Con Edison employees working in the field. They point in particular to calls in

which one or more field personnel describe manhole events, and another in which the dispatcher opines that the network should have been shut down. As for the reports of manhole events, that information was passed on to the management in the Control Center. Several different managers testified in depositions and interviews taken by the Staff that they stopped by the dispatch desk (or emergency desk as it is called) periodically and asked for reports from the field and the status of manhole activity. In addition, the dispatchers are tasked with entering into the computer system all manhole events reported from the field, and management accessed that computer system throughout the event.

As for the shutdown decision, the “operators” who Staff says should have made the shutdown decision – the emergency desk dispatchers – testified that they have no experience operating the network, no experience making a shutdown decision, and no understanding of the criteria that should be used to make the decision. Not only did they not have the proper background or experience to make the decision, they had only one small sliver of the information that was available to the senior management that was properly tasked with the decision-making role. So while the tapes provide the Staff with sensational material that gives the appearance of support for its view, no reasonable decision maker would rely upon them to undermine the actual decision making by Con Edison during the event.

In sum, Con Edison continues to stand by its decision to maintain the Long Island City network, not because it fails to recognize the severity of the event, as Staff contends. Con Edison understands that the event was very serious both to its customers and to the Con Edison system. Rather, it is because the right decision was made, pursuant to a good

specification, by the right, experienced senior people, based upon all information that was available at the time. Even given what we know today, in hindsight, it was the proper decision for Con Edison's customers and for the network.

VI. POSITIVE FINDINGS IN STAFF'S REPORT

In evaluating the Company's performance, we ask that the Commission not lose sight of the many positive findings and comments contained in Staff's Report concerning the Company's performance. These include the following.

A. The Historical High Level of Reliability Provided by Con Edison to Its Customers in the Long Island City Network

The electric outage that took place in a part of the LIC network – one of Con Edison's 57 electric distribution networks – is uncharacteristic of the Company's service record as a whole and particularly uncharacteristic of the service historically provided to customers in the LIC network. The reliability generally provided by Con Edison to its customers exceeds by a wide margin that of all other utilities in the U.S. and is seven and one half times better than the average utility. Even using the very high standard of Con Edison's general service reliability, the customers in the LIC network have been served extremely well. As noted in Staff's Report (17), the Long Island City network has been more reliable than the Company's network system as a whole. Staff observed that between 2001 and 2005, Long Island City network consumers experienced an average interruption rate of two metered customers interrupted per 1,000 metered customers served compared to three metered customers per 1,000 customers served for the Brooklyn/Queens operating area and seven per 1,000 metered customers served system

wide.² In 2005, Long Island City network customers experienced service reliability of less than three interruptions per thousand customers served. This puts the LIC network in the top quartile of Con Edison's 57 networks and the reliability provided by Con Edison to its customers was 400 times better than the average customer experience in New York State.

B. Con Edison's Commitment to Investing in Its Infrastructure

To achieve such high levels of reliability, the Company makes substantial investments in its electrical infrastructure and has historically done so well before the Long Island City event. As pointed out in Staff's Report (135; Appendix E), from 2000 through 2005 Con Edison spent about \$4 billion for capital improvements to the electric transmission and distribution (T&D) system, about \$1.2 billion more than was covered by its rates. \$2.8 billion of this amount was spent for improvements to the electric distribution system and 29% (\$0.8 billion) was invested in the Brooklyn/Queens distribution system that includes the Long Island City network. During the same period, the Company spent nearly \$1.9 billion in Operations and Maintenance (O&M) expenditures for the Electric T&D system. Of the \$1.2 billion spent for electric distribution O&M, one third was for O&M spending in the Brooklyn/Queens distribution system. Significantly, the Company's O&M expenditures exceeded the cumulative rate allowances for this period.

In fact, within the Brooklyn/Queens region, Con Edison has invested substantial resources to maintain the high reliability of the LIC network. From 2000 through 2005, the Company upgraded approximately 520 primary cable sections in the LIC network,

² System wide performance excluded 2002 performance when factors not related to distribution system performance interrupted network system customers.

eliminated about 842 sections of PILC cable and over 200 targeted stop joints, and installed more than 350 new network transformers. As part of Con Edison's 2006 summer preparation programs in the LIC network, Con Edison upgraded approximately 169 primary cable sections on 18 feeder projects and increased secondary system capability by adding or replacing 18 network transformers and installing 16 associated secondary mains. Also, the Company replaced and upgraded more than 80 secondary mains, high-potential tested eight feeders, eliminating 13 weak primary feeder components, and, replaced about 70 primary PILC cable sections and associated targeted stop joints.

