

NEW YORK STATE
PUBLIC SERVICE COMMISSION

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In the Matter of	:	
	:	
Proceeding on the Motion of the Commission to	:	
Investigate the Forced Outage at Consolidated Edison	:	Case 00-E-0612
Company of New York, Inc.'s Indian Point No. 2 Nuclear	:	
Generating Facility.	:	
	:	
Petition of Certain Members of the New York State	:	
Legislature Regarding Indian Point No. 2 Outage.	:	
_____	X	

JOINT PROPOSAL ON THE
INDIAN POINT 2 PRUDENCE PROCEEDING

December 2, 2003

Case 00-E-0612
JOINT PROPOSAL ON THE
INDIAN POINT 2 PRUDENCE PROCEEDING

The Parties to this Joint Proposal, which settles the issues in Case 00-E-0612, are: Consolidated Edison Company of New York, Inc. (Con Edison), New York State Department of Public Service Staff ("Staff"), Office of Attorney General Eliot Spitzer (OAG), Hon. Richard L. Brodsky, Hon. Adriano Espaillat, New York State Consumer Protection Board (CPB), The Public Utility Law Project of New York, Inc. (PULP), City of New York (NYC), County of Westchester (Westchester), Utility Workers Union of America, AFL-CIO Local 1-2 (Union), Owners' Committee on Electric Rates (OCER), and such other Parties whose authorized representatives have signed the execution pages. The Parties agree to the terms of this Joint Proposal, which is to be presented to the New York State Public Service Commission (Commission).

In a petition filed in March 2000, Assemblymembers Richard L. Brodsky, Ann Margaret Carrozza, Adele Cohen, Adriano Espaillat, James Gary Pretlow, Roberto Ramirez, William Scarborough, Ronald Tocci, Albert Vann, Eric Vitaliano, and Keith Wright requested that the Commission examine the reasonableness of Con Edison's actions regarding the operation and maintenance of its Indian Point Unit No. 2 Nuclear Generating Facility (IP2), and, in particular, the events leading to forced outage that occurred on February 15, 2000. Similar requests were made by Westchester, NYC, and the State Senate.

After considering those requests, and issues identified during an investigation immediately following the February 15 outage by the Department of Public Service, Department of Health and State Emergency Management Office, acting collaboratively under the direction of Governor Pataki, the Commission issued an Order Instituting Proceeding to Investigate Outage at the Indian Point No. 2 Nuclear Generating Facility on March 30, 2000, instituting this proceeding to investigate the circumstances surrounding the February 15 outage and other issues relating to Con Edison's management and operation of IP2.

Prehearing conferences were held before Administrative Law Judge Jeffrey E. Stockholm on May 2, 2000, August 21, 2000, November 10, 2000, February 28, 2001, May 31, 2001, and November 8, 2002, at which the scope of the issues to be addressed in this proceeding, the schedule for the proceeding, discovery disputes, and other matters were discussed.

Settlement negotiations were conducted periodically in this proceeding in the year 2000 without success. After Staff and other parties spent thousands of hours conducting discovery, reviewing documents, and analyzing the issues in this proceeding, a determination was made that renewing settlement discussions would be appropriate. Accordingly, in accordance with the Commission's rules, all parties to this proceeding, and the Secretary to the Commission, were notified by letter dated November 19, 2002 that settlement negotiations would recommence on December 12, 2002. The negotiations scheduled for that date were adjourned at the request of some parties to January 16, 2003. Additional settlement negotiations were held on January 29, April 21, April 29, September 18, and September 24, 2003. Con Edison, Staff, OAG, Hon. Richard L. Brodsky, NYC, Westchester, CPB, PULP, the Union, and OCER participated in some or all of those meetings. All settlement conferences and negotiations were conducted in accordance with 16 NYCRR § 3.9 and the Commission's Settlement Guidelines, set forth in Opinion No. 92-2.¹

As a result of their efforts, the parties have reached a comprehensive proposed resolution of this proceeding, as follows:

1. Con Edison will refund or absorb a total of \$137,500,000 of the replacement power costs it incurred during the outages identified in paragraph 5, below, in the manner set forth in the following paragraphs 2-4.

