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March 30, 2007

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

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

Dear Secretary Brillong:

Pursuant to the Notice Extending Reply Comment Schedule, (issued March 14, 2007) in the above proceeding, Public Utility Law Project ("PULP") hereby files an original and ten copies of its reply comments regarding the Department of Public Service Staff Report on its Investigation of the July 2006 Equipment Failures and Power Outages in Consolidated Edison's Long Island City Network in Queens, New York ("Staff Report").

Both an electronic copy of these comments, and a hard copy of these comments via 1st Class Mail, are being sent to Administrative Law Judge Eleanor Stein. An electronic copy is being sent to all parties on the November 20, 2006 list.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerald A. Norlander".

Gerald A. Norlander, Esq.
Executive Director

cc: Eleanor Stein, Administrative Law Judge

**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

**PULP REPLY COMMENTS IN RESPONSE TO 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 COUNTY, NEW YORK**

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STATE OF NEW YORK
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PULP REPLY COMMENTS IN RESPONSE TO DPS STAFF FINAL REPORT
ON ITS INVESTIGATION OF THE JULY 2006
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Introduction

The Public Service Commission ("Commission" or "PSC") commenced this proceeding to investigate a major failure of Consolidated Edison Company of New York on July 17, 2006 and the following days to provide safe and adequate service to large numbers of its customers in its Long Island City network.¹ Staff of the DPS commenced its investigation, and numerous parties intervened in this proceeding, including the Public Utility Law Project of New York, Inc. ("PULP"). On February 9, 2007, DPS Staff issued its final "*Staff Report on its Investigation of the July 2006 Equipment Failures and Power Outages in Con Edison's Long Island City*

¹ "Staff shall conduct a *comprehensive* examination of the circumstances surrounding the failure of the feeders and the outages, the events that led to the failures and outages. . . . The circumstances underlying the events described above warrant close examination. *In investigating this matter, Staff's review will include, but is not limited to, the . . . circumstances that led to the loss of the primary feeders. . . .*" 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, *Order Instituting Proceeding and Directing Staff Investigation*, (Issued July 26, 2006) (*Emphasis added*).

Network in Queens County, New York ("Final Staff Report")² and recommendations for Commission action. The *Final Staff Report* does not reference and did not address some of the issues and areas of concern previously identified in PULP's comments³ on DPS Staff's draft Staff Report.⁴ The Administrative Law Judge established a schedule for initial comments and replies regarding the *Staff Final Report*.⁵

PULP submitted comments on the *Final Staff Report*, making the following recommendations:

1. The Commission should initiate an independent investigation of outages, grid conditions, disturbances and unusual events that may have affected Con Edison system reliability, reactive power supply or increased temperatures prior to the first feeder failure on July 17, 2006.
2. The Commission should examine the prudence of Con Edison's system operation.
3. The Commission should adopt service performance standards to reduce N-2 feeder outage incidents and their duration and to reduce the incidence of secondary system fires and explosions.
4. The Commission should commence a review whether Con Edison has the ability to measure and manage reactive power needed to maintain network voltage and stability.

² The *Final Staff Report* is 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)

³ *PULP Comments in Response to Department of Public Service Draft 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*. PULP's comments on the Draft Report are available at <http://www.pulp.tc/PULPCommentsonStaffReportJan31.pdf> and comments of other parties are available at http://www.pulp.tc/html/queens_blackout2006.html

⁴ The *Draft Staff Report* is available at <http://www.pulp.tc/06E0894SR070117.pdf>

⁵ It is expected that some active parties will issue their own reports on the July 2006 Queens power outages. In addition, a legislative special Task Force issued a report on January 30, 2007. It is available at http://www.pulp.tc/Queens_Task_Force_Rpt.pdf

5. The Commission should further investigate the July 12, 2006 outage of Con Edison's load flow management program, "AutoWOLF." and should require Con Edison to archive load flow program records.
6. The Commission should require additional life support and medical emergency customer protections for residential customers in multiple dwellings where the commission has allowed submetering of electric service by non-utilities.
7. The Commission should adopt voltage and other power quality performance standards.
8. The Commission should revise SAIFI/SAIDI outage performance standards to stop undercounting of Con Edison outages in submetered and master metered buildings.
9. The Commission should revise the Con Edison earnings sharing mechanism to assure that costs incurred by Con Edison due to any imprudent operation and maintenance are disregarded in the calculation of earnings to be shared with customers.
10. The Commission should implement performance sanctions promptly, rather than defer them until future rate cases, and should apply service performance financial measures to benefit LIC Network customers, rather than using service performance sanction revenues to benefit customers in areas unaffected by the LIC network service quality deficiencies.

