

NEW YORK STATE  
PUBLIC SERVICE COMMISSION

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.

Case 06-E-0894

In the Matter of Staff's Investigation of Consolidated Edison Company of New York, Inc.'s Performance During and Following the July and September Electricity Utility Outages.

Case 06-E-1158

Petition of Certain Members of the New York State Legislature Regarding Consolidated Edison of New York, Inc.'s Electric Service Outages.

Case 06-M-1108

PETITION FOR REHEARING AND CLARIFICATION OF THE  
NEW YORK STATE CONSUMER PROTECTION BOARD

Mindy A. Bockstein  
Chairperson and Executive Director

Douglas W. Elfner  
Director of Utility Intervention

John M. Walters  
Utility Intervenor Attorney

Gregg Collar  
Project Manager

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Albany, New York

NYS CONSUMER PROTECTION BOARD  
5 EMPIRE STATE PLAZA  
SUITE 2101  
ALBANY, NEW YORK 12223-1556  
<http://www.nysconsumer.gov>

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The New York State Consumer Protection Board ("CPB") seeks a rehearing and clarification of the July 20, 2007 Order in these proceedings<sup>1</sup> pursuant to §22 of the Public Service Law ("PSL") and §3.7 of the Rules and Regulations of the Public Service Commission ("PSC" or "Commission")<sup>2</sup> on the grounds that certain findings of the Order are inconsistent with the facts and applicable law. The Commission should rehear these issues and modify its July 2007 Order.

The CPB's objective in these proceedings continues to be to assist in identifying changes that must be made at Consolidated Edison Company of New York, Inc. ("Con Edison" or "Company") and in the PSC's oversight of the utility, and to minimize the chance of a prolonged power outage in the future. We have participated actively in all phases of Case 06-E-0894, and identified specific improvements that should be made in Con Edison's

<sup>1</sup> Order Implementing Outage Recommendations, July 20, 2007 ("July 2007 Order").

<sup>2</sup> 16 N.Y.C.R.R. §3.7.

electric systems, maintenance practices, and its communications with customers and other entities, as well as changes that should be made in the manner in which the PSC regulates the Company. Some of our recommendations were adopted in the Commission's July 2007 Order.

Many of our recommendations, however, as well as those of other parties, were not adopted by the PSC, due to errors of fact or law. Specifically, the July 2007 Order: (1) fails to reflect procedures and standards of review consistent with the PSL and the intent of the proceeding as defined by the Administrative Law Judge ("ALJ"), PSC Chairman Flynn and Chairwoman Acampora, (2) declines to adopt any CPB recommendation addressing changes that should be made in the PSC's oversight of Con Edison and (3) directs Con Edison to take certain action that falls far short of what is required to protect consumers. These decisions should be reversed.

## BACKGROUND

Customers served by Con Edison's Long Island City ("LIC") distribution network suffered a power outage from July 17, 2006 through July 25, 2006. The CPB participated actively in the PSC's investigation of that outage by, among other things, conducting discovery, submitting comments on the Draft Report filed by Staff of the Department of Public Service ("DPS Staff")<sup>3</sup> and filing comments on DPS Staff's Final Report.<sup>4</sup> That report contained 87 distinct recommendations applicable to Con Edison. Other parties including the City of New York; the New York State Assembly Standing Committee on Corporations,

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<sup>3</sup> Case 06-E-0894, Letter from CPB to DPS Staff Regarding Draft Report, January 31, 2007.

<sup>4</sup> Case 06-E-0894, 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 ("DPS Staff Report"); Case 06-E-0894, Initial Comments of the New York State Consumer Protection Board, March 2, 2007 ("CPB Initial Comments").

Authorities and Commissions (“NYS Assembly Corporations Committee”); Office of the State Attorney General (“OAG”); Western Queens Power for the People Campaign (“PFP”); the Public Utility Law Project (“PULP”); UWUA Local 1-2 (“Local 1-2”) and TransGas Energy Systems LLC (“TransGas”), also participated actively in this proceeding and made recommendations for Commission action.

