



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE CONSUMER PROTECTION BOARD

Eliot Spitzer
Governor

Mindy Bockstein
Chairperson and Executive Director

March 2, 2007

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

Hon. Jaclyn A. Brillling
Secretary
NYS Department of Public Service
3 Empire State Plaza
Albany, NY 12223-1350

Hon. Eleanor Stein
Administrative Law Judge
NYS Department of Public Service
3 Empire State Plaza
Albany, NY 12223-1 350

Dear Secretary Brillling and Judge Stein:

Pursuant to Your Honor's Notice of Comment Schedule Issued February 13, 2007, please find enclosed the original and ten (10) copies of CPB Comments to be filed in the above captioned matter. Please note that on this date these comments are being served electronically upon all active parties to this case.

Very Truly Yours,

ES John M. Walters

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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.

Case 06-E-0894

INITIAL COMMENTS OF THE
NEW YORK STATE CONSUMER PROTECTION BOARD

Dated: March 2, 2007
Albany, New York

MINDY BOCKSTEIN, EXECUTIVE DIRECTOR/CHAIRPERSON
NYS CONSUMER PROTECTION BOARD
5 EMPIRE STATE PLAZA
SUITE 2101
ALBANY, NEW YORK 12223-1556
<http://www.nysconsumer.gov>

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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.

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Staff of the Department of Public Service (“DPS Staff”) issued a report on February 9, 2007 (“DPS Report”) summarizing its investigation of the July 17, 2006 through July 25, 2006 power outages in the Long Island City (“LIC”) distribution network of Consolidated Edison Company of New York, Inc. (“Con Edison” or “Company”). That report concludes that Con Edison’s performance was “unacceptable and a gross disservice to its customers.”¹ It demonstrates that the Company failed to properly operate, maintain and manage its electric system; substantially understated the number of customers who lost service or experienced outages; did not comprehend the magnitude of the crisis on the secondary network, leading to damage of the power delivery system; and failed to fulfill its responsibilities under the Public Service Law.² The Report contains 87 recommendations for improvements in Con Edison’s electric systems, maintenance practices, procedures to help the Company understand how problems with its system affect consumers, and its communication with customers and other entities. Overall, these recommendations are “intended to minimize the chance for similar events to occur

¹ DPS Report, p. 2.

² Id., pp. 9 – 10.

in the future.”³ DPS Staff also recommends that the Public Service Commission (“PSC” or “Commission”) commence a proceeding to examine the prudence of the Company’s actions or inactions regarding this matter.

The New York State Consumer Protection Board (“CPB”) submits these comments pursuant to the Commission’s February 13, 2007 Notice.⁴ In Part I, we explain that overall, the DPS Report represents a comprehensive effort by DPS Staff to investigate the cause of the power outages and identify corrective action. The CPB agrees with the vast majority of the DPS Report’s findings and recommendations. We urge the Commission to formally adopt those recommendations, impose definitive dates by which each must be completed, and vigilantly oversee Con Edison’s implementation of those recommendations.

In several respects, however, the Report should be strengthened. In Part II, we identify several issues that were not adequately addressed in the DPS Report, and explain why these additional recommendations should be considered by the PSC. In Part III, we identify some required changes to the Commission’s regulation and oversight of Con Edison. It is apparent now, that Con Edison’s infrastructure is aging, not properly maintained and was not sufficiently upgraded to meet growing load. Proper oversight by the PSC would likely have identified these deficiencies before they culminated in the LIC outage. We explain that the Commission must enhance its oversight of Con Edison and ensure compliance with its orders by abiding by legislative requirements to audit Con Edison’s construction program. In Part IV, we show that several changes to Con

³ Id., p. 1.

⁴ Case 06-E-0894, Notice of Comment Schedule, February 13, 2007.

Edison's current rate plan and tariff are required before the summer of 2007, to provide meaningful incentives for the Company to deliver quality and reliable service. In the interest of protecting consumers, we urge that the Commission address these oversight recommendations, and the process of changing Con Edison's current rate plan and tariff at the same time that it addresses the DPS Report.

It is imperative that the Company and the Commission institute prompt and substantial changes in their operations to help ensure that the Company provides safe and reliable service in the summer of 2007 and thereafter.