PULP welcomes this opportunity to respond to other parties' comments on the Final Staff Report, and particularly to respond to Con Edison's comments.⁶

REPLY COMMENTS

1. **Further Evidence, Including Con Edison's Consultant Report Finding no Root Cause for the Fire that Triggered the Event, Supports PULP and TGE's**

⁶ Con Edison's March 2, 2007 Comments of the *Final Staff Report* are available at http://www.pulp.tc/CE_Comments_on_Staff_LIC_Report.pdf

Recommendation that the Commission Should Investigate Whether the Secondary System Fire That Preceded the First Feeder Outage Was Related to Pre-Event Reactive Power Deficiencies or Grid Disturbances.

As discussed in PULP's initial comments at pages 4 - 14, the *Staff Final Report* followed the same event time line put forward by Con Edison in its reports.⁷ That time line basically begins with a secondary cable fire that burned into a 27 kV feeder at 3:50 PM on July 17, 2006. The Con Edison and Staff reports did not identify the cause of the fire.

Pre-event electrical conditions are discussed, to a limited extent, in a consultant report commissioned by Con Edison.⁸ This *Report of Incident Investigation Committee* dated February 12, 2007, generally laudatory of Con Edison,⁹ was released after the Con Edison reports previously filed in this case, and after the February 9, 2007 *Staff Final Report*. Obviously it was not discussed in the *Staff Final Report*, and it was not mentioned by Con Edison in its March 2, 2007 comments on the *Staff Final Report*. PULP is not aware that this report is in the record, but

⁷ See Consolidated Edison *Initial Report on the Power Outages in Western Queens in July 2006*, August 2, 2006, at http://www.dps.state.ny.us/Con_Ed_Summer_2006_Reliability_Report_06E0894.pdf and Con Edison *Comprehensive Report on the Power Outages in Northwest Queens in July 2006*, October 12, 2006, available at Con Edison website, <http://www.coned.com/messages/pr20061012.asp>

⁸ The consultants' *Report of Incident Investigation Committee* is at the Con Edison website, available at http://www.coned.com/messages/February_12_2007_LIC_Report.pdf

⁹ *E.g.*, "Con Edison provides service to its customers as a result of innumerable, well performed tasks." *Id.*, p. 2. The Chairman of the consulting team "has held management and senior executive positions for Consolidated Edison Company. Prior to his retirement in early 2003, as Senior Vice President of Electric Operations, Mr. Donohue was responsible for all electric distribution operations, maintenance, engineering, construction, planning, and customer services for Con Edison's territory. . . . Long Island City Network, July 17 - 25, 2006, *Report of Incident Investigation Committee*, February 12, 2007 P. 162. The Investigation Committee Chairman retired in March 2003 apparently owning substantial amounts of Con Edison stock and he received stock options exercisable until 2012. <http://www.secinfo.com/dVut2.2DQc.htm>

believes it should be.¹⁰

The *Report of Incident Investigation Committee* sheds some new light on the effects of Long Island City transformers out of service in the area where the secondary wire burned. The Comprehensive report states that prior to the fire incident, “1,112 of the 1,198 transformers were in service,”¹¹ *i.e.*, 86 transformers were not in service. The consultants’ report, however, states that only “25 of the network’s 1194 transformers were out of service prior to the start of the event.”¹² The difference is not explained.

Earlier Con Edison reports briefly mentioned two pre-event transformer outages in the neighborhood of the fire and slight secondary line overloads, but portrayed them as quite normal and to be expected in a large system that could absorb the transformer outages without significant reliability consequences. Let us contrast the findings of the October 2006 “Comprehensive” report with the February 2007 consultant study:

“Comprehensive” Report

The “analysis” section of the Con Edison “Comprehensive” report at p. 5- 43 minimized the overload of the secondary line that burned:

¹⁰ Some new material is being introduced on Reply, which provides significant additional insight into the event. PULP urges that it be considered, and certainly will have no objection if Con Edison or others seek an opportunity to respond. Also, inasmuch as neither Staff nor Con Edison mentioned pre-event conditions in their respective report and comments, which were well identified by PULP in its comments on the draft Staff report, PULP will seek an opportunity to respond if Con Edison addresses pre-event issues for the first time in their reply to PULP’s initial comments. The Commission’s objective in this proceeding is to investigate fully events leading to the outage and that objective will be frustrated unless all available evidence is considered, or if Con Edison is allowed to save its discussion of obvious pre-event issues until the filing of replies.

¹¹ *Id.*, at 3 - 6.

¹² Report of Incident Investigation Committee, p. 46.

