

**Before the  
PUBLIC SERVICE COMMISSION  
Albany, N.Y.**

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| In the Matter of the Public Service Commission’s Notice | ) |                |
| Requesting Comments on the Reimbursement Tariff of      | ) | Case 06-E-0894 |
| Consolidated Edison Company of New York                 | ) | Case 06-E-1158 |

**COMMENTS OF**

**ASSEMBLYMAN RICHARD L. BRODSKY, CHAIR,  
NEW YORK STATE ASSEMBLY STANDING COMMITTEE  
ON CORPORATIONS, AUTHORITIES AND COMMISSIONS**

**I. Background**

Between January 2006 and the present, the customers of Consolidated Edison Company of New York, Inc. (“Con Edison”) have been affected by four major electrical power outages.<sup>1</sup> The smallest of these blackouts affected between 75,000 and 85,000 customers in Westchester County, who lost power in excess of four days during one of the hottest weeks of the summer.<sup>2</sup> The largest of these blackouts affected in excess of 195,000 customers in Westchester for more than four days during a period of sustained flooding and disaster conditions.<sup>3</sup> The blackout of longest duration occurred in Long Island City, where between 75,000 and 195,000 people lost power for approximately

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1 Major outages affecting more than 25,000 metered customers occurred during January, July and September of 2006 in Westchester County, and in July of 2006 in Long Island City.  
2 Although the outage was reported as affecting 35,000 metered customers, there are approximately 2.5 persons per each metered account in Con Edison’s Westchester system. See New York PSC, Cases 06-E-0894, 06-E-1158 & 06-M-1108, Order Implementing Outage Recommendations issued and effective July 20 2007, p. 2 “[July 2007 Order”].  
3 July 2007 Order, p. 2.

nine days<sup>4</sup> during the hottest weeks of the year. These blackouts are currently the subject of investigations, a prudence proceeding, a “reasonableness proceeding,” a prudence petition by various Members of the Assembly,<sup>5</sup> and a separate series of investigations by the Assembly Committee on Corporations, Authorities and Commissions (the “Committee”).<sup>6</sup>

Con Edison’s preparation for, management of, and response to these four major blackouts has been subjected a number of characterizations, but at a minimum its overall performance was “unacceptable and a gross disservice to its customers” in Long Island City,<sup>7</sup> and may have been unreasonable as a matter of law with regard to its customers in Westchester.<sup>8</sup> In both Long Island City and Westchester, tens of thousands of people suffered loss of perishable items, medicines were spoiled, electrical appliances and computers were damaged by severe and prolonged low voltage conditions, businesses lost both perishables and sales, and an unknown number of people were placed into physical jeopardy or exposed to potential injury because of the exacerbation of health problems by the extreme heat.

In contrast to the enormous losses suffered by its customers, Con Edison’s electrical service tariff drastically limits its liability to its customers for losses arising from electrical outages.<sup>9</sup> There are two primary exceptions to Con Edison’s damages limitation;<sup>10</sup> but during the four major blackouts cited above, Con Edison was generally only liable for up to \$350 for residential customers’ lost perishables spoiled by lack of

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4 Unlike Westchester, there are approximately 3 customers per meter in the Long Island City network. July 2007 Order, pp. 2 & 6.

5 See Note 14, *infra*.

6 See, for example, the relevant Orders and Notices of Cases 06-E-0894, 06-E-1158, 07-E-0742, 06-E-1108; see also, for example, the transcripts of the Committee’s hearings July of 2006 and February of 2007.

7 July 2007 Order, p. 6.

8 July 2007 Order, p. 26

9 See P.S.C. No. 9 – Electricity, Seventh Revised Leaf No. 63, Superseding Sixth Revised Leaf No. 63 [“PSC #9”], appended to the July 2007 Order as Appendix A.

10 If an outage is caused by gross negligence, Con Edison’s damages are not limited by PSC #9. The second exception concerns outages caused by storms and certain other conditions outside of Con Edison’s control; if reasonable restoration efforts are not made, Con Edison is liable for damages. See PSC #9.

refrigeration (per incident), and up \$7,000 for non-residential customers per incident.<sup>11</sup> When Con Edison filed its proposed amendments to PSC #9,<sup>12</sup> Assemblyman Brodsky filed comments pursuant to sec. 202(1) of the state administrative procedures act (“SAPA”) with the Commission, seeking more transparency and accountability in the process surrounding Con Edison’s liability limitation tariff.<sup>13</sup>

## II. Discussion

The PSC’s Notice soliciting comments on Con Edison’s reimbursement tariff provided five questions for parties to address, in addition to any other issues raised by parties relating to the tariff in question.<sup>14</sup> The questions are:

1. Are the new compensation levels in the Reimbursement Tariff reasonable?
2. Should the tariff expand the types of losses eligible for reimbursement?
3. What methods should be used to verify outage related claims?
4. Is there a need and rationale for establishing a mechanism to make periodic automatic adjustments to the tariff?
5. What is the proper balance between the interests of consumers in obtaining reimbursement and avoiding undue increases in rates?

### 1. The Sufficiency of the new PSC #9

In the petition they filed in September of 2006, the Assemblyman Brodsky and his co-petitioners asserted that the compensation under the existing tariff was inadequate.<sup>15</sup> With

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11 Con Edison’s tariff PSC #9 was amended, slightly, on March 2007 by Con Edison. The Public Service Commission (“Commission” or “PSC”) allowed the amendments to take effect on July 1, 2007 by operation of law under sec. 66(12)(b) of the public service law.