I. OVERVIEW OF DPS REPORT

The DPS Report is the product of a detailed investigation by DPS Staff of the LIC event. The DPS Report provides a comprehensive analysis of the causes of those outages and well-supported recommendations to help minimize the chance that the LIC outages, or a similar event, will occur again. The CPB commends the DPS Staff team for its work on this project and urges the Commission to direct the Company to adopt each of the report's recommendations, along with several critical additional requirements that we identify and discuss herein. In so doing, however, the PSC must establish a firm deadline for the Company to fully implement each recommendation, as well as an open and transparent process for the parties and the public to keep apprised of the Company's progress.

The Commission should be especially mindful of the fact that it is likely that the LIC network incurred some long-term damage that may only be discovered over time.⁵

⁵ DPS Report, p. 6.

Even if the Company implements all of the recommendations made by the parties in this proceeding, it needs to be fully prepared to respond to stresses on the LIC network in the summer of 2007 and beyond.

Moving forward, the CPB agrees that the PSC should investigate the prudence of the Company's actions in this matter. The Commission should ensure that ratepayers are not required to pay costs that could have been avoided had Con Edison acted appropriately. It is also important, however, that the Commission ensure that the Company, DPS Staff and other parties, focus on improving the service Con Edison provides to its customers.

II. REQUIRED ENHANCEMENTS TO THE DPS REPORT REGARDING ACTIONS TO BE TAKEN BY CON EDISON

In several areas, the recommendations of actions in the DPS Report should be strengthened. Our proposals in this section generally follow the format of the DPS Report.

A. Need for Vigilant Oversight in 2007

The DPS Report understates the need for vigilant oversight and review of Con Edison's investment in the LIC network, and its system-wide expenditures particularly on operations and maintenance, in 2007. Con Edison has stated that it will account for incremental operations and maintenance expenses associated with the LIC outages, as well as the cost of outage claims settlements, in the current period. This means that customers would not pay any of those costs unless the Company's earnings exceeded the

earnings sharing threshold in the Company's Rate Plan.⁶ The DPS Report includes a projection that these costs will total \$68.5 million through December 2006.⁷ Significant additional costs related to the LIC outages are expected to be incurred in 2007.

The Report does not mention the fact that the Company has a powerful incentive to postpone or avoid other expenditures, since it is absorbing the costs associated with the LIC outages and faces the risk of a PSC finding of imprudence. In these circumstances, the Company may choose to reduce other expenditures, including those which underlie the charges paid by its customers. PSC vigilance regarding this matter is required. The PSC should immediately increase its oversight of Con Edison's expenditures substantially, to ensure that necessary expenditures, particularly operations and maintenance expenses which underlie the Company's rates, are undertaken.

B. Status Reports

In many instances, the DPS Report requires Con Edison to provide a report on the status of the Company's compliance with individual recommendations. In each case, the report recommends that these status reports be provided only to DPS Staff. Interested parties should also be provided a copy of this information, as well as other status reports ordered by the Commission in this proceeding. Further, the Commission should review at a public session, no later than the end of May 2007, the Company's compliance with each Commission directive in this case.

⁶ DPS Report, pp. 140 -142.

⁷ Id., Appendix F.

C. Relationship with Case 06-M-1078

The DPS Report contains no mention of Case 06-M-1078, Proceeding on Motion of the Commission to Audit the Performance of Consolidated Edison Company of New York, Inc. in Response to Outage Emergencies. In that proceeding, the PSC directed that an independent third-party consultant conduct an audit of the Company's performance in response to outage emergencies and planning for restoration of service. In the interest of clarity, the CPB recommends that in this proceeding, the Commission include a brief explanation of the issues addressed in that case, confirm that all relevant issues regarding the LIC outage are addressed in at least one of these proceedings, and identify any overlap between the two proceedings. There should be no confusion among the parties in this proceeding, or consumers, as to the forum in which important consumer issues relating to the LIC outage are being addressed.

D. §4.2: Con Edison's Identification of Consumer Outages

A timely and accurate assessment of the extent of any outage, including the number of affected customers, is a necessary first step in identifying potential causes of the outage as well as the necessary assistance required by emergency services providers. The DPS Report includes several recommendations intended to improve the Company's estimate of the number of customers affected by an outage.

