

NEW YORK STATE
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

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

Case 06-E-1158

REPLY COMMENTS OF THE
NYS CONSUMER PROTECTION BOARD

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Dated: August 8, 2007
Albany, New York

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The New York State Consumer Protection Board ("CPB") respectfully submits these reply comments in response to the Notice issued July 10, 2007 in this proceeding by the Public Service Commission ("PSC" or "Commission").¹ Provisions in the tariff of Consolidated Edison Company of New York, Inc. ("Con Edison") regarding payments made to residential and commercial customers for certain losses sustained as a result of power outages ("Reimbursement Tariff"), are inadequate to protect consumers and must be revised.

Under its Reimbursement Tariff, Con Edison will compensate customers for certain losses resulting from power failures attributable to malfunctions in the local distribution system when customers experience outages totaling 12 or more hours within a 24-hour period. Under the tariff effective at the time of the 2006 outages in Queens and Westchester County, residential customers would be reimbursed up to \$150 for food spoilage when reimbursement claims are supported by an itemized list of losses, and up to \$350 when the list is accompanied by proof of loss. Commercial customers are reimbursed

¹ Cases 06-E-0894 and 06-E-1158, Notice Requesting Comments on Reimbursement Tariff, July 10, 2007 ("Reimbursement Tariff Comment Notice").

up to \$7,000 when their claims are supported by an itemized list and proof of loss.

In early March 2007, the CPB identified several changes to Con Edison's Reimbursement Tariff that were essential to protect consumers adequately.² We recommended that they be implemented before this year's peak summer demand period. Most importantly, we called for an increase in the upper limits on per-customer reimbursement to reflect, at a minimum, inflation in the seven years since they were last set. In addition, we proposed that coverage be expanded to include damaged electronic equipment and appliance motors, particularly from low-voltage situations.³

Con Edison filed a tariff amendment on March 30, 2007, that did, in fact, increase the per-customer reimbursement limits by approximately 30%. It also expanded coverage to medical supplies, but did not include electrical equipment as the CPB had recommended. The Commission permitted the changes to go into effect on July 1, 2007 on an expedited basis, and stated that it would consider comments on them in a subsequent review.⁴

The CPB commends Con Edison for its proposal to increase reimbursement limits for the summer of 2007 as we had recommended, as well as for adding perishable medicine to the list of compensable losses and increasing its overall liability limit to \$15 million per event. Those changes represent a significant step toward providing fair compensation to customers for losses attributable to an outage. However, several other

² Case 06-E-0894, Initial Comments of the New York State Consumer Protection Board, March 2, 2007.

³ Id., p. 25.

⁴ Reimbursement Tariff Comment Notice, p. 2.

modifications should be adopted to reflect that power outages have greater consequences due to our electrical dependency.

Automatic Increases in Reimbursement Limits

The reimbursement limits should increase automatically to account for inflation since they were last revised. Such annual updates are necessary to help ensure that customers are reimbursed for amounts actually spent.

Con Edison asserts that the new limits need not be adjusted for at least three years⁵ and proposes to evaluate the reasonableness of these amounts in five years.⁶ That proposal would not adequately protect customers. The new reimbursement limits reflect 16% inflation over the last seven years and the fact that compensation will be expanded to provide for the loss of perishable medicine. They do not capture future, unknown inflation. Without automatic adjustments of the reimbursement limits to reflect inflation, customers would be disadvantaged.

The CPB recommends that the reimbursement limits be revised periodically, no less frequently than annually. By statement filed with the Commission, Con Edison would increase the limits based on the previous year's change in the Gross Domestic Product deflator for New York City, or some other agreed-upon price index. Alternatively, Con Edison's tariff could include limits for each of the next two or three calendar years, calculated using an agreed-upon inflation forecast. Other parties including the City of New

⁵ Cases 06-E-0894 and 06-E-1158, Comments on Behalf of Con Edison Concerning Reimbursement Tariff, July 25, 2007, p. 19.

⁶ Id., p. 22.

York;⁷ the New York State Assembly Standing Committee on Corporations, Authorities and Commissions;⁸ and Western Queens Power for the People Campaign,⁹ support an automatic increase in reimbursement limits to reflect inflation.

