



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

RICHARD L. BRODSKY

Westchester County

CHAIRMAN
Committee on
Corporations, Authorities and Commissions

March 2, 2007

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

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

Dear Secretary Brillong,

Enclosed please find an original and ten copies of the “Comments of the Committee on Corporations, Authorities and Commissions,” on the Public Service Commission Staff Report in the above-entitled matter. A hard copy and a copy by email are also being sent today to Administrative Law Judge Eleanor Stein, Commission Staff Assistant Counsels Kimberley A. Harriman and Guy R. Mazza, and all Active Parties to the proceeding.

Thank you.

Sincerely

Respectfully submitted,

/s/

Richard A. Berkley, Esq.
Counsel to Assemblyman Richard Brodsky

cc: Active Parties

**Before the
PUBLIC SERVICE COMMISSION
Albany, N.Y.**

Department of Public Service Final Staff Report on its)
Investigation of the July 2006 Equipment Failures and)
Power Outages in Con Edison's Long Island City Network) CASE 06-E-0894
In Queens County, New York)

COMMENTS OF

**ASSEMBLYMAN RICHARD L. BRODSKY, CHAIR, NEW YORK STATE ASSEMBLY STANDING COMMITTEE
ON CORPORATIONS, AUTHORITIES AND COMMISSIONS**

At the outset, the Committee on Corporations, Authorities and Commissions notes that it is reserving its right to withhold the substantive portion of its comments on the Department of Public Service Staff ("Staff") Final Report on the Long Island City outages of 2006¹ until the Committee files its reply comments. Further, although the Long Island City and Westchester outages were considered together in the prudence petition² filed by Assemblyman Brodsky and numerous other ratepayers and public officials, the Committee will restrict itself here to noting that the outages suffered in Westchester

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- 1 Department of Public Service Staff Report on Its Investigation of the July 2006 Equipment Failures and Power Outages in Con Edison's Long Island City Network in Queens County, New York, February, 2007, Case 06-E-0894 ["Final Report" or "Staff Report"].
- 2 PSC Case # 06-M-1108, In the Matter of Consolidated Edison's Long Island City Electric Network July 17, 2006 and the Westchester County September 2, 2006 Electric Service Outages, petition filed by Assemblyman Richard Brodsky, et al., on September 13, 2006 (subsequently amended in part) ["Prudence Petition"].

County after the initial Long Island City and Westchester outage were not isolated occurrences. Rather, these outages are symptomatic of a pattern of failures of Con Edison's management and systems, the failures of its comprehensive emergency response plan, its inability to mobilize and properly staff its repair and restoration crews, and its willful disregard of the recommendations of the 1999 Attorney General's Report³ and the DPS staff investigation(s) of 1999 concerning the Washington Heights outage.

The DPS Staff's Final Report demonstrates clearly that:

- The extensive and prolonged Long Island City outages and restoration process were a gross disservice to its customers,⁴ and the result of Con Edison's ineptitude and failure to discharge its duties under the public service law to reliably operate, maintain and manage its system before, during and after emergencies such as the Long Island City outage;
- Taken together, Con Edison's failure to properly manage its response to the rapidly cascading system outages and crisis greatly exacerbated the damage to its secondary systems and to its customers' premises equipment;
- Con Edison's explanation of the causes of the outages were at best inaccurate;
- Because of Con Edison's grossly negligent performance before, during and after the outage, the residents and businesses that were affected by the outage should receive full compensation for their losses of perishable food and medicine, damage to consumer equipment, and losses arising from businesses closed during the outage, without regard to the limitations set forth in Con Edison's tariff limiting such remedies;
- Because of Con Edison's gross negligence, ratepayers must not bear any of the costs that Con Edison has expended and will expend, to repair the damage its imprudence caused to its network and capital equipment;
- The Commission must use its full authority to require Con Edison to immediately

³ See "Con Edison's 1999 Electric Service Outages, A Report to the People of the State of New York from the Office of the Attorney General," (March 9, 2000).

⁴ Final Report at 2.

begin implementing the recommendations from, among others, the 1999 Attorney General's Report, the 1999 DPS Staff Report, and the January 2006 Report on the Westchester storm outage;

Taken as a whole, the Final Report reiterates the Draft Report's conclusions that Con Edison's emergency planning was inadequate;⁵ that Con Edison's management had not acted prudently in addressing the issues outlined in the Attorney General's Report on the 1999 Washington Heights Blackout; and did not act prudently in planning to address important issues raised in the operation of an underground electric network of the size, capacity and customer load of the Long Island City network. The Final Report also confirms the allegations made in the Prudence Petition, although it is silent with regard to those matters that are covered in the Prudence Petition but were not investigated in the DPS Staff's Long Island City or Westchester reports.