Under projected peak load conditions with V9426 out of service, the review indicated that the sections of secondary cable involved in the electrical fire in SB1345 were *marginally over the cable ratings* at the time of failure.¹³

At p. 5-68 of the “Comprehensive” report, it states:

The secondary mains involved in the July 17 failures of 1Q17 and 1Q16 were only 3% to 6 % over their first contingency ratings. These *marginal overloads*, by themselves, do not usually result in cable insulation damage. These secondary mains most likely had a preexisting condition that lead [sic] to the fire.¹⁴

There is no identification in the “Comprehensive” report of the “preexisting condition.” At page 5 - 73, however, the “Comprehensive” report mentions two out of service transformers in the vicinity of the fire:

At the time of the secondary incident in SB1345 (ticket QE06028057), a 1000 kVA transformer (V9426) located at the corner of 43rd Street and 30th Avenue (see Figure 5-22 for the layout details) was off the system due to defect. *This transformer was removed from the system on July 12.* The transformer in V9426 was identified as defective and dropped from the system via a live end-cap in M11645. The engineering evaluation indicated that dropping the transformer in V9426 with a live end-cap was *acceptable*. There were additional transformers in the area that were out of service but no reported open mains (secondary cable out of service).

The closest nearby transformer off the system, in addition to V9426, was V5447. The transformer in V5447 is a 500-kVA transformer located at 25th Avenue and 42nd Street. *The engineering evaluation indicated that there would be no impact to the system with this transformer out of service.*

The “Comprehensive” report thus minimizes the effect of the transformer outages in the area of the fire.

¹³ Con Edison *Comprehensive Report on the Power Outages in Northwest Queens in July 2006*, October 12, 2006 <http://www.coned.com/messages/LICReport/Analysis.pdf>

¹⁴ *Id.*

The Consultants' Report

The more recently published February 12, 2007 report of Con Edison's consultants, finds that

Prior to the start of the Long Island City network event, *as a result of high demand and transformers that were not in service, secondary mains were overloaded* in the area of 30th Avenue and 44th Street in Long Island City. The Long Island City network event was initiated on July 17th, when the insulation on these secondary cables began to burn in the vicinity of 30th Avenue and 44th Street. *The exact cause of the fire remains uncertain, as the level of loading should not have been enough to cause the cable insulation to burn.*¹⁵

Pre-Event Transformer Failures

In the Long Island City network, 25 of the network's 1194 transformers were out of service prior to the start of the event (refer to Attachment B). This number is not considered unusual by Con Edison or by the Committee. Generally this number of transformers out of service from the 1194 transformers supplying the Long Island City network would not present a problem *if the out of service transformers are fairly well dispersed throughout the network and a thorough analysis of these transformers confirms that other transformers and mains can pick-up the load without becoming overloaded.*¹⁶

But the out of service transformers were not evenly dispersed, and a localized area was affected:

The failure of the transformer in VS 5447 on June 29th increased load on nearby transformers and secondary mains.

* * * *

This transformer [V9426, the transformer closest to the fire] failed on July 11th. It is estimated that the load on the transformer in V 9426 was picked-up by V 7813 (19%) and by V 7914 (39%) with others seeing a slight increase in loading. The loss of this transformer caused **highly loaded secondary mains** in the vicinity. The area of **highly loaded secondary mains** created by the June 29th loss of VS

¹⁵ Report of Incident Investigation Committee, p. 12 - 13.

¹⁶ *Id.*, at 46.

5447 was expanded when V 9426 failed.¹⁷

The consultants' report identifies "root causes," one of which is that "The Long Island City network event was initiated when a secondary cable burned which resulted in two feeders (1Q17 and 1Q16) deenergizing."¹⁸ The consultants identify a weakened condition in the area due to transformer outages, and overloading of secondary lines. They find that this stress was not enough to cause the insulation to burn. Like Con Edison's "Comprehensive" report and like Staff's final report, Con Edison's consultant engineers lack curiosity to inquire as to the "root cause(s)" that would explain *why* a secondary cable burned at that time and place.

PULP's analysis of RMS sensor data obtained in discovery has revealed that there was a sustained low voltage condition on July 16 and 17 in the area of the fire, prior to its occurrence.¹⁹ This new evidence shows that one phase at transformer VS5213 had voltages well below the normal 126 Volts.

This new evidence of low voltage in the area of the fire resonates with the analysis of TransGas Energy Systems, LLC ("TGE") contained in its initial comments. TGE made a technical engineering analysis suggesting that the root cause of the secondary system fire may have been low voltage and a reactive power deficiency:

TransGas' comments focus on a question not addressed in great detail in the Staff Report: what may have caused a secondary cable's insulation to short circuit and start a fire in an underground wooden duct bank, causing two adjacent primary feeders to fail (Staff Report, p. 64). . . . However the fire is characterized, its role

¹⁷ *Id.* at 47.