2. In accordance with the requirements of Chapter 190 of the Laws of 2000 (Chapter 190), on August 9, 2000, the Commission issued an Order prohibiting Con Edison from continuing to collect IP2 replacement power costs associated with the February 15, 2000 outage.² Chapter 190 was ultimately adjudged unconstitutional by the federal courts.³ During the time it and the Commission Order remained in effect, customers did not pay Con Edison \$89,543,663 in IP2 replacement power costs, and the company has a claim for recovery of those costs. That amount will be offset against the \$137,500,000 settlement sum.

¹ Cases 90-M-0255 et al., Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines, Opinion No. 92-2 (issued March 24, 1992).

² Case 00-E-1343, Commission Proceeding Implementing Chapter 190 of the Laws of 2000, Order Modifying Tariff And Mandating Refunds (issued August 9, 2000). Con Edison had been collecting such costs in customer bills since the beginning of the outage.

³ Consolidated Edison Co. of New York, Inc. v. Pataki, 292 F.3d 338 (2002).

3. Con Edison will refund \$45,456,337 to its customers by crediting their electric bills for such total amount over a three month period beginning as soon as practicable, but in no event later than 30 days, following the issuance of a Commission Order approving this Joint Proposal. The refund will be distributed on a usage basis to all current customers, both full service and retail access, to ensure equity between NYC and Westchester customers. A statement will appear on bills explaining that the customer has received a credit related to the IP2 Prudence Proceeding. Because total usage and the credit per kwh will be estimated each month, Con Edison will reconcile actual to estimated usage for the three month period and make the appropriate adjustments, if any, during the following month to ensure that customers receive the full amount of the refund.

4. Con Edison will provide \$2,500,000 to the New York State Energy Research and Development Authority (NYSERDA) to fund one or more energy efficiency programs for Con Edison's low income customers. Usage of the funds will be administered by NYSEDA and governed by the following principles:

- a. NYSEDA shall meet with Staff, Con Edison, CPB, PULP, NYC, Westchester and any interested signatories to this Joint Proposal to discuss NYSEDA's existing low income energy efficiency programs no later than 30 days after the date of the Commission Order approving this Joint Proposal. NYSEDA shall then distribute to the participating parties for review and comment a brief plan describing how the fund will be spent to enhance one or more of these existing programs. Meetings among the interested parties to discuss the plan should occur as expeditiously as possible. After receiving this input from the parties, NYSEDA shall determine how the fund will be allocated among its programs.
- b. The fund shall be utilized to assist Con Edison low income customers located in New York City and Westchester County in an 88% to 12% ratio, respectively.
- c. The fund may be used for different purposes in New York City and Westchester County, provided the programs run concurrently.
- d. The fund has been established to supplement existing programs. Therefore, it shall not be used to supplant existing funding for any

program, whether from Con Edison, the System Benefit Charge, or other sources. Also, all interest accrued on the \$2.5 million will be added by NYSERDA to the fund.

- e. Upon the written request of any active party in this proceeding, NYSERDA shall provide the party a quarterly report on the program activities undertaken and expenditures made from the fund.
- f. As soon as practicable, but in no event later than 30 days, after approval by the Commission of this Joint Proposal, the \$2.5 million shall be delivered by Con Edison directly to NYSERDA and, upon such delivery, Con Edison's commitment under this Paragraph 4 shall be deemed to be fully satisfied.
- g. NYSERDA will be entitled to collect its standard administrative fee from the corpus of the fund in an amount up to a maximum of 7% or \$175,000.
- h. NYSERDA will be requested to use best efforts to exhaust the fund on appropriate low income energy efficiency programs within two years of the date of the Commission Order approving this Joint Proposal.

5. In return for, and conditioned upon satisfaction of, the above commitments, Con Edison will be released and discharged from all claims and obligations that were or could properly have been asserted in this proceeding relating to its operation and management of IP2 from 1985 through the date of the plant's sale in 2001, including, but not limited to, claims and obligations relating to:

- a. The outage from January 25, 1997 through March 17, 1997 relating to the grit blasting of the steam turbines in 1995.
- b. The outage from October 14, 1997 through September 10, 1998 relating to the DB-50 circuit breakers and the management of IP2, generally.
- c. The outage from August 31, 1999 through October 18, 1999 relating to the reactor scram.
- d. The outage from February 15, 2000, through January 29, 2001 relating to the rupture of tube R2C5 in Steam Generator 24 and subsequent replacement of all of the steam generators.

