

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

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

CASE 06-M-1108

NEW YORK STATE CONSUMER PROTECTION BOARD'S  
STATEMENT IN SUPPORT OF JOINT PROPOSAL

Mindy A. Bockstein  
Chairperson and Executive Director

Douglas W. Elfner  
Director of Utility Intervention

John M. Walters  
Intervenor Attorney

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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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NEW YORK STATE CONSUMER PROTECTION BOARD'S  
STATEMENT IN SUPPORT OF JOINT PROPOSAL

The New York State Consumer Protection Board ("CPB") submits this Statement in full support of the Joint Proposal filed in this proceeding on April 24, 2008 resolving issues raised in the investigation of the prudence of Consolidated Edison Company of New York Inc.'s ("Con Edison" or "Company") actions concerning the July 2006 electric outages in Queens, New York ("Joint Proposal"). If approved by the Public Service Commission ("PSC" or "Commission"), the Joint Proposal would provide consumer benefits including bill credits or payments to adversely affected individuals and businesses, other benefits to the affected communities including a formal apology from the Company and funding for tree-planting and other environmental initiatives, and assurance that the general body of ratepayers will not bear the costs of capital spending required as a result of the outages. Many of these provisions could only have been attained through a negotiated settlement. As such, the CPB recommends that the PSC approve the Joint Proposal.

The CPB has participated actively in this case by submitting written comments on the Department of Public Service (“DPS”) Staff’s report concerning the outage investigation,<sup>1</sup> in which we identified several ways for this report to be strengthened to protect consumers. In addition, we filed a prima facie statement in which we explained why the Commission should conclude that Con Edison was imprudent in several critical respects relating to the cause, scope and duration of the outages. We also demonstrated in that document that the PSC has the authority to determine whether there was gross negligence or willful misconduct, a finding that may lead to affected consumers receiving amounts beyond those specified in Con Edison’s tariff.<sup>2</sup> In addition, the CPB participated in every meeting in an attempt to negotiate a resolution of these matters.

Throughout this proceeding, the Agency’s objectives have been to ensure that the general body of Con Edison ratepayers do not bear the burden of costs to repair the damage to the Long Island City (“LIC”) network associated with the outage, and that residents and businesses affected by the outage receive reasonable benefits. The Agency asserts that these objectives should be met while recognizing the significant limitation imposed by the PSC’s lack of authority to direct Con Edison to award compensatory damages to those affected by an outage. The Joint Proposal, for the reasons discussed below, achieves the CPB’s objectives in this proceeding and

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<sup>1</sup> Case 06-E-0894, Initial Comments of the New York State Consumer Protection Board, March 2, 2007.

<sup>2</sup> Case 06-E-0894, Prima Facie Statement of the New York State Consumer Protection Board, July 10, 2007.

satisfies the PSC's Settlement Guidelines. We recommend that the Commission approve it in its entirety.

I. THE PROPOSAL PROVIDES SIGNIFICANT BENEFITS FOR RATEPAYERS.

If approved, the Joint Proposal would provide several important benefits to consumers, including those which the CPB has sought throughout this proceeding.

A. Costs of Repairing the Damage to the LIC Network

Con Edison had previously agreed to absorb the labor, materials and related operating expenses it incurred to restore the LIC network, estimated to be \$59 million. Under the Joint Proposal, Con Edison would similarly forego recovery from ratepayers of \$40 million of capital expenditures it made for transformers, cables and other equipment required to replace and repair that network. In addition, the Company would agree to not seek recovery of \$6 million of interest and depreciation expense accrued on those plant costs.

These provisions achieve the CPB's objective that Con Edison, and not its customers, pay all costs to restore the LIC network.

B. Benefits to Affected Communities

Under the Joint Proposal, Con Edison would provide \$17 million for the direct benefit of communities affected by the outage. Approximately one-half of that amount would be used to provide bill credits or payments to households and businesses: \$100 to residential; \$200 to small non-residential and \$350 to large non-residential

customers. Approximately 70,400 customers who received bill credits pursuant to a previous PSC order,<sup>3</sup> would be eligible for these credits or payments. Customers who have the same account number as they did in July 2006, will receive a bill credit. Customers who do not have the same account number, likely because they have since relocated, would receive a payment upon request accompanied by proof of identity and evidence that the claimant resided or was located in the LIC network and was affected by the outage. Payments will also be made to the approximately 3,000 individuals and businesses to whom Con Edison paid a claim of spoilage, although they are not customers of record. The Joint Proposal also specifies procedures to be used to resolve disputes concerning these bill credits and payments.