The Commission issued its Order in July, approximately four months after comments on the DPS Staff Report were submitted and one year after the LIC outage. It ordered the Company to implement 23 directives, apparently derived from the 87 recommendations contained in the DPS Staff Report. However, in several important respects, the Commission erroneously concludes that it need not take further action to protect consumers.

I. THE COMMISSION ERRED BY FAILING TO ADOPT PROCEDURES AND STANDARDS OF REVIEW THAT ARE CONSISTENT WITH THE PUBLIC SERVICE LAW, THE INTENT OF THIS PROCEEDING AND AN OPEN AND TRANSPARENT PROCESS.

The PSC found that approximately 150 recommendations made by parties including the CPB are inconsistent with proposals made by DPS Staff.<sup>5</sup> The Commission placed each of these recommendations in one of four categories: (1) meriting further consideration, (2) to be addressed in other specific proceedings, (3) rejected, and (4) “other.”<sup>6</sup>

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<sup>5</sup> According to Appendix D of the July 2007 Order, 26 of the CPB’s recommendations were of this type, as were approximately 80 recommendations of the City of New York, 12 recommendations each by PRP and OAG, 8 recommendations each by the NYS Assembly and PULP, 7 recommendations made by Local 1-2 and 1 recommendation made by TransGas.

<sup>6</sup> According to the July 2007 Order, Appendix D, there were 94, 22, 14 and 22 recommendations in these categories, respectively.

The Order contains no explanation as to why recommendations were placed in a particular category. Instead, a list was included in an Appendix, with a checkmark indicating the PSC's disposition on each recommendation. The text of the 26-page, July 2007 Order contains only a single paragraph discussion of these 150 recommendations, which simply refers the reader to the Appendix.

The PSC concludes that almost 100 recommendations merit further consideration, and directs Con Edison to evaluate, and implement them as appropriate. It also instructs the Company to:

provide a report to Staff, not later than September 15, 2007, of the results of its evaluation, and the status of each implementation as it determines appropriate, of these party recommendations.<sup>7</sup>

The PSC's decisions regarding recommendations placed in the categories of "declines to adopt," and "other," are similarly without any justification or explanation. Most puzzling is the category of "other," which is defined only as "recommendations that do not belong in one of the other categories."<sup>8</sup>

#### Inappropriate Delegation of Regulatory Authority

With respect to the recommendations meriting further consideration, the PSC delegates to Con Edison, authority that properly resides only with the Commission. In particular, Public Service Law §66 invests the Commission with authority to take action to help ensure safe and reliable electric service, including by directing "reasonable improvements and extensions of the works, wires, poles, lines, conduits, ducts and other

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<sup>7</sup> July 2007 Order, p. 22.

<sup>8</sup> Id., Appendix D, p. 39.

reasonable devices, apparatus and property of ...electric corporations.”<sup>9</sup> The Commission erred in delegating to Con Edison, authority to implement those recommendations “as it determines appropriate.” The Commission also erred in failing to direct the Company to provide a justification for each recommendation that it chooses not to implement fully and in not preserving for the PSC the final determination as to whether Con Edison’s decisions on these matters are reasonable. Without such information and further Commission action, there is no basis for the Commission, the parties or the public, to conclude that the likelihood of similar outages has been minimized and that all reasonable actions are being taken to provide safe and reliable service.

#### Inconsistency of the July 2007 Order with the Intent of the Proceeding

It is the intent of this proceeding to have the parties be treated fairly, the Commission be provided with the benefit of the parties’ input, and that the proceeding be conducted in an open and transparent manner. The ALJ issued several procedural rulings to ensure that all parties had an opportunity to participate effectively and present their views for Commission consideration. For example, in her first ruling on procedures, ALJ Eleanor Stein concluded:

The objective of these procedures and schedule is to ensure party participation and information without prejudicing the ability of the Staff team to complete its investigation and make recommendations.<sup>10</sup>

Similarly, in a procedural ruling specifically regarding the due process to be provided to parties other than DPS Staff, the ALJ stated:

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<sup>9</sup> Public Service Law §66.