C. The Company's Restoration Program Was "Vigorous" and "Well Managed"

Staff closely monitored every aspect of Con Edison's LIC network recovery effort and repair of equipment (121). Staff's objective "was to observe and assess [the recovery effort's] effectiveness and ensure that the network was being returned to a condition that provided safe and reliable service" (121). With this objective, Staff's Report "concludes that Con Edison has conducted a vigorous and well-managed effort to identify and remedy event-related damage in the network" (124). These efforts, plus additional work that the Company has performed to upgrade and reinforce network equipment will promote the networks return to its exceptional level of reliability during 2007 and beyond.

D. Communication Strengths

As Staff's Report recognizes, the Company has invested considerable resources and developed considerable expertise in its customer service and communication staffs (34). These representatives were trained and ready and, in fact, communicated with and

assisted customers throughout the event. Staff's Report observes that through no fault of these representatives or their preparedness, they "did not have appropriate information" about the customer count or when service would be restored (4, 34). Nonetheless, they began communication activities early and communicated continually throughout the event. Notwithstanding Staff's comment that the Company's efforts were "unavailing" (34), as noted below Con Edison's communications and assistance activities were quite successful in a variety of ways, as Staff's Report points out.

1. Call Center Communications

Staff found that the Company's Call Center had sufficient staffing and telephone lines to handle incoming calls and that calls were picked up in a reasonable time (24). From July 17 through July 26, the Company received 565,710 calls from throughout its entire service area for all business matters, e.g., billing inquiries. Overall, 94.7% of the 565,710 calls were answered. Only 9,727 callers received a busy signal, and 85% of the callers receiving a busy signal successfully called back and made direct contact with the Company (32, fn. 37). Staff also found Con Edison's process effective for keeping its Call Center representatives informed about event information to use in communications with callers (43). Finally, and after listening to a random sampling of recorded calls, Staff found that the Company's representatives demonstrated appropriate skill and showed empathy to the callers (43).

2. Communications with Life Sustaining Equipment Users

Con Edison asks consumers that use electrically powered life sustaining equipment ("LSE") to register with the Company so that they can be contacted both in advance of storms that could affect electric service and during electric service outages. Staff's Report explained the measures the Company uses to inform consumers of this

program. As part of the process to establish the account, we ask customers whether life sustaining equipment is used in their household. In addition, we send mailings to customers describing our LSE program. All residential customers receive an invitation to enroll in this program twice each year via an article and application in *Customer News* and in the rights and responsibilities notice which customers receive annually. Information about the LSE program can also be found on Con Edison's web site. Customers can notify the Company at any time regarding their LSE status by calling the Con Edison toll-free number (1-800-75-CONED) or by visiting the Web site and completing an application online. We also send a letter each year to LSE service-related providers (medical and surgical equipment suppliers, repair service providers), hospitals, rehabilitation centers, home health care providers, and emergency responders, such as police, fire, and ambulance/ambulette services. This annual mailing asks these organizations to alert their clients to register with Con Edison and encloses a survey brochure that their clients can complete to advise us of the use of life-sustaining equipment. All LSE customers on record with Con Edison receive a letter each spring reminding them that they are registered and outlining the LSE program and the need to be prepared for an electric service outage (45).

Staff's Report points out that in anticipation of the heat wave beginning July 17, Con Edison called all LSE coded accounts (34-35). On July 17, 2006, from 07:40 to 09:45, outbound interactive voice-response-unit calls were made to all 2,376 registered LSE users in the entire service area, including 58 LSE users served by the LIC network. The outbound call message for LSE users referred to the anticipated severe weather and indicated that Con Edison's records showed there was LSE used at the premises. The

message recommended that the consumer consider alternatives in the event of an emergency such as going to a hospital, calling 911, or making other arrangements to make sure the equipment remained operable. The message also provided a priority toll-free number to call to speak to a Company representative and recommended battery backup for the equipment (46).

