

STATE OF NEW YORK

Public Service Commission

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CON EDISON'S CAPITAL EXPENDITURES INVESTIGATED

— Review of Contracts for Electric, Gas and Steam Capital Projects Underway —

Albany, NY—2/12/09—The New York State Public Service Commission (Commission) today commenced a proceeding to determine the prudence of actions by Consolidated Edison of New York, Inc. (Con Edison) for its capital project contract funding related to the company's electric transmission and distribution systems. Also, Con Edison was directed to investigate and report on, among other things, improvements in internal controls, and methods and procedures with respect to contracting for capital projects, operations and maintenance work.

“Under our regulations, a prudence investigation and proceeding is undertaken whenever ratepayer interests may have been compromised by improper utility spending,” said Commission Chairman Garry Brown. “Recent allegations in the now-public, detailed, government-sponsored affidavits used to support the criminal complaints against several Con Edison employees compel us to assess the prudence of Con Edison's spending under the contracts identified by the US Attorney's investigation.”

Chairman Brown continued: “The facts contained in the affidavits also suggest we need to look more broadly at the adequacy of Con Edison's system of operating and accounting controls to determine whether the scope of the prudence inquiry should be expanded.”

Since the facts contained in the affidavits suggest some vulnerability in Con Edison's system of internal controls, the Commission stated it cannot assume that the ill effects of

improper Con Edison expenditures are limited to matters identified in the incidents described in the affidavits.

Accordingly, the Commission will require Con Edison to report more broadly on the adequacy of its internal controls, the efforts that the company has made to enforce these controls, the company's efforts to identify and respond appropriately to other potential criminal activity, and to show why the company burden concerning the prudence aspects of the Commission's proceeding should be expanded to matters beyond the scope of the affidavits.

Also, the Commission will require Con Edison to report on improvements to its internal controls that it believes are needed in light of allegations in the affidavits. All of these matters will be investigated in the Commission's proceeding under the oversight of an Administrative Law Judge.

The Commission today noted that in the last Con Edison electric rate case, the Commission had concerns about the growth patterns of the company's capital expenditure program and the extent to which capital expenditures exceeded budgets. While the record in that case did not suggest that the money was being expended on projects that were not appropriate, the Commission was concerned that the company may not have had adequate and effective internal operating and accounting controls in place to ensure that expenditures were efficiently and effectively expended and overseen.

Following Con Edison's last completed rate case, the Commission ramped up its focus on Con Edison's internal controls and, pending the outcome of that investigation, required that a significant portion of the company's revenue requirements associated with capital expenditures be collected through an adjustment clause. This was intended to ensure that any over-collections due to subsequent findings of imprudence would enable the Commission to provide refunds to customers back to the time the mechanism was established in the last electric rate case.

Whether the amount of dollars being collected through the adjustment clause is sufficient to protect ratepayers in light of the alleged criminal activity in the affidavits is an issue that will be considered by the Commission at the time the company's current electric rate case is decided.

Since capital project and operation and maintenance contracting funding at issue in the affidavits involve electric, gas and steam operations, the Commission believes consideration of a similar ratemaking protection provided to electric customers is needed for gas and steam customers for the duration of the prudence proceeding.

In the report required to be filed with the Commission, Con Edison was directed to:

- a. Describe all company controls in place as of January 2009 designed to protect the company, and its customers, from overcharges for work done by contractors under capital and operation and maintenance project contracts, from kickbacks or other illegal payments to employees from capital project contractors, bid rigging or other practices which compromise the company's ability to secure at least cost contract services, and from employees failing to protect fully the company's interests in negotiations with capital project contractors for payments under a capital project contract;
- b. Describe all company controls in place in the period from January 2000 to January 2009 with respect to the negotiation or administration of the Company's capital and operation and maintenance project contracts, including, but not limited to the processes for bidding on contracts, company oversight of work in progress on contracts and company remittance and review of contractor bill statements;
- c. Identify any auditors, attorneys, or other experts, internal or external to the company's operations, who have been retained by the company at any time from January 2000 to January 2009 to investigate and/or report concerning the internal controls for capital project contracts and provide to the Commission any of their written findings to date;
- d. Provide to the Commission any internal audit reviews and/or reports, and company investigations of complaints regarding company retained contractors and/or company employees involved with capital and operation and maintenance contracts;
- e. Describe all methods and procedures used by the company from January 2000 to January 2009 to verify compliance with the company controls, as well as any remedial measures or procedures applicable when a provision of the company's controls were not complied with, or were waived or otherwise compromised, and describe each instance when any of such remedial measures or procedures were used during such period and to what effect;

f. Describe any changes to the company's controls that the company has considered or adopted, in its management of the contracting process as a result of the incidents underlying the Commission's Order in this matter;

g. Provide the total cost of contractor service and the number of contracts under which costs were incurred in each calendar year for the period January 2000 – December 2008 in each Con Edison region. The company should also provide a breakdown of each year and region's contractor costs and number of contracts between the electric, gas and steam divisions and, for each breakdown, should segregate each statement of costs and number of contracts between capital and operation and maintenance expenditures;

h. Provide the total cost of contractor service associated with each of the company's open contracts as of January 2009. The company should also provide a breakdown of each project's contractor costs between each Con Edison region and, for each regional breakdown, a further breakdown between the electric, gas and steam divisions. Such costs should be further segregated between capital and operation and maintenance expenditures; and

i. Provide the Commission with any plans that the company has to pursue recovery of and/or damages that have resulted from the alleged illegal activity that is the subject of the Commission's Order, as well as the total amounts, if any, that the company is seeking or intending to seek from contract counterparties in damages, and the extent, if any, to which such claim may be covered by a surety, bond or other guarantee from the contract counterparty, or from any Company insurance policy.

The Commission will issue a written order reflecting today's action. That order, when available, may be obtained from the Commission's www.dps.state.ny.us Web site by accessing the Commission's Documents section of the homepage and referencing Case 09-M-0114. Many libraries offer free Internet access. Commission orders may also be obtained from the Files Office, 14th floor, Three Empire State Plaza, Albany, NY 12223 (518-474-2500).