<sup>10</sup> Case 06-E-0894, Ruling on Procedure and Schedule, September 27, 2006, p. 4.

By employing this procedure, it is ensured that at the time of its consideration of the issues at stake in this proceeding, the Commission will have before it not only the Staff's report, but the formal responses of all parties to this proceeding, including Con Edison.<sup>11</sup>

In testifying before the Assembly Standing Committee on Corporations, Authorities and Commissions and the Assembly Standing Committee on Energy, the PSC Chairman stated that: "I commit to the people affected by the outages that this investigation will be conducted in an open and transparent manner."<sup>12</sup> Current PSC Chairwoman Acampora also clearly noted a similar objective. In testimony on this matter before those same Assembly Committees, the Chairwoman stated:

The examination process was designed to incorporate the public's views and to encourage participation by all interested parties. Use of such an open and transparent process will, I believe, result in the marshaling of the facts, issues, and recommendations and will promote thoughtful decision-making.<sup>13</sup>

The Chairwoman concluded that the procedure established in this case

demonstrates the Commission's commitment to producing a thoughtful, fair, and professional work product. I know that other parties will have their own unique ideas, and some parties will, no doubt, find areas where either staff has gone too far or staff has not gone far enough in its recommendations. The Commission looks forward to receiving these comments and points of view, and will consider the final report and the comments thereon....in a timely and deliberative manner to ensure that rate payers are protected, parties are treated fairly, and the public interest is advanced.<sup>14</sup>

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<sup>11</sup> Case 06-E-0894, Further Ruling on Procedure, December 5, 2006, pp. 2-3.

<sup>12</sup> Written Testimony of William M. Flynn, Chairman, New York PSC, The Power Outages in the Consolidated Edison Service Territory, Before the Assembly Standing Committee on Corporations, Authorities and Commissions and the Assembly Standing Committee on Energy, August 3, 2006, p. 2.

<sup>13</sup> Assembly Standing Committee on Corporations, Authorities and Commissions and the Assembly Standing Committee on Energy Public Hearing, The Major Power Outages Suffered by Consolidated Edison's Customers in July and September, 2006, in Queens and Westchester County, February 26, 2007, ("February 2007 Assembly Hearing") Prepared Remarks of Chairperson Acampora, Transcript Reference ("TR") 7.

<sup>14</sup> Id., TR 10-11; See also TR 13.

In addition, the CPB explicitly recommended that this proceeding be conducted in an open setting with a tracking mechanism to enable interested parties, and the public, to monitor or review utility compliance with Commission orders.<sup>15</sup>

However, the PSC's July 2007 Order falls far short of reflecting the intent of the proceeding as articulated by the ALJ and the PSC's Chairwoman. The PSC's Order gives no explanation at all, much less any rational basis, for why the Commission concluded that approximately 130 recommendations<sup>16</sup> of the parties should not be adopted. Then, it gives the subject of the outage investigation the unilateral right to accept or reject the approximately 100 recommendations that the Commission concluded "merit further consideration," precluding participation by parties other than DPS Staff, which, as explained above, is the only intended recipient of Con Edison's report on those matters. Further, even if the active parties were provided a copy of that report, the PSC has not provided an opportunity for parties to address the report's conclusions even if the Company provides no reasonable basis for rejecting a recommendation. Similarly, many of the recommendations that were adopted by the Commission require the Company to submit status reports, but only to DPS Staff.

These procedures deny the parties and the public, any way to assess the appropriateness of the PSC's reasoning and its conclusions. Instead, the Commission's decision effectively ignores the input of parties, including the CPB as the statutory representative of consumers before the PSC, the City of New York, NYS Assembly Corporations Committee, OAG, PULP, PFP, Local 1-2 and others who have a long history

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<sup>15</sup> CPB Initial Comments, pp. 5, 18.