Staff also reported that Con Edison “called [the 58 registered LSE users in the LIC network] regularly throughout the emergency until August 31 to check on the status of their service and well-being” (46). Staff contacted all 58 registered LSE users in the LIC network and found the these “customers appeared generally to have received appropriate information and assistance,” although two LSE users reported difficulty in making initial contact with the Company and were dissatisfied with the information received when they spoke with the Company (46).

E. Customer Outreach and Assistance in Northwest Queens

Beginning on Wednesday, July 19, even before the full scope of the outages was known, Con Edison sent Customer Outreach representatives to establish a communication post within the affected community (43). Staff’s Report also found that Con Edison’s outreach personnel “acted appropriately to assist consumers in preserving food and distributed both dry ice and regular ice” (47). As Staff noted, ice distribution also began on Wednesday, July 19 and continued daily through July 26 at numerous locations throughout the affected communities (47). Given Staff’s belief that the majority of customer outages occurred during the overnight period from Tuesday, July 18, to the morning of Wednesday, July 19 (68), the Company’s outreach communication and activities were timely.

F. Flexible and Liberal Reimbursement Claims Policy

To address this unique and extraordinary event, Con Edison adopted a flexible and liberal reimbursement policy to mitigate the hardships endured by direct and even indirect customers within the LIC Network. As Staff's Report states, the Company relaxed tariff provisions to make sure that no customer was restricted in receiving payment for food spoilage (57-58). The Company reimbursed residential customers up to \$350 for spoilage of food and medicine based solely on the amount claimed -- without the need for receipts or detailed itemization of their losses. To assist commercial customers with the claims process, teams visited more than 500 open stores with perishable merchandise over a five-day period beginning on July 24 and resolved claims on-site based on a visual evaluation (59). Staff also points out that the Company waived the \$10 million cap on total reimbursements and the 60-day period for filing claims. These efforts to alleviate customer hardships resulted in direct customers and indirect customers receiving reimbursements in excess of \$14.5 million. Con Edison is the only utility in the state that provides such protection.

In order to facilitate the claim process, the Company made claim forms, and information about filing claims, widely available in a number of ways. Staff's Report referred to some of these methods including sending a letter to all customers in the affected communities, providing access to the claim form on the Company's web site, establishing six community sites for filing a claim and obtaining assistance, making the claim form available in six languages, accepting claims by mail, fax, or on line, and through press releases, the outreach van, and the Call Center (35, 43, 58-59, 121). Other actions that the Company took to facilitate the payment of claims will be discussed later in these Comments.

The foregoing strengths highlighted by Staff provide a context in which the Commission should decide whether the current record justifies a further review of Con Edison's performance. Staff's Report shows that Con Edison has historically provided its customers in the LIC network with an exceedingly high level of service – a level of service that is superior to that provided by any other utility in the state. The Company has achieved such a high level of service through continuous systematic investments – investments in O&M and capital that exceeded the amounts covered in rates. While the Company's two-three day delay in recognizing the extent of the outages is extremely disappointing, once it realized the extent of the outages the Company responded in the numerous ways discussed above to minimize the hardships to its customers and restore service and did so in a way that was found satisfactory by Staff.

VII. CON EDISON'S DISAGREEMENTS WITH PORTIONS OF STAFF'S REPORT

Staff has conducted a thorough investigation of the event. We agree with many of Staff's observations and are implementing recommendations that will address Staff's concerns. There are parts of Staff's Report, however, with which we have strong disagreements. Very few of these disagreements, however, relate to Staff's recommendations. On February 19, 2007, we advised Staff that we are implementing the recommendations that Staff identified as priority recommendations without awaiting Commission action. Further, on February 28 we agreed to implement three additional priority recommendations that the Staff identified.