1. Coordination with Telecommunications Service Providers

The DPS Report states:

Con Edison should explore other monitoring techniques, including coordination between it and

the telecommunications carriers in its service territory, to use the carriers' status monitoring capability to detect and evaluate the extent of power outages.⁸

This recommendation should be strengthened to require the Company to implement, and not just "explore," other monitoring techniques. We urge the Commission to explicitly direct Con Edison to coordinate with the telecommunications industry in an effort to detect and monitor the extent of power outages.

Section 8.5.1 of the DPS Report details how DPS staff was in constant communication with telecommunications companies serving customers in the LIC network to keep apprised of the status of telecommunications networks and the concerns of telecommunications service providers regarding electric power.⁹ The PSC should direct that this type of interaction occur between Con Edison and telecommunications service providers during these types of events, even if it requires the Commission to serve as a de facto liaison. The information obtained through this coordination could prove to be invaluable in determining the extent of any future outages in Con Edison's network.

2. The System Trouble Analysis and Response Program

The DPS Report also recommends that the Company's System Trouble Analysis and Response ("STAR") program be made available to all operating regions by June 1, 2007.¹⁰ That program provides a better account of outages than other systems used by Con Edison. The CPB recommends that the Commission enhance this recommendation

⁸ DPS Report, p. 29.

⁹ Id., pp. 149-150.

¹⁰ DPS Report, p. 29.

of the DPS Report by adding a date by which the Company's operating regions must implement the STAR program.

3. Low Voltage Issues

Many participants in the Public Statement Hearings held in this proceeding complained that they received less than optimal voltage levels to operate basic electric equipment such as refrigerators. Customers who experienced very low voltage levels were not necessarily counted as being out of service, as long as their meter was running. The DPS Report recommends that Con Edison provide an estimate of how many low-voltage conditions existed during the LIC network event and explain how it will ensure that such conditions in a network system are estimated accurately in the future.¹¹

The Commission should also require the Company to define a threshold for what constitutes low voltage and to provide supporting studies. A reasonable low-voltage threshold is needed to quantify the number of affected customers. It may also be useful in developing service standards and performance mechanisms that may be applicable in the future.

E. §5.3: Customer Operations Organization

1. Customer Outreach Van

The CPB supports the recommendation that the Company identify ways to use its outreach van(s) and staff more effectively.¹² We recommend however, that the Company

¹¹ Id.

¹² Id., p. 49.

also identify a point-person in charge of dispatching and monitoring the outreach van during emergencies, and provide a detailed list of van functions during emergency and non-emergency periods including informing the public where the van will be stationed. This should be coordinated with the Company's public liaison program, as described in Section II (E) (3) below.

2. Life-Support Equipment Customers

The DPS Report includes several recommendations to help the Company identify consumers who rely on life-support equipment.¹³ Currently, the Company sends letters to emergency service providers and life-support equipment distributors describing its life-support program, but does not correspond directly with hospitals, nursing homes, visiting nurses and other health care agencies in a similar manner. The CPB strongly urges the Commission to expand Con Edison's efforts to identify life-support customers by reaching out to these entities.

The Commission should also require Con Edison to implement new measures to identify consumers requiring life-support equipment who are not customers of record to the utility, perhaps because they reside in multi-family buildings or high-rises served by a single meter. The PSC should also consider mandating that Con Edison send letters, bill inserts and surveys to customers on a bi-annual rather than annual basis. In addition, the CPB recommends that the Commission direct Con Edison to establish a dedicated telephone line that life-support customers may use to inform the Company of their life-support status and obtain and relate relevant information, both in emergency and non-emergency situations.

¹³ id.

3. Public Liaison Program

The DPS Report recommends the establishment of a new public liaison program to establish procedures for the Company to partner with public entities.¹⁴ While a positive step, it is imperative that the office have sufficient authority, resources and independence to provide accurate and unbiased information to key stakeholders and fulfill other mandated responsibilities, without undue influence or limitation. Effective communication is an integral part of responding to an outage in a timely, accurate and effective manner. The decision to communicate with stakeholders about the status of outage events and low voltage conditions should be without hindrance or consequence to the staff of the liaison program.