<sup>16</sup> Calculated as 150 recommendations deemed to be inconsistent with those made by DPS Staff, less the 22 recommendations that are to be addressed in other specific proceedings.



of working constructively in PSC proceedings and/or have worked diligently to represent the interests of their constituents in this proceeding.

### Remedy

To remedy these errors, the CPB recommends that the Commission revise the July 2007 Order to:

- require Con Edison to respond to each of the approximately 100 recommendations that the PSC found “merit further consideration,” that it declines to adopt in full, with a written explanation justifying the company’s position;
- provide all active parties with a copy of Company submissions to DPS Staff regarding the evaluation, implementation and status of those 100 recommendations as well as all PSC directives in this proceeding;
- ensure that active parties have an opportunity to provide the Commission with their concerns and comments regarding those Con Edison filings;
- ensure Commission review of all issues in dispute regarding those matters and
- for each of the recommendations designated by the Commission as “declined to adopt” or “other,” the PSC should provide a written explanation of the basis for its decision, as well as a clear explanation of what is meant by “other.”

## II. THE COMMISSION ERRED IN DECLINING TO ADOPT MANY OF THE CPB’S RECOMMENDATIONS REGARDING CHANGES TO THE PSC’S OVERSIGHT OF CON EDISON.

In our Initial Comments on the DPS Staff Report, the CPB explained that in addition to requiring Con Edison to make substantial changes, the PSC must make significant and meaningful changes in its regulation and oversight of Con Edison and its electric system.<sup>17</sup> For example, we explained that the Commission did not follow through on its own orders resulting from the Washington Heights blackout of 1999, despite a finding by DPS Staff that several of the PSC’s recommendations resulting from that event have not been

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<sup>17</sup> Id., pp. 17-19.

implemented by Con Edison and were directly related to the LIC outage. We also explained that for more than a decade, the PSC has ignored provisions of the PSL that explicitly require it to conduct an audit of Con Edison's construction program planning as it relates to reliable service. Had those audits been conducted as required, the conditions that caused and exacerbated the scope and duration of the LIC outage might have been identified, and corrected.

PSC Chairwoman Acampora testified before the NYS Assembly Corporations Committee and NYS Assembly Standing Committee on Energy regarding the need for review of the PSC's practices for regulating Con Edison:

Mr. Gianaris: ...Does the Commission take any responsibility on itself for what happened this past summer?  
Ms. Acampora: Absolutely.  
Mr. Gianaris: And you recognize the need for improvements of your own process, --  
Ms. Acampora: Absolutely.<sup>18</sup>

In response to questions as to when the PSC would reassess its own process for overseeing Con Edison, the Chairwoman stated:

But in order to make this whole process complete, I believe that when we make a determination, if we do, to go forward with the prudence investigation, at that time, we will talk about our own internal investigation and changes in policy, also, as a complete package.<sup>19</sup>

The PSC commenced the prudence investigation referred to by the Chairwoman in April 2007,<sup>20</sup> but made no public announcement at that time of any changes in PSC

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<sup>18</sup> February 2007 Assembly Hearing, TR 100.

<sup>19</sup> Id., TR 75.

<sup>20</sup> Case 06-E-0894, et al., Order Commencing Prudence Investigation, April 18, 2007.

oversight of Con Edison. Similarly, the July 2007 Order does not adopt any recommendation made by the CPB regarding changes to the PSC's oversight of Con Edison, nor did it even mention those proposals. Instead, it relegates those recommendations to the category of "other," and provides no indication of when, if ever, they will be addressed.<sup>21</sup> In addition, the Order does not mention the more general "internal investigation" identified by the PSC's Chairwoman.

### Remedy

The PSC erred in unduly restricting the scope of its July 2007 Order to actions that Con Edison needs to take to minimize the likelihood that similar outages occur in the future, and ignoring the evidence, including sworn testimony of Chairwoman Acampora before the NYS Assembly, that changes in the PSC's oversight of Con Edison are required. The Commission should revise the July 2007 Order to explicitly identify the action it will take to address each recommendation made by the parties concerning such matters.