1. Network Restoration

Report Statement:

Staff notes that nearly seven months after the event permanent repairs are still ongoing (69)

Comment:

While the Report acknowledges that the Company “conducted a vigorous and well-managed recovery effort” (124), it does not mention that at the same time that Con Edison was engaged in repairing event-related damage it was also using this opportunity to conduct upgrade and reinforcement work unrelated to the event. Thus it is confusing to suggest that permanent repairs took seven months. Some examples of this additional upgrade and reinforcement work included:

1. As is typical in annual upgrade and reinforcement work, transformers were replaced due to corrosion or mechanical failure unrelated to the LIC event (i.e., neither thermal failure, secondary bushing failure, nor high gas). This was the bulk of the transformer replacement work and would include all primary and secondary cable work associated with them.
2. Most new conduit installations and all structure enlargements were proactive steps toward future system growth/reliability and were not completed as a result of any damage. This work included 170 structure enlargements and over 24,000 trench feet of new conduit systems.
3. All secondary main work triggered by inspections but NOT associated with shunt locations could be the result of damage prior to the LIC event.
4. RMS system upgrades (over 300 transmitters visited and repaired or replaced) were not due to damage associated with the event.

5. Some of the work was reinforcement (additions) to the existing system because of load growth in a very local area. This was just over 200 sections of 120 volt cable.

For the same reason, the Report is incorrect to state that the recovery cost will exceed \$100 million because it combines expenditures to repair event-related damage with costs typically incurred to upgrade and reinforce the network. It even includes some \$14.3 million dollars in claims payments. The Report creates an incorrect impression and confuses the public.

2. Customer Count

Report Statement:

Staff's Report contains statements concerning customer outage count that present an incorrect impression. The Report states that the outage management system known as STAR was not deployed in Brooklyn/Queens and if it had been used it would have signaled a larger outage (26) and that the Company "stuck to the traditional, conservative method for estimating outages" (23).

Comment:

STAR was designed for overhead radial systems and not underground network systems. The two systems operate much differently. Con Edison was experimenting with modifying STAR so that it could be used in underground network systems but was experiencing much difficulty in doing so. Staff acknowledges that "STAR does not perform as well in a network system" but unfortunately buries that very significant acknowledgment in a footnote. STAR proved so unreliable to network systems that the Company is developing an alternative system to better identify outages within a network.

Thus, any criticism of the Company for not deploying an outage count methodology that was not designed for networks and does not work in networks seems unfair.

What Staff refers to as “the traditional, conservative method of estimating outages” in underground network systems, namely, relying on outage calls from customers and then responding with field crews to perform on-site inspections, is the method used by almost all utilities with underground network systems. The historical reason for relying on calls from customers in networks is that network systems rarely have large outages. Outages are almost always local and confined to a relatively small number of customers and caused by hard to detect problems with local underground low voltage cables. Thus the practice of relying on calls from customers has served utilities well and the high reliability of networks and the rareness of large scale network outages made uneconomical to customers the use of expensive, customer-based telemetry to signal that a customer had lost service. Until the LIC event, the traditional approach worked well and made the most economic sense for customers.

The Company agrees that it must examine new technologies and techniques to estimate network outages and low voltage conditions as accurately as possible, and we are planning to have measures in place by June 2007.

3. Emergency Preparedness

Report Statement:

Staff observed that emergency preparedness drills over the last three years identified customer outage count shortcomings that were not acted on (62).

Comment:

Unfortunately Staff has misinterpreted the corrective actions identified by the Company following the 2004-2006 drills. The three exercises – 2004, 2005 and 2006 –

identified issues concerning customers, but, contrary to the statement in the Report, these issues were unrelated to establishing customer outage counts from secondary system failures.

The 2004 CERC Exercise Report resulted in three Process Improvement Teams who completed their actions. One of the teams was concerned with the ability to view on a single display current customer outage counts for all three of the Company's energy commodities – electricity, gas, and steam. It was resolved by displaying outage numbers for all commodities –on a single display using Status Central for customers without service. Outage Manager was the source of this information for electric power outages.

The 2005 CERC Exercise Report resulted in five Process Improvement Teams. One of the teams concentrated on issues concerning the ability to identify the customer impacts related to the Company's Load Shed Management Plan. This did not involve customer counts related to secondary system failures. This team's actions have been completed.

The 2006 CERC Exercise Report resulted in the formation of three Process Improvement Teams. In addition, one exercise player said the Company should be able to identify specific customer outage counts assuming all customers within a fixed geographic boundary were without service. This comment was listed as an Opportunity for Improvement. A software program using updated Census data, and the Company Customer Information System customer data accomplishes this task. This software program allows the identification of specific customer outage counts assuming the outage of all customers within a fixed geographic boundary.