F. §5.7: Training Exercise

One of the most glaring inadequacies identified in this investigation concerns the training exercises performed, or not performed, by the Company. The DPS Report concludes that Con Edison should establish procedures to ensure that the problems it identifies during training exercises are corrected in a timely manner.¹⁵

The CPB recommends that the Company also conduct additional training exercises that focus on the types of circumstances that arose in the summer of 2006. These exercises should focus on key decisions such as whether to shut down a network. The Company should also be required to provide a report to DPS Staff summarizing these

¹⁴ Id., p. 40.

¹⁵ Id., p. 63.

training exercises, the problems identified and how each of them have been corrected. In addition, DPS Staff should attend these training exercises.

G. §6.0: Outage, Restoration, and Recovery Technical Issues

Con Edison has established certain formal procedures which identify actions to be taken concerning the operation of its network in certain circumstances. Specification EO-4095 addresses operation of the network when several feeders have failed, such as the LIC event. It replaced a previous procedure, EO-4031-2, after the 1999 outage in the Washington Heights network. The DPS Report concludes that the current procedure is not as clear as its predecessor on the criteria for deciding when a network should be shut down. The previous procedure, EO-4031-2, stated that a network shutdown “may be necessary to avoid extensive damage to the network or customer facilities.” It further identified general conditions to be considered in deciding whether to shut a network down, including the spread of manhole fires, which were numerous during the LIC outage. The current procedure, EO-4095, is vague on this issue.¹⁶

Surprisingly absent from the DPS Report, however, is any explanation of why EO-4031-2 was replaced and what role, if any, DPS staff or the Commission had in that decision. Also absent is evidence that the company had conducted any training related to the procedure. This issue should be addressed as part of the PSC’s comprehensive investigation of the LIC outage.

¹⁶ *Id.*, pp. 65-66, citing Case 99-E-0930, Order Concerning Staff Report and Directing Company to Show Cause, March 15, 2000 (“March 2000 Order”).

H. §6.13: Washington Heights Network Outage Directives

The DPS Report asserts that 36 of the 44 Commission directives following the Washington Heights Outage in 1999 have been completed satisfactorily and “eight involve on-going, long-term projects.”¹⁷ Further the report states that “four of the eight long- term projects ...relate to the problems that occurred in the Long Island City Network and are key to improving system performance.”¹⁸

1. Directives Alleged to be Implemented Completely

The DPS Report claims that several of the 36 completed directives were applied, “or had been initiated to some extent,” in the LIC network.¹⁹ No further information is provided. The PSC should continue to investigate this issue to determine the extent to which the 36 completed directives had been completed in the LIC network. It should also investigate the extent to which the LIC outages were attributable to incomplete implementation of those 36 directives.

In addition, the PSC should review assertions that other directives from the Washington Heights incident were completed satisfactorily. For example, the Commission directed that the Company “implement procedures to monitor the quality and timeliness of information conveyed to customers during an emergency situation,”²⁰ but the DPS Report in this case found numerous deficiencies in the information conveyed

¹⁷ DPS Report, p. 129.

¹⁸ Id.

¹⁹ Id.

²⁰ Case 99-E-0930, Order Requiring Implementation of Recommendations Concerning July, 1999 Electric Distribution System Outages, March 16, 2001 (“March 2001 Order”), Attachment, p. 4.

to customers.²¹ Similarly, the Commission directed the Company to “take advantage of the existing network of community-based organizations to assist in its efforts to provide affected customers with information about the problem, restoration information, updates and the claims process.”²² The DPS Report in this case found that Con Edison did not communicate with leaders of 11 community-based organizations before or during the event.²³

These findings of the DPS Report contradict assertions that directives from the Washington Heights order were satisfactorily completed. It appears that either these directives were not complied with at all, or were implemented for only a short period of time. In either case, further attention of the PSC is required.

2. Directives Not Fully Implemented

According to the DPS Report, several directives from the PSC’s Orders following the Washington Heights outages had not been fully implemented and were related to the LIC outages. The report lists those issues, but does not fully explain how they were related to the LIC outages or whether the LIC outages might have been avoided if they had been fully implemented. It appears to the CPB that the Company’s failure to fully implement these directives at least contributed to the LIC outages.

²¹ E.g., DPS Report, p. 3, 4, 5, 10.

²² March 2001 Order, p. 4.