### III. THE ORDER DIRECTS CON EDISON TO TAKE CERTAIN ACTION THAT FALLS FAR SHORT OF WHAT IS REQUIRED TO PROTECT CONSUMERS.

#### A. Issues Related to the Washington Heights Outage

As the CPB has explained throughout this proceeding, several directives from the PSC's Orders following the Washington Heights outages which were not fully implemented by Con Edison, are related to problems that occurred in the LIC network and are critical to improving the utility's system performance.<sup>22</sup> Several other parties, including the City of

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<sup>21</sup> July 2007 Order, Appendix D, pp. 6 – 8.

<sup>22</sup> E.g., CPB Initial Comments, pp. 13-15.

New York, NYS Assembly Corporations Committee and OAG, joined the CPB in recommending that the Commission determine whether the LIC outages might have been avoided if these PSC directives had been implemented, and that the PSC take action to enforce its orders.

The DPS Staff Report finds that several of the 44 recommendations resulting from the investigation of the Washington Heights outage, which the PSC ordered Con Edison to implement, had not been complied with more than six years later. The Report concludes:

The eight recommendations that are still outstanding include four that involve issues that this Report has cited in several sections above as issues that continue to need resolution. These involve: improving modeling techniques, monitoring of the secondary network, expediting elimination of paper-insulated lead-covered cables and joints, and developing an alternative to hipot testing. It is imperative that the Company continue to work on addressing these matters, not only to complete its obligations with respect to the Washington Heights Network, but also to address the similar recommendations made in this Report with regard to the Long Island City Network and the entire Con Edison electric distribution system.<sup>23</sup>

Further, the Director of the DPS' Office of Electricity and Environment, Mr. Gallagher, made the following statement under oath at the NYS Assembly's February 2007 Hearing:

We do find that there are, I would say, two recommendations that came out of Washington Heights that the company has not adequately dealt with, and we believe there may be a link with Long Island City - monitoring of the secondary system and - and as well as cable ratings. And we are specifically, you know, directing the company - it's - at least staff is recommending directions to the company that they immediately act on these - these two issues. It's something that has - that should have been acted on.<sup>24</sup>

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<sup>23</sup> DPS Staff Report, February 2007, p. 130.

<sup>24</sup> February 2007 Assembly Hearing, TR 62.

Curiously, however, the July 2007 Order contains no mention of the Commission's order in the Washington Heights case. Further, insofar as the Order addresses issues that are related to the failures of the Washington Heights network and have not been fully addressed since then, it generally repeats the same directives that were given more than six years ago. That approach has not adequately protected consumers, and the Commission erred in assuming that it would do so now. Stronger action to protect consumers is required, as detailed below.

#### 1. Monitoring of the Secondary System

The Commission erred in not taking stronger action regarding Con Edison's monitoring and analysis of its secondary network. As explained below, there is ample evidence that the absence of effective monitoring of the secondary system contributed to the Company's inability to accurately assess the extent of the outage, as well as its scope and duration. The absence of strong action on this issue is of particular concern since this was also a key factor in the 1999 Washington Heights outage.

The Commission's investigation of the Washington Heights outage concluded:

Recommendation: Con Edison should evaluate reasonable actions that can be taken to improve monitoring of its secondary system including use of additional monitoring devices, where feasible, and report to the Commission by June 1, 2000 on its findings.

Tasks/Comment: Con Edison is installing a full monitoring system in one of its networks as a prototype. Con Edison will provide staff an assessment by March 31, 2001.<sup>25</sup>

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<sup>25</sup> Case 99-E-0930, March 16, 2001 Order, Attachment, p. 1, Implementation Status Report ("2001 Washington Heights Order").