¹⁸ *Id.* At 17.

¹⁹ See attachment of July 16 and 17 voltage data for the sensor on transformer VS5213. In its discovery responses, Con Edison identified VS5213 as the transformer upon which the burned secondary cable was most dependent. Pending PULP discovery seeks RMS data for the prior week.

in the ensuing power outages was very important. The ultimate cause of the secondary fire appears undetermined. *A reasonable theory, as detailed herein, for the failure of the cable's insulation and the resulting fire, can be explained by overheating caused by low voltage levels due to a reactive power deficiency in the LIC Network prior to the reporting of the fire.*²⁰

The *Report of Incident Investigation Committee* lends credence to the TGE hypothesis because that Con Edison report identifies pre-outage events - localized secondary overloading due to transformer outages - and because Con Edison's consultants cannot explain the fire based on that condition alone. PULP's discovery now establishes that there was sustained low voltage at the transformer serving the line that burned, during the 27 hours preceding the fire. *See attachment.*

What other conditions could have added to the overloaded situation (acknowledged by Con Edison) and the sustained pre-event low voltage (identified by PULP's discovery)?

Con Edison is stubbornly avoiding production of documents related to grid conditions prior to the event, first by resisting discovery into pre-event grid conditions and disturbances, and then, after PULP's motion to compel discovery was granted in part,²¹ by not producing documents Con Edison had provided to FERC, which are the subject of PULP's pending FOIA request at FERC.²² (As outlined in PULP's initial comments, FERC had warned that out of service Con Edison transmission lines made New York City more vulnerable to load shedding in hot weather or if there were further outages. It appears that both hot weather and further outages

²⁰ Comments of TransGas Energy Systems LLC, on Department of Public Service Staff Long Island City Power Outage Report, p. 2, March 2, 2007 ("*TGE Comments*").

²¹ See ALJ Stein's Ruling on PULP's motion to compel answers to information requests 3,4,5,6 and 11, November 30, 2006, available at [http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/ArticlesByCategory/1793AAAF773719185257236006A184C/\\$File/06E0894_Ruling.pdf?OpenElement](http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/ArticlesByCategory/1793AAAF773719185257236006A184C/$File/06E0894_Ruling.pdf?OpenElement) .

PULP's information requests are at http://www.pulp.tc/html/information_requests.html .

²² See PULP IR # 72, attached.

occurred, and that FERC's prediction was right). Con Edison also refused to answer PULP IR 72 regarding an event at about 3:25 PM on July 17, 2006 which may have involved tripping of a generator at Astoria, close to the Long Island City Network substation. PULP's motion to the ALJ to compel answers to IR 72 is still unresolved.²³

Significantly, the New York Reliability Council Executive Committee minutes indicate that in July 2006 "Indian Pt. 3 and Astoria Energy East each tripped twice at near full load."²⁴ The dates of those trips are not indicated in the Reliability Council's minutes. July 17 was a day of near peak load,²⁵ and with Con Edison's major transmission line from Westchester to Queens out of service since late June, it is fair to hypothesize that generating plants in New York City may have been running at near full load and so it is reasonable to inquire whether there was an outage at Astoria that may have caused a brief disturbance or reactive power deficiency which, when added to the pre-existing low voltage conditions, overheated the secondary wire that burned and triggered the eve²⁶ nt.

²³ PULP's January 16, 2007 request for a ruling on IR 72 is attached.

²⁴ "11.1 NYISO Operations Report (July 2006) – Mr. Raymond indicated that the number of frequency excursions continue to show a noticeable decline after years of abnormally high levels. The other tracked parameters remained in the normal range. He also noted that no major emergencies were initiated by the NYISO. However, Indian Pt. 3 and Astoria Energy East each tripped twice at near full load. The system responded as expected." NYSRC Revised Minutes of August 11, 2006 meeting, *emphasis added*.
<http://www.nysrc.org/pdf/MeetingMaterial/ECMeetingMaterial/ECAgenda89/ECMinutes88Draft.pdf>

²⁵ "The system peak load that was forecast for the summer of 2006 for the Con Edison service area was 13,400 MW. The actual system peak load on July 17, 2006, was 12,760 MW for the hour ending (HE) 18:00." Con Edison "Comprehensive" report at p. 5 - 3.

²⁶ "Con Edison's performance in preparing for, and responding to, the outage event was deficient, a gross disservice to its customers. The Commission should initiate a proceeding to consider the prudence of the Company's actions, or lack thereof. The Company failed to fulfill its responsibilities under the Public Service Law." *Final Staff Report* at 9.