²³ DPS Report, p. 39.

a. Improved Modeling techniques

Con Edison uses several tools and computer programs to monitor and simulate changes within the distribution system and associated equipment. These tools provide network operators crucial information to determine what is happening in the network, what is likely to happen in certain circumstances, and the proper course of action to minimize disruption to customers. In concluding its investigation of the Washington Heights outage, the Commission directed the Company to enhance its network modeling, particularly of the secondary system.

The DPS Report concluded that the Company's progress on this effort "has been insufficient and it appears that it has not been given sufficient priority."²⁴ The absence of proper tools may have contributed to the lack of information concerning the extent, location and duration of the LIC outages. The PSC should enforce its order in the Washington Heights case.

b. Monitoring of Secondary System

In its investigation of the Washington Heights outages, the Commission found that Con Edison's ability to monitor secondary network performance was extremely limited, and stated:

Con Edison should evaluate reasonable actions that can be taken to improve monitoring of its secondary system including use of additional monitoring devices, where feasible, and report to the Commission by June 1, 2000 on its findings.²⁵

²⁴ Id., p. 90.

²⁵ Case 99-E-0930, March 16, 2001 Order, Attachment, p. 1, Implementation Status Report.

According to the DPS Report “little real improvement has been made” in this area since the 1999 Washington Heights network shutdown.²⁶ The DPS Report also concludes that as the LIC was failing, the Company “essentially ignored the secondary system.”²⁷ The inability to monitor the secondary network is directly related to the resulting damage to that network as well as the inability of the Company to identify the extent of the problem.

It appears that the Company’s failure to abide by the directive in the Washington Heights order, contributed to the extraordinary damage to the secondary system that occurred during the LIC outage. The Commission should enforce its Washington Heights order.

c. Alternatives to Hi-Pot testing of Primary feeder cables

The Commission’s order in the Washington Heights case directed the Company to:

accelerate its evaluation of alternatives to high potential testing, such as low frequency AC testing, to determine their possible effectiveness and report to the Commission on its efforts by June 1.²⁸

Some industry experts consider so-called High Potential (“Hi-Pot”) testing to be destructive, because it stresses the cables above normal operating limits. The Company has not yet identified and implemented an alternative. The PSC should enforce its 2001 order.

²⁶ DPS Report, p. 91.

²⁷ Id.

²⁸ Washington Heights Implementation, p. 4.

I. §6.14: Emergency Plan

According to the DPS Report, Con Edison followed two emergency procedures in recovering from the LIC event: the Company's 2006 Consolidated Emergency Response Plan and the Brooklyn/Queens Heat Storm Mobilization Guidelines. The DPS Report states that the previously effective 2005 Heat Storm Mobilization Guidelines were modified at some point in 2006. The modifications made purportedly changed the mobilization guidelines applicable to "level III full-scale incidents," a condition that characterized the LIC network on Tuesday, July 18 and Wednesday, July 19.²⁹

The DPS Report, however, is silent on the reason for this change, as well as any impact it may have had on Con Edison's response to the multiple feeder outages and transformer failures of July 18 and 19. The PSC should ensure that its comprehensive investigation of the LIC outages addresses these issues.

J. §6.3.5: Analysis and Findings – Cable Restoration Time

The DPS Report recommends that the Company analyze the appropriateness of the expedited feeder processing scheme it used during the LIC network event.³⁰ The Commission should also determine whether the Company had ever used or tested this procedure prior to the LIC event and if so, whether it was effective in those instances.

²⁹ Id., p. 131, footnote 145.

³⁰ Id., p. 84.

III. NECESSARY CHANGES IN PSC REGULATION AND OVERSIGHT

The DPS Report is silent on the lack of oversight exercised by Con Edison. It fails to give attention to the fact that the Commission did not follow through on its own orders resulting from the Washington Heights blackout of 1999, despite finding that several of the PSC's recommendations resulting from that event have not been implemented by Con Edison and were directly related to the LIC outage.³¹ Similarly, the DPS Report does not mention that for more than a decade, the Commission ignored provisions of the Public Service Law ("PSL") that explicitly require it to conduct an audit of Con Edison's construction program planning as it relates to reliable service. Overall, the PSC failed to ensure that Con Edison's electric system was capable of providing safe and reliable service, and did not identify issues requiring attention until after the LIC outage. Therefore, significant and meaningful changes are required in the Commission's regulation and oversight of Con Edison and its electric system.