Up to \$500,000 of the \$17 million in direct benefits would be used for a study of the impact, including economic and health effects, of the outages on the affected communities. The study will be conducted by a research entity, selected by a majority vote of the signatories of the Joint Proposal from at least three qualified entities.

The remainder of the \$17 million in community benefits will be used to provide environmental benefits, including the planting and maintenance of trees in the neighborhoods affected by the outage, and other "greening projects." The Joint Proposal specifies procedures for selecting administrators of these projects, and details their responsibilities.

Overall, the \$17 million in benefits to the affected communities are substantial and will provide needed financial assistance as well as enduring benefits. The amount of the bill credits or payments to be provided to residential and small non-residential

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<sup>3</sup> Case 06-E-0894, Order Temporarily Waiving Tariff Provisions, August 3, 2006.

customers exceeds the average monthly electric bill for those customer classifications in the summer of 2006, thereby providing welcome financial assistance to individuals and businesses impacted by the outage. The trees and other environmental benefits that would be available under the Joint Proposal are intended to enhance the quality of life in the affected communities for many years in the future. As explained below, these benefits are unique, and will be available only if the Joint Proposal is approved.

## II. THE JOINT PROPOSAL SATISFIES THE COMMISSION'S SETTLEMENT PROCEDURES AND GUIDELINES.

The Commission has adopted standards to evaluate whether negotiated agreements are in the public interest.<sup>4</sup> Among those Settlement Guidelines are the following:

- a. A desirable settlement should strive for a balance among (1) protection of the ratepayers, (2) fairness to investors, and (3) the long term viability of the utility; should be consistent with sound environmental, social and economic policies of the Agency and the State; and should produce results that were within the range of reasonable results that would likely have arisen from a Commission decision in a litigated proceeding.
- b. In judging a settlement, the Commission shall give weight to the fact that a settlement reflects the agreement by normally adversarial parties.<sup>5</sup>

The Proposal satisfies these standards.

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<sup>4</sup> Cases 90-M-0255 and 92-M-0138, Opinion , Order and Resolution Adopting Settlement Procedures and Guidelines, ("Settlement Guidelines"), Opinion No. 92-2, March 24, 1992.

<sup>5</sup> Id., Appendix B, p. 8.

A. Balance Among Ratepayers, Investors and the Long-Term Viability of the Utility

The Joint Proposal reasonably balances the interests of ratepayers, investors and the long-term viability of the utility. Ratepayers are protected since they will not fund the cost of restoring the LIC network, and residents and businesses affected by the outage will receive benefits totaling \$17 million. The Commission can reasonably conclude that the Joint Proposal is fair to investors and consistent with the long-term viability of the utility, by virtue of the fact that Con Edison is a signatory of the Joint Proposal. The Company may consider that the Joint Proposal provides an opportunity to move forward, gain some goodwill within the community, and eliminate its perceived risk of litigation.

B. Consistent with Policies of the PSC and State

The Joint Proposal is also consistent with the policies of the Commission and the State. The alternative to the Joint Proposal is complex and lengthy litigation, with an uncertain outcome. Litigation would also require significant resources by State agencies and the Company, which could be better spent on other pressing energy matters, such as enhancing the Company's infrastructure in a cost-effective manner and evaluating Con Edison's most recent rate increase request.

C. Within the Range of Reasonable Results from Litigation

In the CPB's view, the Joint Proposal would provide benefits to ratepayers that exceed what is likely to have resulted from litigation. Nevertheless, the Commission

should consider the Company's acceptance of the Joint Proposal as indicating that from the utility's perspective, the agreement is consistent with the Settlement Guidelines.

Absorption by Con Edison of \$40 million of capital costs, plus \$6 million in carrying costs, associated with restoring the network, is a positive resolution of this issue from the perspective of consumers. The Company incurred an estimated \$65 million in capital costs attributable to the LIC outage, including costs to restore the network to its previous status, and costs to improve the LIC network with new equipment with longer service lives, reinforcements and other upgrades that enhance reliability.

In a litigated prudence proceeding, parties would have had to demonstrate that incremental capital costs would have been avoided but for Con Edison's alleged imprudent conduct. There is substantial uncertainty whether the Commission would find Con Edison imprudent regarding its conduct concerning the outage. Further, even if it did, there is a substantial litigation risk as to the amount of capital costs that the Commission would disallow. Con Edison has vigorously asserted that "at most, approximately \$2.7 million" is at issue,<sup>6</sup> representing the undepreciated cost of all LIC equipment that was retired prior to the expiration of its expected service life, and provided detailed information supporting its claims.