PULP's initial comments indicate a very strong possibility that a generator tripped in the half hour before insulation on the already overloaded secondary lines burned at 3:50 PM.²⁷ There needs to be further investigation whether a generator tripped at about 3:25 PM, and if so, whether the tripped generator (or other generators urgently called upon for spinning reserves) reduced reactive power output, or otherwise created a disturbance or momentary voltage drop that aggravated the pre-existing low voltage and overloaded condition on the secondary line that burned. Accordingly, PULP supports the recommendation of TGE that

If the Commission initiates the prudence investigation proposed in the Staff Report, one of the issues to be explored should be the adequacy of reactive power supply in the LIC Network and surrounding networks and whether Con Edison should have taken steps to correct any deficiencies prior to the July 17, 2007 secondary cable fire.²⁸

PULP would add that such an inquiry into pre-event grid conditions and reactive power sufficiency should be made whether or not there is a prudence inquiry as Staff has recommended.

In sum, the failure of Con Edison or its consultants to identify the cause of the fire that started the event, the discovery results indicating prolonged low voltage in the area prior to the fire, the probable generator outage, the Con Edison investigative report indicating that transformer outages had highly loaded the secondary lines, and the TGE analysis in its comments all militate for continued, further investigation of pre-event conditions and root causes of the fire that began the event. Because it does not address these matters, *Final Staff Report* is not responsive to the Commission's charge that "Staff shall conduct a *comprehensive* examination of

²⁷ See PULP Initial Comments at p. 8, citing NYISO information and data supporting the conclusion that a "large event reserve pickup" occurred at 3:25 PM on July 17, 2006.

²⁸ TGE Comments at 10. PULP takes no position whether, as contended by TGE, a power plant TGE seeks to build in New York City would alleviate a reactive power deficiency.

the circumstances surrounding the failure of the feeders and the outages, [and] the events that led to the failures and outages. . . .”²⁹ The Commission should direct Staff to conduct further inquiry and investigation into “the events that led to the failures and outages.” If Staff lacks the capacity to do so, the *Final Staff Report* should be augmented by an independent investigation of those matters.³⁰

2. The Commission Should Reject Con Edison’s Plea Not to Examine the Prudence of Con Edison’s System Operation.

Con Edison in its comments asks the Commission not to commence a prudence proceeding as requested by Staff.³¹ PULP supports Staff’s recommendation.

Much of the discussion regarding prudence revolves around a Staff finding that the network should have been shut down temporarily so that it could be restored in an orderly manner without the further damage that occurred when the system, designed to meet an N-2 reliability standard, was being run with many more than two feeders simultaneously out of service. The fact that a network can sometimes run with numerous feeders out of service, risking, but escaping, wider outages and damage to the system is not justification to do so, any

²⁹ 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, *Order Instituting Proceeding and Directing Staff Investigation*, (Issued July 26, 2006) (*Emphasis added*).

³⁰ After the 1977 blackout, Governor Carey directed that there be an outside investigation, which was completed by an investigator with subpoena power with the assistance of outside counsel. See NY State Report on 1977 Con Edison Blackout (1978), available at http://www.pulp.tc/ny_state_77.pdf

³¹ “Con Edison’s performance in preparing for, and responding to, the outage event was deficient, a gross disservice to its customers. The Commission should initiate a proceeding to consider the prudence of the Company’s actions, or lack thereof. The Company failed to fulfill its responsibilities under the Public Service Law.” *Final Staff Report* at 9.

more than the tavern drunk can justify over imbibing and running red lights because he previously has done so without accidents or apprehension by law enforcement.

Con Edison in its comments challenges some of the evidence cited by Staff and discredits the testimony of some of its employees and invokes the superior rank, knowledge, and judgment of the higher-ups who kept the network on despite the damage that was occurring. In a prudence proceeding, presumably staff will put forward its evidence and will call its experts to testify as to which Con Edison employees were correct.

The February 12, 2007 report of the independent consultants, discussed above, and the pre-event low voltage data further support investigation of whether it was prudent for Con Edison to have allowed a localized load pocket in an area with overloaded secondary lines to persist for days during peak season. Simply cutting out failed transformers and overloading the area where the fire occurred, instead of promptly replacing the transformers prior to the outage, may not have been reasonable or prudent.