4. Feeder Ratings

Report Statement:

Staff asserts that the Company's feeder rating program does not adequately account for ambient earth temperatures (81).

Comment:

The statement confuses ambient temperature with actual underground cable environment temperatures. The Company has several years of earth temperature measurements that support the 30 degree C ambient temperature level (summer of 2001 was a hot summer and the average earth temperature measured in Manhattan and Brooklyn/Queens was 24.2 degrees C). The ambient temperature rarely exceeds 30 degrees C. In addition, the Company cable rating methodology uses a conservative estimate (0.65 versus 0.75 average) for the earth's resistivity (ability to dissipate heat).

5. Manholes and Service Boxes

Report Statement:

Staff states that congestion and spacing in manhole structures contributed to primary cable failures during the LIC event (82).

Comment:

Congestion is not, by itself, a problem and has not been found to be the direct cause of secondary fires affecting primary feeders. Primary failures due to secondary fires inside a manhole are, on average, less than 5 percent of all primary cable failures. Accordingly, congestion is one factor to be considered in planning reliability work. Making congestion relief a top priority would require resource intensive efforts imposing significant costs on customers with limited benefits. Pursuant to recommendation 6B of the Company's own Report on the LIC event, the Company is currently investigating

methods to protect primary feeders from heat and fire. Staff's recommendation that the Company prioritize congestion reduction should be modified to permit the Company to complete its investigation and report the results to Staff.

Report Statement:

Staff proposes that the Company evaluate the use of infrared and/or partial discharge testing of underground cables and joints when conducting its normal underground inspections (85-86).

Comment:

Con Edison's response to Staff Interrogatory 390 (cited by Staff in support of its recommendation) states that "Infrared technology provides a surface temperature of the subject specimen which renders it ineffective on the UG and Aerial cables as they are wrapped in several layers of arc-proofing or outer jackets that prevent one from obtaining accurate records of copper temperatures." Arc proofing on primary cable tends to spread out the heat and, therefore, hides the problem. Infrared technology may have some benefits for the secondary system. The Company's study will examine this issue.

Report Statement:

Staff proposes that the Company accelerate scheduled inspections of LIC network manholes and service boxes (92).

Comment:

There are over 15,000 manholes and service boxes in the LIC network. The Company has inspected about 2,300 of these structures during the recovery effort. The Company identified the selected structures by conducting studies to identify high loading scenarios that could have damaged cable. By prioritizing its structure inspections, the

Company has already inspected and repaired the structures that are more likely to have been damaged. Staff reviewed this process during its investigation (121, 123) and “conclude[d] that Con Edison has conducted a vigorous and well-managed effort to identify and remedy event-related damage in the network” (124). The Company does not believe that immediate inspection of the remaining structures is warranted. The Company’s ongoing inspection program will complete the remaining structure inspections by the end of 2009, consistent with the five year inspection cycle established in the Commission in its Electric Safety Standards. The acceleration of the LIC structure inspections would draw from resources working in other Brooklyn/Queens load areas to the detriment of inspections in those areas.

6. Monitoring Secondary System

Report Statement:

Staff criticizes the Company’s focus on preventing the cascade of primary feeders as a disregard of the secondary system (91).

Comment:

The concentration on preventing the cascade of primary feeders was the major method used to escape the recursive cycle that leads to secondary damage and potentially the widespread loss of service. Primary feeder restoration was the most appropriate method to minimize the extent of the secondary damage. Con Edison’s managers acted entirely correctly to contain the secondary damage by aggressively restoring primary feeders to restore voltage support to the secondary grid and preempt additional damage. Appeals to customers to reduce load were also used. The Report is mistaken in stating that Con Edison ignored the secondary system. The operators were continually monitoring conditions to the secondary network and at no point disregarded the

information they were receiving. What Staff may be saying is that new engineering tools should be developed to allow the Company to do a better job of monitoring the secondary system and doing so on a real-time basis. The Company fully agrees with that observation bearing in mind that no utility has developed a system that allows it to accurately monitor secondary flows and events in real time.