I. Brief Discussion

The Long Island City blackout of 2006 was one of the longest and most extensive blackouts in Con Edison's history. The extent of the damage to the network, and to the affected customers, remains as yet unknown. Hopefully, these issues will be revealed in the prudence proceeding – requested on September 13, 2006 by the Prudence Petition, and since echoed by several parties to the proceeding -- that will bring transparency and accountability to the crisis itself, and to Con Edison's policies and actions before, during and after the crisis.

⁵ For example, the Draft Report states that Con Edison's emergency planning process does not account for whether frequent stressing of equipment reduces its service life or makes equipment more susceptible to failure. *See* Draft Report at 105.

The Committee believed in September of 2006 that there was a great deal more to be uncovered with regard to the blackout in Long Island City, and the DPS Staff reports have confirmed those conclusions. However, the general conclusions that the Committee reached in its own investigation, and were demonstrated to be accurate by the DPS Staff investigation, are still valid. Con Edison's emergency planning was inadequate and led to consumer confusion; confusion among, and inadequate briefing of, public officials tasked with reacting to the crisis and representing the affected parties; and to extensive damage to the network and property of customers that might otherwise have been avoided. Con Edison's management displayed a bewildering lack of understanding with regard to proactively determining and dealing with the severity of the network crisis, and at many levels, failed to act prudently before and during the blackout. Finally, Con Edison failed to assess how many customers were affected by low voltage and/or had personal property damaged by the low voltage condition; failed to keep the Transit Authority and LaGuardia Airport properly apprised of the extent of the blackout; and demonstrated a lack of attention to the unique characteristics of the customers and neighborhoods of its largest electric network -- as demonstrated by its need to form a task force to address unique outage-related consumer issues associated with large buildings containing elevators.

These failures by the company, among the many other failures revealed by the Committee's investigation and by the DPS Staff investigation, demonstrate why the Prudence Petition called for a prudence proceeding as early as September 13, 2006, and

why it is unconscionable that there has been more than five months delay in instituting such a proceeding. In advance of the further comments it will file as part of the reply process, the Committee makes the following interim recommendations.

II. Interim Recommendations⁶

- The Commission must immediately institute the prudence proceeding called for by the Prudence Petition in September of 2006 to determine the full extent of Con Edison's mismanagement and the remedies needed to prevent another network power emergency. Ratepayers should not bear the burden of Con Edison's failures;
- The Commission must, in the context of a prudence proceeding, order increased compensation to the affected residents of Long Island City and Westchester, which should include reimbursement for residents' and businesses' damaged electrical equipment;
- The Commission must begin the necessary proceeding(s) to require Con Edison to change the existing tariff(s) limiting reimbursement for outage related damages to reflect the actual losses suffered;
- The Commission must require Con Edison to establish immediately the necessary systems to accurately count customer and/or household outages, rather than the current metric that is far less precise;
- The Commission must revisit the regulations relating to comprehensive emergency response plans to clarify that such regulations do extend to emergencies not caused by storms;
- The Commission must require Con Edison to immediately establish a comprehensive emergency response plan that addresses the unique issues arising from dense concentrations of high-rise buildings served by elevators;
- The Commission must impose concrete deadlines for Con Edison's compliance with its recommendations in the Long Island City and Westchester reports, and it

⁶ These recommendations do not represent an exhaustive list, but are illustrative of the issues the Committee asserts must be addressed; and of the issues upon which the Committee will comment in more substantive fashion in its reply comments.

must exert far more strenuous vigilance of Con Edison's compliance with its legal duties under the public service law;

- The Commission must require Con Edison to implement the as yet un-implemented recommendations of the 1999 Attorney General's and DPS Staff's reports, without delay;
- The Commission must require Con Edison to implement a better and more accurate method of identifying and communicating with individuals who depend upon life support equipment, and for identifying and communicating with critical care facilities;
- The Commission must examine whether Con Edison's corroded transformers pose such a significant problem that emergency replacement should be considered;
- The Commission must require Con Edison to conduct a complete inspection of its Long Island City network to identify wherever possible weakened elements resulting from the July 2006 outage, and any as yet unidentified vulnerabilities in the system that could lead to another such outage.