Con Edison argues at page 40 of its comments that a prudence proceeding should not be commenced because reliability performance incentive “mechanisms have caused the Company to incur a penalty of \$9 million for the LIC event.” *Id.* As PULP pointed out in its initial comments, the performance sanctions are only accounting credits typically netted out in the next rate case in the context of negotiations involving compromise of far larger sums. Moreover, Con Edison incurred a reliability performance incentive sanction for 2005 of \$8 million, and apparently this had no impact on its conduct in 2006. As stated by the Commission:

Con Edison failed in 2005 to meet the threshold targets set forth in the RPM for interruption duration in its network and radial systems. The company does not contest the failure to meet either of these threshold targets. As a result, Con Edison should defer on its books from shareholder funds a ratepayer credit of \$8

million.³²

When Con Edison agreed to performance standards and sanctions in the multi-year rate case beginning in April 2005, that did not preclude the Commission from examining Con Edison prudence and disallowing costs or taking other measures to correct unreasonable utility conduct.

Con Edison also argues against the prudence proceeding on the theory that it has borne large operation and maintenance expenses to repair the system and is not seeking recovery of those costs from customers.³³ This claim that the company, rather than ratepayers, is bearing the outage costs deserves close scrutiny.

The structure of the rate agreement provides for sharing of earnings over an 11.4% ROE threshold. Thus, when Con Edison is in the sharing zone, after income tax and after sharing with customers, the impact to the company's bottom line due to the incremental cost may be quite small. PULP in its comments asked that imprudent outage related expenses not be considered in the earnings sharing calculations. In a footnote, Con Edison argues that it may not be in an earnings sharing position for the rate year ending March 31, 2007. However, Con Edison's recently filed SEC reports show that last year it at one point anticipated potential earnings sharing of up to \$59 million. Later that was revised, due to lower than expected earnings and

³² 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. RECOMMENDATION: Staff recommends that Con Edison be directed to defer on its books from shareholder funds a ratepayer credit of \$8 million for not meeting its reliability goals for 2005 under the terms of its Reliability Performance Mechanism." Available at [http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Web/6A5BFA2382DCD0498525720B0071F5D0/\\$File/04e0572_10_20_06.pdf?OpenElement](http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Web/6A5BFA2382DCD0498525720B0071F5D0/$File/04e0572_10_20_06.pdf?OpenElement).

³³ 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." *Con Edison Comments on Staff Final Report* at p. 3 - 4.

application of unidentified deferral credits in favor of the company. Con Edison now projects it would not be in an earnings sharing position at the end of the 2006 rate year ending March 31, 2007, but included in that projection are costs of the outage:

In accordance with the rate agreement, at December 31, 2005, Con Edison of New York estimated that its Adjusted Earnings for the rate year ending March 31, 2006 would exceed an 11.4 percent return on equity by \$59 million, of which \$47 million was accounted for as an offset to regulatory assets arising from the cost reconciliations and \$6 million was reserved for customer benefit. Actual Adjusted Earnings for the rate year exceeded this target by \$38 million. Accordingly, in the first quarter of 2006, the company reduced the regulatory asset offset by \$9 million and eliminated the \$6 million reserve for customer benefit (which had the effect of increasing revenues for 2006 by \$15 million). At December 31, 2006, Con Edison of New York estimated that its Adjusted Earnings for the rate year ending March 31, 2007 would not exceed an 11.4 percent return on equity.³⁴

Thus, earnings sharing for 2005 did not occur due to application of unspecified regulatory assets to wipe out \$38 million otherwise subject to sharing with customers.³⁵ Earnings for 2006 were higher than 2005, even considering outage costs. At P 45 of the Con Ed 10-K for 2006, the Company states:

Con Edison of New York's electric operating *income increased \$54 million in 2006 compared with 2005*. The increase reflects higher net revenues (\$340 million, due principally to the electric rate agreement), offset in part by higher operations and maintenance costs (\$175 million, *due primarily to power outages (\$63 million), compensation for spoilage of food associated with certain of the outages (\$9 million), demand side management program expenses (\$31 million), East River Repowering Project costs (\$19 million), higher expenses relating to uncollectible customer accounts (\$7 million), increased transmission and distribution expenses (\$19 million) and recognition of expense for stock-based compensation (\$7 million), taxes other than income taxes (\$60 million,*

³⁴ Con Edison 2006 10-K, March 13, 2007, p. 82, available at http://library.corporate-ir.net/library/61/614/61493/items/236177/10KWrap_total.pdf

³⁵ Although these reports show that Con Edison previously projected earnings sharing of up to \$59 million for 2005 and subsequently revised its books with the result that it did not share any earnings, a search of the Commission's docket in Case 04-E-0572 reveals no order of the Commission regarding any assessment of the validity of the accounting adjustments that caused the projected 2005 earnings share for customers to evaporate.

principally property taxes) and depreciation (\$21 million).³⁶

Thus, at year-end 2006, the company earned \$54 million more than in 2005 (when \$38 million was potentially shareable, before applying the unidentified regulatory assets), and if we add to that \$71 million in outage costs (assuming for the moment that they may be disallowed as imprudent) then the company might have in the neighborhood of \$109 million potentially shareable with customers.