7. Current Limiters

Report Statement:

Staff's Report asserts that current limiters failed to protect the secondary system (92).

Comment:

Con Edison has concluded through experience that many limiters will open to protect secondary cables under high load conditions and limit the spread of secondary damage in addition to opening due to faulted cable conditions. This occurred in Washington Heights prior to the network shutdown when limiters opened to isolate and protect the large portion of the secondary grid supplying Inwood.

The secondary grid carries the flow of currents delivered by the network transformers connected to the grid. The distributed networks are designed for N-2 contingency which applies only to the primary feeders. The secondary grid is designed so that no secondary cable is significantly overloaded when any combination of two primary feeders are interrupted at summer peak loading. Under multiple contingencies beyond the design criteria the load flow in the secondary grid exceeds the design limits. However, under these conditions the secondary grid is designed to isolate faults and prevent cascades by limiting the damage to the problem section. The cable limiters secure the secondary grid resiliency.

The cables in the secondary grid are protected by the cable limiters. Limiter ratings are based on the insulation damage withstand curve of the cable. Limiters have a thermal time lag to prevent a cascading effect within the network. They open for a low-impedance fault on the cable or when the current substantially exceeds the damage level of the associated cable.

In order to demonstrate the effectiveness of limiter operation under multiple contingencies in the LIC event, all the network contingencies were modeled in the PVL secondary model for the LIC network. A sequential output by contingency and each calculated blown limiter associated with the secondary cable sections were removed from the model.

In the model runs, the load flow on all cable sections in the secondary grid was determined at several network contingencies. In majority of the instances, the amount of current flowing through the limiters along with the duration of this load flow was sufficient for limiter operation prior to cable insulation damage. In instances where the duration of the load flow exceeded the time lag of the limiters, the cable insulation was damaged prior to limiter operation.

At the end of the event, the PVL results estimated 1,028 secondary mains sections were isolated and protected by limiter operation. Although the accuracy of the PVL results is limited by the accuracy of the secondary model, this clearly demonstrates that the limiters isolated secondary grid under multiple network contingencies. In addition, there is no evidence that current limiters and network protector fuses do not coordinate very well together.

8. Restoration

Report Statement:

Staff's asserts that the Company was unable to use its six mobile generators in the network during the event (120).

Comment:

Staff's Report overlooks the complexity of deploying 2 MW generators developed to support 4 kV systems to support 27 kV networks. Most of the Company-owned generators were designed to support the 4kV systems during contingencies and hence are larger than necessary for most of the network customers in LIC. During the event, the Company developed a configuration design to allow the use of these 2MW units via 4kv/120-208v padmount stepdown transformers. However, after considering that such a configuration required greater field resources (primary and secondary splicing), staging obstacles (generator, transformer and primary/secondary cable layout), and additional delivery resources (generator and transformer), it was decided to use the smaller vendor units. These smaller units were available.

As a result of storms in Westchester, there was likelihood that some generators would be needed locally. In light of the availability and delivery timeframes of vendor-supplied generators, it was most expeditious to direct the vendor resources to the Astoria area rather than redeploy Company transformers from Westchester. Had we depleted available vendor units, the other Con Edison units would have been re-deployed.

9. Communications

Report Statement:

Staff states that the recorded messages on the Company's call system impeded customers in reporting outages (42).

Comment:

The recorded messages were used to communicate important outage information to customers and to comply with the PSC's Outage Notification Incentive [Penalty] Mechanism. The length of the messages was driven by the need to comply with the content requirements of the Commission's mechanism. The "billing problem" message was provided only intermittently during very high call volume periods to ask customers calling about billing matters to call back at a later time so that the Company's call representatives could focus on handling emergency calls. The change made on July 24th allowed customers with follow-up calls to get through to a representative since the messages would not provide them with any new information.

The automated system also provides self-service functionality for callers that is not adequately discussed in the Report. Self-service outage reporting provides outage information quickly and efficiently to system operators to enable them to more quickly understand and respond to outage events. During the LIC event, callers selecting the option to report an electric emergency were provided with the outage notification incentive mechanism content information and then were able to use our self-service system to report their service problems or they could transfer to a representative to report it. While we have enhanced the self-service application since the event to provide information as efficiently as possible and reduce call time, the reporting systems during the event were adequate to allow customers to report their outages while we also maintained compliance with the Commission's Outage Notification Incentive Mechanism.