Based on the CPB's review of extensive information provided throughout this proceeding, both formally and informally, parties would have been very hard pressed to create a record indicating that Con Edison should absorb more capital costs than the \$40 million plus \$6 million in carrying costs specified in the Joint Proposal. Therefore,

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<sup>6</sup> E.g., Case 06-E-0894, Consolidated Edison Company of New York, Inc.'s Objection to the Prima Facie Submissions Made by the Staff of the Department of Public Service and the Intervening Parties, August 31, 2007, p. 40.



this provision of the Joint Proposal represents a more favorable outcome than what would likely have been achieved in litigation, from the perspective of consumers.

The \$17 million in community benefits included in the Joint Proposal would not have been achievable at all in administrative litigation, because the Commission does not have authority to award damages for customer losses. These benefits simply will not be available to the residents and businesses that suffered as a result of the outage if the Joint Proposal is not approved. From the perspective of consumers, these payments alone demonstrate conclusively that the Joint Proposal is in the interest of ratepayers and should be affirmed by the Commission.

#### D. Agreement by Normally Adversarial Parties

The Joint Proposal also satisfies the second standard of the PSC's Settlement Guidelines, since it is supported by diverse parties who often hold adversarial positions in PSC proceedings. In particular, it has been signed by Con Edison, the CPB, DPS Staff, the members of the Western Queens Power for the People ("WQPFP"), New York State Assemblyman Richard L. Brodsky, the City of New York and the Public Utility Law Project ("PULP"). In past proceedings before the Commission, these parties have held competing positions on many policy issues. Indeed, in this proceeding, the CPB, DPS Staff, PULP and WQPFP submitted prima facie statements in opposition to the Company.

It is also noteworthy that all interested parties had an opportunity to participate in negotiations and contribute to the development of the Joint Proposal. All parties on the PSC's "active parties" list were informed of the time and location of settlement

conferences and invited to attend and contribute. Further, there is virtually no impediment to any interested party becoming an “active party.” The PSC’s rules and regulations require that parties be provided “active party” status if the Administrative Law Judge (“ALJ”) finds that intervention is “likely to contribute to the development of a complete record” or is “otherwise fair and in the public interest.”<sup>7</sup> The CPB is not aware of any instance in this proceeding, in which a party was denied active party status. Further, ALJ Eleanor Stein took the unusual step of sending letters to all active parties not participating in negotiations, providing a summary of the status of those discussions. For example, by letter dated November 13, 2007, sent to a list of 45 individuals on the PSC’s active parties list, the Judge stated that parties were negotiating issues involving mechanisms that might benefit the affected communities, including bill credits, a study of the outage impact on consumers and community greening projects; and she invited parties to participate in subsequent negotiations. The Judge sent another letter to active parties on March 28, 2008, explaining that it appeared that a settlement was near and again inviting further participation. Thus, any party with an interest in contributing to the investigation and resolution of Con Edison’s responsibility for the outages, had ample opportunity to do so.

Importantly, the CPB is not aware of opposition to the Joint Proposal by any party that participated in negotiations or submitted prima facie statements. This broad support and absence of opposition from parties that worked on these issues, demonstrates that the Joint Proposal is in the public interest.

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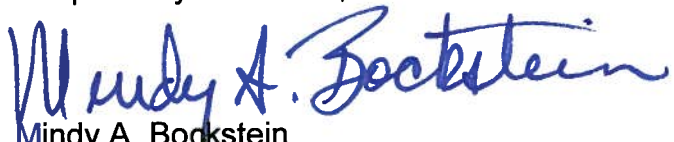
<sup>7</sup> Department of Public Service Rules and Regulations, §4.3(c)(1).

For all these reasons, the Commission should conclude that the Proposal fully satisfies the Settlement Guidelines.

#### CONCLUSION

For all of the above reasons, the New York State Consumer Protection Board recommends that the Public Service Commission approve the April 24, 2008 Joint Proposal in this proceeding.

Respectfully submitted,



Mindy A. Bockstein  
Chairperson and Executive Director

Douglas W. Elfner  
Director of Utility Intervention

John M. Walters  
Intervenor Attorney

Dated: Albany, New York  
May 9, 2008