The financial report for 2006 suggests that with higher earnings and perhaps fewer accounting adjustments passing muster at the PSC, Con Edison may well be in the zone of earnings sharing. Thus, the concern that the financial impact of any imprudent outage costs will be borne by customers is quite real. Accordingly, any imprudent expenses should be disregarded in calculating the 2006 earnings sharing. In sum, the Commission should reject Con Edison's arguments and conduct a prudence investigation into Con Edison's operation and maintenance of its systems, as recommended by Staff.

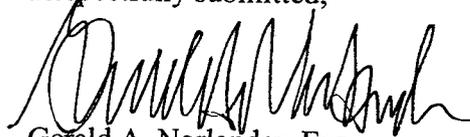
³⁶ *Id.*

CONCLUSION

PULP urges the Commission to adopt PULP's recommendations made in its initial comments, including further investigation of pre-event conditions and root causes of the outage, to conduct a prudence proceeding, and to disregard any imprudent costs in calculation of earnings sharing for the 2006 rate year.

March 30, 2007

Respectfully submitted,



Gerald A. Norlander, Esq.

Ben Wiles, Esq.

Charles J. Brennan, Esq.

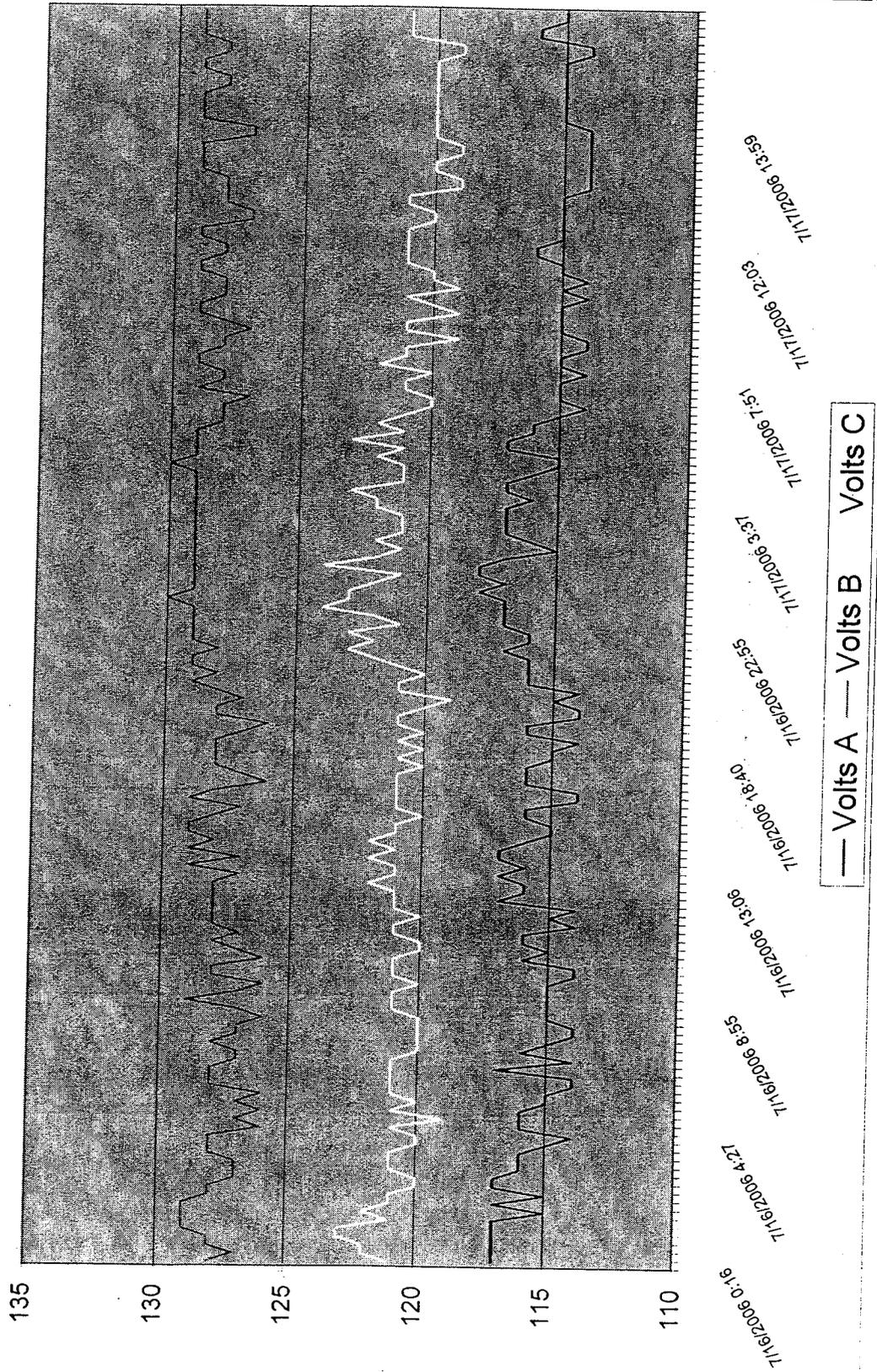
Public Utility Law Project of New
York, Inc.

