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Via First Class Mail and Email

April 6, 2007

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

Re: Case 06-E-0894 – Investigation of Electric Power Outages in Con Edison’s Long Island City Network

Dear Secretary Brilling:

In an April 5, 2007 letter, Con Edison proposes that the Commission institute a new, undefined proceeding - not a rate case and not a prudence proceeding - “to explore the potential for alternative resolution of ‘prudence’ of the Company in respect of the July 2006 outages in Northwest Queens.” Con Edison states that if the proceeding it requests is not successful in reaching a settlement agreement, then the Commission “would still have the ability to institute whatever proceedings it believed appropriate.”

Con Edison is, in effect, making a sur-reply to comments filed in the above entitled proceeding on the issue of Staff’s February 7, 2007 recommendation that the Commission institute a prudence proceeding. Con Edison could have made the proposal contained in its April 5 letter in its initial comments filed March 2 in response to Staff’s Final Report,¹ but did not, thereby depriving active parties an opportunity to respond in their replies filed March 30, 2007. Accordingly, the letter should be disregarded.

If, however, the Commission entertains Con Edison’s proposed alternative to commencement of the prudence proceeding recommended by Staff, and supported by most parties to the proceeding, PULP asks that the following comments be considered.

¹ *DPS Staff Final Report on its Investigation of the July 2006 Equipment Failures and Power Outages in Con Edison's Long Island City Network in Queens, NY*, February 9, 2007, available at [http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Web/F813FD973CA2310285257267004B9E83/\\$File/LIC_FINAL_REPORT_FEB_9_07.pdf?OpenElement](http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Web/F813FD973CA2310285257267004B9E83/$File/LIC_FINAL_REPORT_FEB_9_07.pdf?OpenElement)

Con Edison's letter notwithstanding, PULP continues to believe that Staff's recommendation for a prudence proceeding should be approved. Further, the scope of the prudence proceeding described by Staff should and will be broad enough to include an evaluation of all of Con Edison's actions and omissions before and during the event, including any unreasonable lack of system investment, lack of maintenance, misoperation, failure to install replacement equipment, lack of situational awareness and emergency planning.² We believe that such a proceeding can and would be completed quickly.³ The institution of a new, novel, and parallel proceeding to mediate or settle the prudence issues as requested by Con Edison is unnecessary and very likely to cloud the record already made on prudence issues and well understood by the public.

The prudence of Con Edison's actions is likely to have important implications in other matters before the Commission. For example, calculations of any customer sharing of Con Edison over earnings will be made soon under the current rate plan, for the one year period ending March 31, 2007. Con Edison indicated last month in an SEC filing that despite incurring major unanticipated costs due to the Queens outage, the Company earned more in 2006 than in 2005. If unreasonable, imprudent conduct on the part of Con Edison caused unnecessary expenses to be incurred, those expenses should not be considered in the Commission's calculation of earnings for purposes of sharing them with customers. Apparently outage-related costs were deducted from earnings in Con Edison's recent SEC filing to support its assertion that earnings will not be available this year for sharing with customers.⁴ Without a prudence disallowance of outage costs, customers may lose what otherwise would be a share of Con Edison over earnings.

Further, and of equal or greater consequence, it is expected that Con Edison will file a new rate case this month to set rates for the period following expiration of the current rate plan on March 31, 2008. In this rate case, it is also to be expected that Con Edison would include new investments in the Long Island City network in its itemization and calculation of capital assets upon which a return for investors will be requested. Some of these investments, arguably, would

² Staff Reply Comments, March 30, 2007, p. 8. "Staff's recommendation, that the Commission institute a prudence proceeding, was premised on both the imprudence of Con Edison's decision to maintain the Long Island City Network during the event and the Company's imprudent maintenance of the network leading up to the outage. Serious questions are presented, and even highlighted by the City's own report, concerning the Company maintenance of Long Island City Network equipment, including transformers and remote monitoring system devices." *Id.*, available at http://www.pulp.tc/Case_06-E-0894_Staff_Reply_Comments3-30-07.pdf

³ "Staff is confident that the evidence it has amassed during its investigation, and the additional evidence that will be collected during the prudence proceeding, will prove that the Company acted in an imprudent manner in the operation, maintenance and oversight of the Long Island City Network." *Id.*

⁴ See PULP Reply Comments, March 30, 2007, p. 15, available at http://www.pulp.tc/PULP_Reply_Comments3-30-07.pdf

have been made years ago by a prudent utility, for example, to relieve strain on feeders whose load had grown due to increased demand. It may be appropriate to impute depreciation of any imprudently delayed investment as if the equipment had been installed prudently several years ago. Further, there may be new claims made for a return on assets installed to replace equipment that burned or failed during the outage, which would not have been necessary to install if Con Edison had acted prudently before and during the outage. Finally, there may be claims for recovery from ratepayers for the write-off or full depreciation of wasted capital items that burned or failed unnecessarily in the outage which would still be in operation to provide service to current and future ratepayers but for imprudent acts or omissions.

As we note above, the prudence proceeding recommended by Staff will have an impact on other matters and proceedings. In addition, a fuller picture of the financial impact of the outage and its impact on rates and ratepayers is likely to emerge in the course of the forthcoming rate case. For this reason the Commission should exercise its discretion to initiate the prudence proceeding and then consolidate it with the forthcoming rate case when that is filed. Accordingly, PULP believes that expeditious commencement of the prudence proceeding proposed by Staff is in the public interest and should not be delayed. When the anticipated rate case is filed, the prudence proceeding should be consolidated with the rate case and decided in the same time frame.

Very truly yours,



Gerald Norlander

cc: Active parties list (via email)