Compensation for Damage to Equipment

Con Edison's Reimbursement Tariff should be modified to provide compensation to customers for verifiable damage to electrical equipment including electronics such as computers, and electric motors in appliances such as air conditioners and refrigerators.¹⁰ The intent of the Reimbursement Tariff is to make customers whole for losses suffered as a result of an outage of long duration that is attributable to a malfunction of Con Edison's local distribution system. Non-perishable equipment should not be excluded from the list of compensable losses. Customers providing verifiable information demonstrating that a particular outage caused damage to such equipment should be reimbursed for the loss of market value of the equipment, or the reasonable cost of repairs, up to a limit of at least \$500 per customer per event. The balance between the interests of customers suffering losses attributable to outages and the interests of the general body of ratepayers, are more

⁷ Cases 06-E-0894, 06-E-1158, Initial Comments of the City of New York, July 25, 2007 ("City of New York Comments"), pp. 7-8.

⁸ Cases 06-E-0894, 06-E-1158, Comments of Assemblyman Richard L. Brodsky, Chair, New York State Assembly Standing Committee on Corporations, Authorities and Commissions, July 25, 2007 ("NYS Assembly Comments"), p. 5.

⁹ Cases 06-E-0894, 06-E-1158, letter from Western Queens Power for the People Campaign to Secretary Brilling, July 24, 2007 ("WQPFP Comments"), p. 1.

¹⁰ Other parties also made this recommendation, including the City of New York (City of New York Comments, p. 6); the New York State Assembly Standing Committee on Corporations, Authorities and Commissions (NYS Assembly Comments, pp. 4-5); Office of the Attorney General (Comments of the Office of the Attorney General of the State of New York, Andrew M. Cuomo, on Con Edison's Reimbursement Tariff, July 25, 2007, p. 4); and Western Queens Power for the People Campaign (WQPFP Comments, p. 1).

appropriately addressed through limits on overall per-customer and per-event liability, than by ignoring the real, significant losses of individual consumers.

If the PSC does not adopt this proposal, it should immediately commence a new proceeding to address this issue, which has been languishing for seven years. After its review of the outage of Con Edison's Washington Heights Network in 1999, the Commission concluded that "the issues concerning compensation for damages to motors for low voltage situations are referred to Staff for further study."¹¹ Approximately nine months later, it denied requests that Con Edison's tariff be modified to provide compensation for damage to electric motors, saying that its staff was continuing to investigate the issue.¹² Six years later, no studies have been produced by the Department of Public Service staff, nor has the Commission taken any action on this issue of vital importance to consumers.

In support of its assertion that the types of losses eligible for reimbursement should not be expanded to include equipment damage, Con Edison submitted three studies as part of its July 25, 2007 initial comments. At least one of those studies, dated April 12, 2000, was apparently conducted in anticipation of the Commission's still pending review of this issue after the Washington Heights outage. It appears that none of these studies were previously provided to the parties and the two weeks provided for reply comments in this proceeding is not sufficient to address them in detail. Accordingly, if the Commission does not adopt an expanded list of reimbursable losses that includes electrical equipment, it

¹¹ Case 99-E-0930, Order Concerning Responses to March 15, 2000 Order, May 27, 2000, ordering clause 4, p. 7.

¹² Case 99-E-0930, Order Concerning Tariff Provisions Governing Reimbursement for Food Spoilage, March 1, 2001, pp. 6-7.

should direct its staff to complete the investigation ordered more than seven years ago and convene a proceeding to investigate and bring closure to this issue.

Definition of Power Outage

The CPB supports the City of New York's recommendation that Con Edison's tariff include a definition of a "power outage."¹³ Below a certain voltage level, customers will not be able to operate appliances, lighting and other equipment even if electric current is available. This happened during the July 2006 outages in Queens, and to consumers, the occurrences were sometimes indistinguishable from an outage. Moreover, low voltage can severely damage customer equipment.

Arguments over low voltage versus outage damage are likely to be as frustrating and infuriating to Con Edison's electric customers as the debates over wind versus water damage were to insurance policy holders in the wake of Hurricane Katrina. To avoid ambiguity and customer confusion, Con Edison's tariff should be modified to include a definition of "power outage" that captures low-voltage situations in which common electrical appliances and equipment are inoperable.

¹³ City of New York Comments, pp. 4-5.

CONCLUSION

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

Respectfully submitted,

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