A. Compliance with Orders

As explained in Point II, there are many similarities between the LIC outages and the Washington Heights outages in 1999. After investigating the Washington Heights outages, the Commission directed the Company to implement 44 recommendations contained in DPS Staff's Report on the July 1999 Con Edison System Outages, or explain why an alternative better met the objective of the recommendation.³² In September 2002, the Commission issued an order in which it found that the Company implemented 32 of

³¹ DPS Report, P. 130

³² Case 99-E-0930, Order Concerning Staff Report and Directing Company to Show Cause, March 15, 2000, p. 3; Ordering Clause 3, p. 5.

those recommendations, and was in the process of implementing the remaining 12.³³ The CPB is not aware of any Commission action regarding the remaining recommendations from the Washington Heights outage in the four and one-half years since that order.

Improvements to the PSC's procedures for monitoring compliance with Commission directives are required. It appears that in general, information regarding utility compliance with PSC orders is provided only to DPS Staff, which in turn, may or may not forward that information to the Commission. Apparently, criteria regarding whether the Commission receives such information have not been established. The CPB recommends that the PSC adopt an open and transparent system of compliance tracking, in this and other proceedings. This process will enable interested parties, and the public, to monitor or review utility compliance with Commission orders, and identify issues requiring attention.

B. Management Audit

The DPS Report identifies numerous improvements that are required in Con Edison's network and maintenance practices to eliminate weaknesses that could lead to events similar or worse than the LIC outages. These deficiencies were relatively easy to identify after the LIC event, but had not been identified by Con Edison or the PSC before the disaster. Had the Commission pursued its authority, these problems might have been identified, and addressed, before the LIC outage.

³³ Case 99-E-0930, Memorandum from the Office of Electricity and Environment to the Commission, September 3, 2002, Filed Session of September 18, 2002, Approved as Recommended and so Ordered by the Commission, September 20, 2002.

The PSL explicitly provides the Commission an important tool to investigate an energy utility's construction program planning and its ability to provide reliable service, and requires the Commission to use that tool at least once every five years. (PSL §66(19)) That provision directs the Commission to conduct or oversee management and operations audits of energy corporations such as Con Edison. By law, these audits must include, but are not limited to, "an investigation of the company's construction program planning in relation to the needs of its customers for reliable service and an evaluation of the efficiency of the company's operations." (Id.) The law also requires that the Commission review a utility's compliance with the directions and recommendations made as a result of previous audits and incorporate that review in its order regarding a major change in rates for that company.

These audits have two main purposes: they identify actions that the utility should take to enhance service reliability, and they help ensure that ratepayer-provided funds, including those for the capital construction program, are spent in an efficient manner. Despite these benefits, a formal audit of Con Edison has not been conducted since the 1980's, even though the utility spent about \$4 billion on its electric system construction program from 2000 – 2005, and it now spends over \$1 billion per year.³⁴ In addition, the CPB is not aware of any studies or evaluations conducted by the PSC or on its behalf since the last audit, which may have reasonably substituted for the formal audit required by the PSL. The DPS Report makes no mention of this issue.

³⁴ In September 2006, the PSC commenced an audit of "the Company's performance in response to outage emergencies and planning for restoration of service." (Case 06-M-1078, Proceeding on Motion of the Commission to Audit the Performance of Consolidated Edison Company of New York, Inc. in Response to Outage Emergencies, Order Instituting Proceeding and Directing Audit, September 8, 2006, p. 4, ordering clause #2.) The scope of that audit is much narrower than the audit required by law, as discussed herein. That audit does not obviate the need for the audit required by the PSL.

CPB recommends that the PSC initiate an audit of Con Edison, pursuant to PSL §66(19), focusing on the construction program planning. This effort would be the first meaningful review of Con Edison's spending on infrastructure, operations and maintenance for its electric network in more than 15 years. It should commence in 2008, to obviate any concern that the audit might distract the Company from implementing the numerous recommendations resulting from this proceeding.

IV. NECESSARY CHANGES TO CON EDISON'S RATE PLAN AND TARIFFS BEFORE THE SUMMER OF 2007

The Commission's review of the LIC outage and its determination of whether Con Edison's actions were imprudent, will likely take many more months. It is apparent now, however, that several changes are required to Con Edison's rate plan and its tariff, to focus the Company's attention on service reliability and to protect consumers. The PSC should take action immediately to address these matters so that changes are in place before the summer of 2007. These changes should be designed to maintain the overall balance between the interests of ratepayers and shareholders contained in the current rate plan, but should focus the Company's attention on system reliability.