- e. Additional payments made by Con Edison's customers for energy during the 2000-2001 outage as a result of the impact of the loss of IP2's power on the wholesale electric power markets, as identified by OAG.

6. Nothing in this Joint Proposal shall be construed as an admission by any party with respect to the prudence or imprudence of any decision or action by Con Edison related to its management and operation of IP2 or as to the remedies appropriate in any such case.

7. The parties agree and acknowledge that each provision of this Joint Proposal is in consideration and support of all the other provisions, and expressly conditioned upon their acceptance by the Commission. In the event that: (a) the Commission fails to adopt this Joint Proposal according to its terms or adopts it with material modifications that are adverse to any party; (b) this Joint Proposal or a Commission Order approving it, or any provision of either is materially and unacceptably modified by a court order which has become final and non-appealable and such modification is adverse to any party; or (c) a statute, rule, order or regulation is enacted or issued by any federal, state, local or other governmental, regulatory or administrative agency, commission, department or board that imposes liability on Con Edison for any of the discharged claims or obligations enumerated in paragraph 5, above, then each of the signatories to this Joint Proposal so adversely affected reserves the right to withdraw its acceptance of this Joint Proposal, upon reasonable notice to the other parties, and to renegotiate and, if necessary, to litigate without prejudice, any or all issues as to which the signatory agreed in this Joint Proposal. Any signatory who so withdraws its acceptance of this Joint Proposal shall not be bound by its provisions, and this Joint Proposal shall be null and void as to that signatory.

8. The terms and provisions of this Joint Proposal apply solely to, and are binding only in the context of, the purposes and results of this Joint Proposal. None of the terms and provisions of this Joint Proposal may be cited or relied upon by any party hereto or any other party in any fashion as precedent in any proceeding before this Commission, or before any other regulatory agency or any court of law for any purpose except in furtherance of the purposes and results of this Joint Proposal.

9. The parties hereto agree to submit this Joint Proposal to the Commission and to individually support and request adoption by the Commission of the Joint Proposal as set forth herein.

10. This Joint Proposal may be executed in counterpart originals and will be binding upon each signatory Party when its executed counterpart is filed with the Secretary of the Commission.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

By: _____
[name]
[title]

Dated: November _____, 2003

DEPARTMENT OF PUBLIC SERVICE STAFF

By: _____

Kevin M. Lang
Assistant Counsel

Dated: November _____, 2003

ELIOT SPITZER
ATTORNEY GENERAL OF THE STATE OF NEW YORK

By: _____
Mary Ellen Burns
Special Counsel
Public Advocacy Division

Dated: November _____, 2003

HON. RICHARD L. BRODSKY
MEMBER, NEW YORK STATE ASSEMBLY, 92ND DISTRICT

Dated: November _____, 2003

CITY OF NEW YORK

By: _____

Gil Quiniones
Senior Vice President – Energy
New York City Economic Development Corporation

Dated: November _____, 2003

COUNTY OF WESTCHESTER

By: _____
[name]
[title]

Dated: November ____, 2003

NEW YORK STATE CONSUMER PROTECTION BOARD

By: _____

Seth R. Lamont
Intervenor Attorney

Dated: November _____, 2003

THE PUBLIC UTILITY LAW PROJECT OF NEW YORK, INC.

By: _____
[name]
[title]

Dated: November _____, 2003

LOCAL 1-2, UTILITY WORKERS UNION OF AMERICA, AFL-CIO

By: _____

Emanuel Hellen
President

Dated: November _____, 2003

OWNERS' COMMITTEE ON ELECTRIC RATES, INC.

By: _____
[name]
[title]

Dated: November _____, 2003

HON. ADRIANO ESPAILLAT
MEMBER, NEW YORK STATE ASSEMBLY, 72ND DISTRICT

Dated: November _____, 2003