Six years later, the DPS Staff Report in this proceeding cited “little real improvement” in this area since the 1999 Washington Heights network shutdown.<sup>26</sup> DPS Staff recommended that:

Con Edison should investigate ways to improve its monitoring of the secondary system during normal and multiple contingency event conditions. If it is unable to develop an adequate technical solution by June 1, 2007, it should develop a manual solution. The Company should report the outcome of its investigation and plans by June 1, 2007.<sup>27</sup>

In its July 2007 Order, the PSC found that the Company has been unable to develop an adequate technical solution to this matter and is developing a manual solution. It instructed the Company to provide a report to Staff on April 1, 2008, and every six months thereafter, on the effectiveness of its monitoring of the secondary system.<sup>28</sup> This recommendation is virtually identical to that made by the PSC following the Washington Heights outage.

Contrary to the Commission’s conclusion, the record in this case provides no reason to conclude that this approach to monitoring the secondary system is adequate. The last six years have demonstrated that simply requiring Con Edison to provide reports to DPS Staff does not effectively protect consumers. In view of the critical importance of the absence of effective monitoring of the secondary system in both the Washington Heights and Long Island City outages, Con Edison should be directed to explain, to all parties, why the full monitoring system it was installing as a prototype in 2000 was not a reasonable solution to this issue. It should also identify industry best practices regarding secondary

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<sup>26</sup> Case 06-E-0894, DPS Staff Report, February 2007, p. 91.

<sup>27</sup> July 2007 Order, Appendix A, p. 6, #43.

<sup>28</sup> Id., p. 19.

network monitoring systems based on a review of other underground systems throughout the world and explain why those systems are not appropriate here. This information should be provided no later than November 1, 2007, and parties should have an opportunity to inform the Commission of their comments or concerns on these matters.

## 2. Improved System Modeling Tools

Con Edison uses several tools and computer programs to monitor and simulate changes within the distribution system and associated equipment. These tools provide network operators crucial information to determine what is happening in the network, what is likely to happen in certain circumstances, and the proper course of action to minimize disruption to customers.

The PSC found that the absence of adequate modeling tools was a contributing factor in the Washington Heights outage and directed the Company to enhance its network modeling, particularly of the secondary system. Recommendation II-1 of that order, regarding “Improved Modeling Techniques,” stated:

Con Edison should improve its cable rating methods to more accurately reflect actual thermal conditions and develop techniques to better model its network systems, especially those under multiple contingency conditions.<sup>29</sup>

This Order explained that “This is a phased project which will be completed in the 2001-2002 time frame. Staff will review progress next spring to determine if enhancements can be made prior to the 2001 summer season.”<sup>30</sup>

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<sup>29</sup> 2006 Washington Heights Order, Attachment, p. 1.

<sup>30</sup> Id.

The DPS Report in this proceeding concluded that the Company's progress on this effort "has been insufficient and it appears that it has not been given sufficient priority."<sup>31</sup> The absence of proper tools may have contributed to the lack of information concerning the extent, location and duration of the LIC outages. Accordingly, DPS Staff made several recommendations specifically targeted to system modeling.<sup>32</sup> It stated that the Company should upgrade its "World-class Operations Load Flow" ("WOLF") system to enhance its reliability and study possible improvements to that system. It also recommended that the Company upgrade its "Poly Voltage Load Flow" ("PVLf") model.<sup>33</sup> The Commission does not directly address these proposals in its July 2007 Order, but concludes that it is satisfied with the Company's implementation of the DPS Staff recommendations.<sup>34</sup>

The Commission erred in concluding that the Company has complied with these recommendations, particularly since similar general directives to enhance these models were issued more than six years ago. The PSC should direct the Company to provide, to all active parties, a written explanation of precisely how it has improved the capability and reliability of the WOLF system and PVLf model, along with a description of best practices regarding network system models and an explanation as to why the Company chose not to implement best practices in this instance. The parties should have an opportunity to inform the Commission of their comments and concerns regarding these issues.

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<sup>31</sup> DPS Staff Report, p. 90.

<sup>32</sup> July 2007 Order, Appendix A, p. 7, # 38-39.

<sup>33</sup> Id., Appendix A, p. 7, # 39-40.

<sup>34</sup> July 2007 Order, p. 9.