A. Financial Incentives

The financial incentives in Con Edison's electric rate plan,³⁵ which continues through at least March 31, 2008 unless modified by the Commission, do not properly focus the Company's attention on reliability. That plan includes a Reliability

³⁵ Case 04-E-0572, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service, Order Adopting Three-Year Rate Plan, March 24, 2005, Joint Proposal submitted December 2, 2004 ("Rate Plan").

Performance Mechanism (“RPM”), which according to the DPS Staff Report, “is in place to help ensure that the Company pays adequate attention to reliability.”³⁶ The RPM identifies certain performance metrics and requires Con Edison to defer shareholder money for the benefit of ratepayers if it fails to meet those standards. It contains two measures regarding the reliability of network systems: the frequency of interruptions (“SAIFI”) and the duration of interruptions (“CAIDI”). A total of \$5 million, and \$4 million, respectively, are at risk for these measures each year. The RPM also places \$10 million at risk for a “Major Outage” that is defined as a loss of all supply feeders to any of the 57 secondary networks.”³⁷

Con Edison’s rate plan also includes financial incentives for the Company to encourage customers to migrate to ESCOs. The Company earns \$10 for each account that initiates service from an ESCO and \$20 for each account that remains with an ESCO, as defined in the Rate Plan.³⁸

In 2005, the Company did not meet its targets for CAIDI for its network system and incurred the maximum penalty, or revenue adjustment, permitted under the Rate Plan.³⁹ Similarly, in 2006, although results have not been finalized, it appears that the Company will also incur the maximum revenue adjustment for its network system for both CAIDI and SAIFI, primarily as a result of the LIC outage.⁴⁰

³⁶ DPS Report, p. 145.

³⁷ Rate Plan, p. 40.

³⁸ *Id.*, pp 29-31.

³⁹ Case 04-E-0572, Memo from DPS Office of Electricity and Environment to the Commission, October 2, 2006, Filed Session of October 18, 2006, Approved as Recommended and so Ordered by the Commission.

⁴⁰ DPS Report, p. 145.

The DPS Report recommends that the RPM be “re-examined in the next rate case to determine if changes are needed to make it more effective for a network event.”⁴¹ That recommendation should be modified as follows.

1. Financial Incentive Regarding Network CAIDI

Con Edison incurred the maximum revenue adjustment for the duration of outages on its network system in both 2005 and 2006. It is apparent that the \$4.0 million annual incentive in its current Rate Plan is not sufficient to, in the words of DPS Staff, “ensure that the Company pays adequate attention to reliability.”⁴² The Company’s rate plan should be modified to provide Con Edison a more meaningful incentive, in the range of \$20 million, to minimize the duration of outages on its network system.

2. Financial Incentive Regarding Major Outages

Con Edison did not incur the \$10 million revenue adjustment associated with a major outage in 2006 since the LIC network was not shut down. That potential revenue adjustment is the largest in the RPM, and provides the single largest incentive for the Company. As the Staff Report demonstrates, it may be that the public interest would have been better served had the Company shut down the LIC network, thereby incurring the \$10 million revenue adjustment. Regardless of whether the Company’s actions regarding the LIC event are found to be imprudent, it is apparent that this incentive should be reconsidered to ensure that Con Edison does not have a disincentive to

⁴¹ Id., p. 146.

⁴² Id., p. 145.

minimize the duration of customer outages, particularly in circumstances similar to the LIC event.

3. Financial Incentive Regarding Retail Migration

This incentive is not required for Con Edison to provide safe and reliable service and is not necessary or consistent with just and reasonable rates for the Company's services. Moreover, as a general matter, incentives should align utility interests with those of customers who fund them, whereas the migration incentive does not achieve that objective. Indeed, this retail migration incentive distracts the Company from what should be its primary objective – providing safe and reliable service. It is completely inappropriate now, in view of the demonstrated failure of the Company to provide reliable service. Con Edison's rate plan should be modified to remove this retail migration incentive and replace it with incentives that are targeted to service reliability. Customer migration has no effect whatsoever on the demand that must be met by the Company's delivery system.

