

Western Queens Power for the People Campaign

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Sent First Class Mail and Email

April 10, 2007

Hon. Jaclyn A. Brillling
Secretary
NYS Public Service Commission
3 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 Brillling:

As a community voice for people who live and work in Western Queens and who lost power during Con Edison’s Long Island City network outage in July 2006, Western Queens Power for the People (“WQFP”) strongly objects to Con Ed’s request that the Public Service Commission (“The Commission”) forgo a prudence hearing and establish an extraordinary, ad hoc, and quite possibly extralegal, alternative proceeding (“the Con Ed Request”).

Our members and supporters are New York State residents who suffered millions of dollars in damages and losses, including lost wages, lost earnings, property damage, and additional expenses because of the negligence of Con Edison (“Con Ed” or “the Company”). Con Edison’s Request makes no mention of how our communities would be retroactively compensated for these losses, which go well beyond the reimbursement for spoiled food. Additionally, it ignores the importance of a prudence hearing for potentially protecting consumers from paying outage-related expenses through a rate increase—which a finding of “imprudence” could prevent.

Con Edison’s April 5 request is another clear example of the Company avoiding responsibility for its mistakes and—given the timing of the request, at the start of a holiday weekend—negotiating in bad faith and attempting to impede transparency. If it grants the Con Ed Request, the Commission would surrender its most important regulatory hammer. We ask that you reject the Con Ed Request and proceed with a legislatively sanctioned prudence hearing with all deliberate speed.

The Con Ed Request provides no legal basis for the Company's proposal for an undefined alternate proceeding. The proposal also has three impacts of which you should be aware. First, by taking an as yet to be defined action, the Commission may lack legal standing. Second, whether or not the Commission has legal standing, a party aggrieved by the undefined action may challenge the Commission's actions in establishing an alternate procedure as extralegal and outside the Commission's regulatory power; this could result in unnecessary litigation or legislative action. Third, the ad hoc procedure sidesteps available legislatively sanctioned remedies, and so the Commission will not have the power to penalize Con Ed for its actions. In effect, if the PSC consents to Con Ed's Request, it would essentially be giving away its regulatory power.

The New York State Legislature has granted the Commission broad powers to review and modify the actions of the State's utilities. These powers include the power to modify the rates of a utility company in a so-called prudence hearing as described in Public Service Law, Chapter 48 Article 4 Section 66(5) and 66(12-k). Because Con Ed has arguably violated its duty of reasonable care, it has good reason to be concerned that the Commission may modify its rates or charges to ensure that future costs are borne by Con Ed's stockholders rather than by its customers, or, arguably as in this case, by third-party victims of its actions.

Con Ed suggests that a prudence hearing is not necessary because an extensive investigation has already been conducted. Yet the extensive investigation concludes that a prudence proceeding, with a full hearing and public record, is necessary. This is yet another example where Con Ed and the Commission's staff have reached opposite conclusions. Strangely, while the Company seems to be coming down on the opposite side of just about everything, the Con Ed Request posits that it is aimed at reaching a settlement and working constructively with multiple parties.

To not proceed with a prudence hearing would waste the efforts of the Commission's own staff and the other active parties to the investigation. There is no evidence that Con Ed management has learned from its mistakes, or that its actions have been altered by the post-outage investigation. The extensive investigation reached conclusions that are in many areas the diametric opposite of conclusions posited by Con Ed in its own September report. Judging from its comments on the PSC Staff Report, Con Ed management apparently still holds to its discredited beliefs.

In many ways Con Ed's letter relies upon the objections of the City of New York ("the City") to a prudence hearing. The City's hands are, however, not clean in this matter, and it made its own very serious and significant mistakes during the outage. The regulation of utilities is left to the state government for good reason. A state government is less likely to be entwined with the local interests that may subvert appropriate regulation. A state regulatory agency is more capable of assessing the actual impact of utilities' malfeasance on the statewide level. Given the length and scope of the Queens outage, we hope you will agree that the Commission can best continue this assessment under the rubric of a prudence hearing.

As a representative of New York State residents who live and work in Western Queens and who were left in unlit, overheated apartments/homes or endured closed workplaces for nine days last July, WQFPF strongly believes that Con Ed management should be sanctioned for its actions and that every effort should be made to ensure that Con Ed's shareholders bear the full cost of the outage. We recognize that the Commission may not as yet have come to the same conclusion. We hope, however, that the Commission agrees that now is an inappropriate time to forgo the legislatively granted power of a prudence hearing and that Con Ed's request for an alternative proceeding should be unequivocally rejected.

Very truly yours,

Patrick Barnhart
Western Queens Power for the People

cc: Active Parties
Governor Eliot Spitzer
Western Queens elected officials