### 3. Alternatives to High-Potential Testing of Primary Feeder Cables

Some industry experts consider High Potential (“hipot”) testing of feeder cables to be destructive because it stresses the cables beyond normal operating limits. After the Washington Heights outage, the Commission directed the Company to:

accelerate its evaluation of alternatives to high potential testing, such as low frequency AC testing, to determine their possible effectiveness and report to the Commission on its efforts by June 1 [2001].<sup>35</sup>

The Company has not yet identified and implemented an alternative. In this proceeding, DPS Staff recommended that the Company

determine if the Very Low Frequency (VLF) high potential testing is effective on underground network systems and, if effective, adopt such an approach as the Company's standard practice for testing primary cable for integrity by June 1, 2007. If not effective, the Company should accelerate the research and development of other alternatives to hipot testing with the intent to have such a new procedure in place by the summer of 2008.<sup>36</sup>

The Commission did not directly address this issue in its July 2007 Order. Instead, it stated only that it is satisfied that “nearly all” of the DPS Staff recommendations are being adequately implemented by the Company.<sup>37</sup>

There is no basis for the Commission’s conclusion, and the record in this case indicates that it is unreasonable to expect an adequate solution based solely on reports provided to DPS Staff. Since this issue is unaddressed for at least six years, stronger Commission action is required. The Commission should direct the Company to provide a report to all parties identifying the industry best practices regarding testing of feeder cables

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<sup>35</sup> 2006 Washington Heights Order, p. 4.

<sup>36</sup> July 2007 Order, Appendix A, p. 7, #37.

<sup>37</sup> July 2007 Order, p. 10.

and why those solutions are not appropriate here. The report should be submitted no later than November 1, 2007, and parties should be provided an opportunity to inform the Commission of their comments or concerns.

## B. Low-Voltage

As we explained in our Initial Brief, many consumers affected by the LIC outage complained that they received less than optimal voltage levels to operate basic electric equipment such as refrigerators. These customers were not necessarily counted as being out of service, as long as their meter was running.<sup>38</sup>

DPS Staff recommended that Con Edison file a report containing an estimate of how many low voltage conditions existed during the LIC network event, explain how it will ensure that such conditions in a network system are estimated accurately in the future and put forth what monitoring thresholds are appropriate.<sup>39</sup> The CPB recommended that the Company define a threshold for what constitutes low voltage and provide supporting studies.<sup>40</sup> The PSC's July 2007 Order is silent on this issue, asserting only that the Company has "adequately implemented" "nearly all" of the DPS Staff recommendations.<sup>41</sup>

The Commission erred in concluding that no further action is required on this matter. The issue of the appropriate definition of "low-voltage" is being addressed in another phase of Case 06-E-0894, dealing with Con Edison's reimbursement tariff. More generally, that

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<sup>38</sup> CPB Initial Comments, p. 8.

<sup>39</sup> July 2007 Order, Appendix A, p. 1, #5-6.

<sup>40</sup> CPB Initial Comments, p. 8. The CPB further elaborated on this point in comments on Con Edison's tariff regarding customer reimbursement in certain outages. (Cases 06-E-0894, 06-E-1158, Reply Comments on the NYS Consumer Protection Board, August 8, 2007)

<sup>41</sup> July 2007 Order, p. 10.

case is addressing the issue of ratepayer compensation for damage to electronic equipment and appliance motors attributable to low-voltage situations, an issue that has been outstanding since 1999. The Commission should revise its July 2007 Order to ensure that the Company's filings in this proceeding regarding low-voltage are provided to all active parties in the review of Con Edison's reimbursement tariff, and that those parties have a fair opportunity to inform the Commission of their comments or concerns.

### CONCLUSION

The Consumer Protection Board urges that the Public Service Commission adopt the recommendations identified herein.

Respectfully submitted,

Mindy A. Bockstein  
Chairperson and Executive Director

Douglas W. Elfner  
Director of Utility Intervention

John M. Walters  
Utility Intervenor Attorney

Gregg Collar  
Project Manager

Dated: August 20, 2007  
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