Report Statement:

Staff proposes that portable telephone banks and cellular transmitters be set up when outages exceed 48 hours (152).

Comment:

This activity presents a potentially large, expensive, open-ended, and unmanageable commitment. There is no limit to the number of neighborhoods that could be involved during a major storm, protracted, severe heat event, or regional blackout. Having phone banks in limited locations would provide very limited benefits. A more practical approach is to require the Company to encourage people to store (along with the typical emergency supplies) an inexpensive corded telephone for use during an electric outage when cordless telephones do not work.

Report Statement:

Staff contends that the Company's outreach van should have been used to survey the network (45).

Comment:

The primary purpose of the van is to establish a field presence for members of the public to be able to interact with Company personnel for customer care issues and information. The van is not utilized for the purpose of surveying areas with respect to outages. To the extent field surveys are appropriate, the Company can employ separate measures to gather this information.

Report Statement:

Staff states that the Company's communications with public officials was inadequate and in some cases non-existent. (38).

Comment:

The Company's Reports provided documentation of contacts with all public officials customers during the event. Until the Company discovered the scope of the outage, it was not in a position to communicate information it did not have. It is understandable that public officials were frustrated that timely and accurate information was not immediately available, but communication with public officials was nonetheless ongoing based on the available information. Once the extent of the outage was identified, the information was communicated to all public officials.

Report Statement:

Staff's Report provides a critical assessment of the Company's communications with critical care and large facilities and government agencies (54)

Comment:

The Company's Reports provided documentation of contacts with all Large / Critical customers during the event. In fact, Staff's Report acknowledges that the Company was in contact with its 400 large customers between July 17 and July 20 (117). In choosing to focus on several administrators who were understandably frustrated by the uncertainty resulting from the outage, the Report loses sight of the continuous and successful effort that the staff of Energy Services made to stay in close contact with such facilities and to assist them during the outage. Given the fluid nature of the loss of feeders and on-going feeder restoration efforts, customer updates were frequent. With the stabilization of the primary system on Thursday, July 20, all Large / Critical customers were contacted again to confirm their status: restored from the distribution system or on generation. Following the repair of the primary distribution system, those

large and critical customers directly supplied by multi-bank installations were encouraged to go back on to our system.

10. Claims

Report Statement:

Staff asserts that a Company representative provided to a customer misleading and inappropriate information about a property damage claim (60-61).

Comment:

We have reviewed the claim regarding the damaged air conditioning unit that is cited by Staff (Claim # C-37972EE). Staff's concern that the representative's response was "misleading and inappropriate" is unfounded. The complete text of the CSR's response to the customer is as follows:

"You can send the claim for the air conditioner and when it is received it will be forwarded to the Claims Department for review. They will let you know if the claim will be honored."

Contrary to Staff's assertion, the CSR's response was not "misleading and inappropriate." Although the Company disagrees with Staff's conclusion, we concur with the recommendation (61) that the Company "instruct its Representatives to not make assurances to consumers concerning payment of claims, except to the extent those Representatives are the decision makers and will ensure that the claims decision they impart is carried out."

VIII. FUTURE REGULATORY PROCEEDINGS

Staff's investigation of the LIC event has been vigorous and comprehensive. We believe Staff's efforts will help Con Edison's system in the long run. However, in terms of the procedural setting in which to move the stakeholders forward in addressing these events, we believe it is very important to proceed under a regulatory framework that has

the greatest potential for cooperative and constructive input by stakeholders; that maximizes the potential for prevention of a recurrence of the LIC events; and, that focuses stakeholders on improvements to provide better electric service and a better electric system. We do not believe Staff's proposal for a prudence proceeding will achieve these important objectives, and we do not believe the institution of such a proceeding is otherwise in the public interest.