12 Letter from Con Edison to Secretary Jaclyn Brillling proposing an amendment to Con Edison’s filed Tariff, PSC #9, dated March 30, 2007 [“March 30 Letter”].

13 See letter from Assemblyman Richard Brodsky to Secretary Jaclyn Brillling concerning Con Edison’s proposed amendments to PSC #9, dated May 30, 2007 (“SAPA Filing”).

14 See Public Service Commission Notice Requesting Comments on Reimbursement Tariff, Issued July 10, 2007, Cases 06-E-0894 and 06-E-1158 [“Tariff Notice”].

15 As was stated in the petition filed September 13, 2006 by Assemblyman Brodsky and a number of other elected officials, Assemblyman Brodsky and his co-petitioners believe that the affected customers in Long Island City and Westchester should be fully compensated for the direct, consequential and incidental damages they suffered because of the LIC and Westchester outages. PSC Case # 06-M-1108, In the Matter of Consolidated Edison’s Long Island City Electric Network July 17, 2006 and the Westchester County September 2, 2006 Electric Service Outages, petition filed by

regard to Con Edison's new tariff, comment on the reasonableness of its compensation levels will be reserved until party replies are served in August. However, with regard to the sufficiency of the compensation offered under the new tariff, it is clear that the amounts proposed by Con Edison are insufficient to compensate customers for the losses they suffer when a system outage occurs. In the case of businesses with losses arising from perishables, a subject that the Commission heard testimony concerning during its public statement hearings, business insurance and Con Edison's compensation amounts together will not be much more than a band-aid on the losses suffered by businesses in Westchester and Long Island City. As was asserted in the SAPA Letter therefore, the Commission should do a study of the actual losses suffered by residential and non-residential customers in the affected areas; and then with hard numbers in hand, determine the sufficiency of Con Edison's tariffed compensation amounts.

## **2. Expansion of Compensable Loss Categories**

Concerning the question of whether the tariff's compensable loss categories should be expanded, the answer is yes. Con Edison's addition of perishable medicines to the compensation categories was appropriate,<sup>16</sup> but there are a number of other items that should be included, establishing new categories for loss compensation. In the case of medicine, rather than Con Edison's inclusion of medicine in the same category as food, a separate category should be established so that no customer would be forced to make the Hobson's Choice between reimbursement for medicine, and reimbursement for food.<sup>17</sup> With regard to reimbursement for losses suffered to appliances and home-business machines, in circumstances where low-voltage conditions during or in the aftermath of an outage damage customer appliances or render them inoperative, Con Edison should be liable for compensation for such losses. Finally, there are a number of customers, who are indirect customers of Con Edison (e.g., sub-metered buildings or developments, but not limited to such cases) that should be reimbursed for losses suffered during outages because their power supply is dependent upon Con Edison's systems working

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Assemblyman Richard Brodsky, et al., on September 13, 2006 (subsequently amended in part) ["Prudence Petition"].

16 See PSC #9.

17 In addition, there are classes of Con Edison customers whose medications would easily exceed the current tariff whether or not such losses were netted against food losses.

properly, but they are excluded from the existing loss-limitation tariff scheme. Such indirect customers should be added to the general loss categories in PSC #9.

### **3. Verification of loss**

With regard to verification of loss, residential customers and non-residential customers may suffer losses in similar categories, but the sophistication of and motivation behind their recordkeeping is dissimilar. An average household is not, for example, as likely to keep itemized receipts for perishables purchases as a business would be, since the business's recordkeeping has tax implications, among other things. There should be a presumption in the tariff therefore that residential customers should not have to provide itemized receipts to verify their losses. This would be especially appropriate in cases such as those in Westchester, where residential customers were told that their losses were not compensable and, presumably have thrown away any perishables receipts despite the fact that the proceeding in Case 07-E-0742 may find Con Edison liable for such compensation. Business customers on the other hand would potentially not require such a presumption, however it would likely be appropriate to do so for small and unsophisticated businesses.

### **4. The Need and Rationale for Automatic Adjustments to the Compensation Limits**

The current tariff compensation limits are based upon a study undertaken almost ten years ago by Con Edison. In the intervening time, the reliance of businesses and households upon electric power, and the cost, number and fragility of residential and business electrically powered appliances and machines has increased significantly. At a minimum therefore, just to maintain fundamental fairness to Con Edison's customers, the compensation limits should be adjusted automatically at least semi-annually for inflation. However, the question of what mechanism should be used to adjust the compensation limits to the appropriate amounts cannot be answered fully without conducting a new study to find out what losses are actually suffered by average households during outage events.

### **5. Allocation of Risk between Con Edison and its Customers**

The PSC's final question concerns "the proper balance between the interests of

consumers in obtaining reimbursement and avoiding undue increases in rates.”<sup>18</sup> With respect, the question establishes a false dichotomy because it presumes that Con Edison has acted, and will act, prudently and reasonably in its expenditures on its system and in its planning for, management of, and restoration after blackouts. Such a presumption has not been proven, but rather is one of several major issues being examined in more than one major proceeding before the Commission, and more than one investigation by the Committee.

### III. Conclusion

The Committee respectfully requests that the Commission revise Con Edison’s compensation tariff, PSC #9, consistent with the Committee’s comments above and its comments and filings in the underlying proceedings giving rise to this comment period on Con Edison’s reimbursement tariff.

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<sup>18</sup> See the Tariff Notice, p. 7.