4. Timing of Changes to Financial Incentives

As explained above, it is abundantly clear that the financial incentives in Con Edison's rate plan are not operating as intended and are not in the public interest. The recommendation in the DPS Report to re-examine these incentives in the next rate case, is inadequate, since it would permit the existing system of incentives to be in place through March 2008, including the summer of 2007.

The CPB recommends that the PSC immediately convene a proceeding to revise the financial incentives in Con Edison's current rate plan, as recommended herein. In view of the Company's performance on network reliability measures in the summer of

2006, it would not be in the public interest to maintain current financial incentives for another year. The Commission should avail itself of its tools, including taking action on an emergency basis, to ensure that appropriate financial incentives are in place by June 2007.

A complete redesign of those incentives should be conducted as part of Con Edison's next rate case. That comprehensive review should address relatively more complicated issues such as the fact that buildings that are master metered or submetered may be occupied by many tenants, but are considered to be only one customer for purposes of the RPM. It should also create service quality standards for voltage reductions.

B. Tariffs Regarding Customer Reimbursement

Pursuant to Con Edison's tariff, the Company reimburses residential customers for actual losses of food spoiled due to lack of refrigeration up to \$150 upon submission of an itemized list and over \$150 upon submission of an itemized list and proof of loss, to a maximum of \$350 per customer, per incident. The tariff also specifies that Con Edison reimburse commercial customers for actual losses due to lack of refrigeration, upon submission of an itemized list and proof of loss, up to a maximum of \$7,000 per customer, per incident. It also provides an overall cap of \$10 million for any one incident. These tariff provisions were established in June 2000 and modified in March 2001, after review of the electric distribution system outages on Con Edison's Washington Heights Network in 1999.⁴³ The Company proposed, and the PSC approved,

⁴³ Case 99-E-0930, Proceeding on Motion of the Commission to Investigate the July 6, 1999 Power Outage of Con Edison's Washington Heights Network, Order Approving Tariff Amendments, June 22,

a waiver of the tariff provisions requiring proof of loss and establishing a \$10 million cap for claims related to the LIC outages.

The Company has processed more than 40,000 claims associated with the LIC outages. As detailed in the DPS Report, Con Edison denied more than 2,000 claims and many customers stated that the reimbursement amount was inadequate and did not cover losses attributable to the outage and low voltage conditions. The DPS Report recommends that the PSC examine Con Edison's claim tariff and make modifications "if appropriate."⁴⁴

There is ample evidence that changes to these tariff provisions are required and should be completed before the summer of 2007. At a minimum, the dollar amount of the reimbursement limits, for both residential and commercial ratepayers, should be revised to reflect inflation in the seven years since those limits were established. In addition, serious consideration should be given, either this year or in the Company's next rate case, to expanding coverage to include damaged electrical equipment including computers and air conditioners, particularly from low voltage situations.⁴⁵ Consideration should also be given to tying reimbursement to the duration of an outage. These issues can, and should, be resolved before the summer of 2007.

2000; Case 99-E-0930, Order Concerning Tariff Provisions Governing Reimbursement for Food Spoilage, March 1, 2001.

⁴⁴ DPS Report, pp. 59 – 60.

⁴⁵ After its review of the outage of Con Edison's Washington Heights Network in 1999, the PSC concluded that "the issues concerning compensation for damages to motors for low voltage situations are referred to Staff for further study." (Case 99-E-0930, Order Concerning Responses to March 15, 2000 Order, May 26, 2000, ordering clause 4, p. 7) Approximately nine months later, the Commission denied requests that Con Edison's tariff provide customer compensation for damage to electrical motors, saying that its staff is continuing to investigate that issue. (Case 99-E-0930, Order Concerning Tariff Provisions Governing Reimbursement for Food Spoilage, March 1, 2001, pp. 6 – 7) Six years later, the CPB is not aware of any such study, or of any subsequent PSC order regarding this issue.

CONCLUSION

The Consumer Protection Board urges the Public Service Commission to adopt the recommendations identified herein.

Respectfully submitted,

ES Mindy Bockstein, Executive Director/Chairperson

Douglas W. Elfner, Director of Utility Intervention

John M. Walters, Intervenor Attorney

Gregg Collar, Project Manager

Donna DeVito, Utilities Analyst

Submitted: March 2, 2007
Albany N.Y.