194 Washington Avenue, Suite 420

Albany, NY 12210

(518) 449-3375

Feeder 16 - VS5213 Sensor Readings Through 07/17/06 15:50pm



Gerald A. Norlander

From: Gerald A. Norlander
Sent: Tuesday, January 16, 2007 3:43 PM
To: eleanor_stein@dps.state.ny.us
Cc: Dalton, Maria; A Connelly (PFP); Doug Elfner (CPB); 'Krayeske, Mary - Regulatory'; Guy Mazza; John M. Walters (NYS CPB); Kimberly A. Harriman (NYS DPS); Michael Worden (NYS DPS); Moshe Bonder (Couch White for NYC); Patrick Barnhart (PFP); PFP; Robert M. Loughney (Couch White for NYC); Charlie
Subject: Request for Order Directing Con Edison to Answer PULP IR #72
Attachments: Stein1-16-07.pdf

Dear Judge Stein,

PULP's letter requesting a directive that Con Edison answer PULP IR #72 is attached.

Very truly yours,

Gerald Norlander



Public Utility Law Project of New York, Inc.

194 Washington Avenue, Suite 420
Albany, New York 12210
Website: www.pulp.tc

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E-Mail: info@pulp.tc

January 16, 2007

Hon. Eleanor Stein
Administrative Law Judge
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

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

Dear Judge Stein:

PULP requests an order directing Con Edison to answer PULP IR #72. That question, and Con Edison's response, are set out below.

Question No. 72

Was there an electrical outage or disturbance or other event relating to load, available MW, available MVARs, or voltage at or about 15:25 on July 17, 2006?

Response:

Con Edison objects on the grounds that it is overly broad and irrelevant.

There is no overbreadth in this question, and Con Edison has answered no part of it. It refers to a specific date and time, 15:25 on July 17, 2006 and seeks to know if there was a grid disturbance or outage or other event relating to load, available MW, MVARs or voltage.

The line of inquiry being pursued is whether a disturbance or MVAR deficiency, or outage (i.e., electrical conditions of the grid outside normal parameters) may have played a role in overloading or overheating a weak point in the secondary system.

The date and time are quite relevant, because they precede by 25 minutes the first feeder outage at 15:50. According to Con Edison, that outage (and the subsequent outage of feeder 16 at 16:22) was due to a burning secondary cable in the same conduit. Con Edison has provided no explanation for the cause of that fire.

In addition, Con Edison has not answered PULP's other questions regarding apparently unusual events at approximately 15:25 on July 17, 2006. These include:

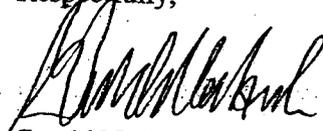
- A large number of RMS sensors showing secondary voltages below 126 Volts at 15:25.¹

¹ A large number of sensors were showing lower voltages just before 15:25. See attachment to PULP IR # 68.2

- A "large event reserve pickup" recorded in a NYISO Operator Dispatch Notice at "07/17/2006 15:25:14."²
- A sudden approximately 95 MW drop in real time New York City zone load at 15:25³
- North Queens substation transformer taps were changed to increase voltage at 15:25⁴
- A large spike in Long Island zone real time energy prices at 15:25⁵
- A large spike in NY City zone real time energy prices at the next interval, 15:35.⁶

Con Edison should be made to disclose what it knows about these events and whether an outage or other grid disturbance preceded the unexplained fires that disabled two feeders at the outset of the Long Island City network outage.

Respectfully,



Gerald Norlander

http://www.pulp.tc/ConEd_Voltage_Analysis_-_071706_-_Hour_16_Sags_Load.pdf

² See attachment to PULP 28.3.

³ See NYISO data in PULP IR # 68, showing two entries for 15:25, with an approximately 95 MW drop in NY City load at the second 15:25.

⁴ See PULP IR # 28.3.

⁵ See PULP IR # 70, showing Long Island zone real time prices went from approximately \$467 at 15:20 to \$1608 at 15:25.

⁶ See PULP IR # 70, showing NY City zone real time prices more than quadrupled, from approximately \$184 at 15:20 to \$924 at 15:25.