A prudence proceeding is not needed to allocate costs arising from the LIC event. The Company has already absorbed significant costs relating to the LIC event and has voluntarily committed to not seek recovery of those costs and to ensure that they are not reflected in future electric rates. Specifically, as noted in Staff's Report (App. F), the Company has incurred about \$40 million of operation and maintenance costs related to the LIC incident and has committed that it will not seek to recover from customers any of those costs. Similarly, the Company has agreed to keep ratepayers harmless with respect to the approximately \$15 million in food spoilage claims paid.³

In addition to these significant financial losses, the Company has already incurred significant financial penalties under the reliability performance mechanism of its current rate plan. This performance mechanism, which establishes the automatic imposition of penalties for service interruptions above set thresholds (subject to limited exclusions, such as for storms that are beyond Con Edison's control) has resulted in over \$9.0 million in penalties for the Long Island City outage.

³ Staff's concern (p. 141) that customers may somehow be required to bear a portion of these costs if the Company's earnings for the rate year ending March 2007 would otherwise exceed the sharing threshold is not a basis to commence a prudence proceeding. Customers have no reasonable expectation to earnings above the threshold; rather, they have an opportunity to realize a portion of such earnings if and when actually achieved by the Company. To the extent the actual costs incurred by the Company for LIC prevent the Company from achieving earnings above the threshold, customers are not entitled to any sharing of earnings. Moreover, Staff's concern is unrealistic because, based on current projections, it is highly unlikely that earnings will otherwise exceed the earning sharing threshold.

Significantly, as noted in Staff's report (134), the Company is subject to penalties of up to \$56.5 million per year for failing to meet all of the specified targets under the reliability performance mechanism and an additional \$36 million per year for failure to meet all of the specified targets under the customers service performance mechanism, with no incentive whatsoever for the superior performance it has generally achieved. As noted above, these mechanisms have caused the Company to incur a penalty of \$9 million for the LIC event. Adopting Staff's proposed recommendation to pursue additional penalties for this event would retroactively revise the agreed-upon rate and regulatory framework for Con Edison, which would ultimately harm customers.

The Company's existing rate plan, which was adopted by the PSC, reflects agreement by the Company, Staff and the other interested parties on the potential penalties to which the Company could be subject for departure from stipulated performance levels, including during events such as the LIC outage. The imposition of penalties in addition to the substantial penalties specified in the Company's current rate plan is not appropriate. Such action would adversely affect investor confidence in the regulatory compact under which the Company operates and on which investors place reliance. The Commission is aware of the public interest in maintaining investor confidence if the Company is to continue to be successful in accessing on reasonable terms the significant amount of capital required to support the Company's infrastructure investment program. The application of predictable, reasonable and non-punitive regulatory policies, including at times when the regulatory system is tested by unusual events, is essential in that regard.⁴

⁴ During 2006 alone, Con Edison raised more than \$550 million in equity and \$1.5 billion in new debt.

More fundamentally, a prudence proceeding would divert the Company's operating and customer focus for an indeterminate and potentially long period of time, with potentially long-term adverse impact on customers. The principal focus of the Company and the PSC Staff should be on promoting improved service for the state's consumers, including the identification of improvements to utility service and systems to be undertaken to prevent recurrence of past concerns. The resources and attention must be focused on using lessons learned from experience in a cooperative effort to meet the growing energy needs of the Company's customers through a strong and reliable system.

It is no coincidence that the Commission's focus in reviewing similar service disruption events has not been on utility "prudence" but on forward-looking system and operating improvements. In numerous other cases involving the response of New York State utilities, including Con Edison, to various storms and extreme weather situations resulting in the interruption of service to customers, the Commission has investigated a utility's handling of an outage without commencing a prudence proceeding. The Commission directed Staff to conduct a full examination of the outages and report its findings and recommendations to the Commission and then required the utility to implement certain corrective actions and provide periodic status reports on its implementation. Some of these events adversely affected many utility customers and resulted in extensive review of operating practices and resource commitment. Yet, in each of these cases, the Commission took a forward-looking approach. The Commission should do the same in this proceeding, again, focusing on what is in the best interest of the customers.

It is also no coincidence that the Public Service Law, with some exception, is forward-looking in concept and in practice, and places at its core forward-looking improvement in the rendition of utility service. We look forward to addressing the LIC events in a spirit of cooperation and constructive dialogue with the Staff and other interested stakeholders. A prudence proceeding will work at cross purposes with those objectives and it is not in the public interest.

Respectfully submitted,



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