STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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| Proceeding on Motion of the Commission to Audit the Performance of Consolidated Edison Company of New York, Inc. in Response to Outage Emergencies. | : | Case 06-M-1078 |

**COMMENTS OF THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK, ANDREW M. CUOMO ON INDEPENDENT AUDIT REPORT**


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## BACKGROUND

Following major electric power outages in Queens and Westchester in the summer of 2006, this office and others called for an independent audit of Con Edison's operations and management. The Public Service Commission ("Commission"), among other actions, instituted a proceeding and ordered that an independent audit be conducted on the "adequacy" of Consolidated Edison Company of New York, Inc.'s ("Con Edison" or "the Company") "management of its emergency outage responses and preparedness." The Commission directed that the auditor "conduct a full independent examination of the Company's preparedness for responses to outage emergencies and performance in responding to them," and specified numerous aspects of the Company's operations and management to be evaluated.[1]

The auditor's report[2] was filed with the Department of Public Service on October 24, 2007. The Commission invited Con Edison to respond by November 6, 2007, and interested parties to respond by November 20, 2007.[3] These are the comments of the Office of the Attorney General of the State of New York.

## DISCUSSION

The auditor's 346-page report, with 62 recommendations, underscores many of the comments and recommendations made by this office publicly and in submissions to the

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[1] Order Instituting Proceeding and Directing Audit, issued September 8, 2006, and Confirming Order, issued September 20, 2006.

[2] Final Report, Independent Audit of Consolidated Edison Company Electric Emergency Response Program For The New York State Department of Public Service, Vantage Consulting, Inc., October 24, 2007 ("report").

[3] Notice Inviting Comments, issued October 25, 2007.

Commission since the Queens power failures of July 2006. The detailed report paints a very troubling picture of a Company unprepared for the challenges of the 21st century with regard to emergency response. Not only does it highlight the inadequacies of the Company's responses to the outages of the summer of 2006, but it raises questions as to the degree to which Con Edison is committed to ensuring that it will perform significantly better in the future. The Company's November 6, 2007 response to the audit does not go far enough to allay those concerns. The Commission must make sure that Con Edison lives up to the auditor's recommendations, which are both wide-ranging and specific. The Commission must also create stronger regulatory sanctions for future failures to meet utility performance standards.

## I. The Auditor's Report Indicates Serious Deficiencies in Con Edison's Emergency Preparedness, Both Leading Up To 2006 And Going Forward.

The report makes clear that Con Edison's emergency preparedness was deficient going into the summer of 2006 and is still gravely lacking. It is instructive to highlight some of the auditor's key conclusions, which confirm the findings of Department of Public Service staff in their report on the Long Island City network outages of 2006,[4] as well as the comments and recommendations of this office and other interested parties in Commission filings since those events.[5] The following are some condensed salient audit conclusions:

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[4] 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).

[5] *See, e.g.,* Comments of the Office of the Attorney General of the State of New York, Andrew M. Cuomo, on Public Service Commission Staff Report, filed March 2, 2007 and March 30, 2007.

**A. Continuing Management Deficiencies**.

- Con Edison management "did not fully understand the nature and magnitude of shortcomings in emergency planning and response during 2006." (P. 1)[6]

- Con Edison management "did not exhibit a high degree of interest, direction and support to. . . emergency planning. . . prior to the 2006 outages." (P. 11)

- Con Edison still "lacks a needed strategic framework that is crucial to analyzing and making internal decisions on the relative priority of emergency planning and preparedness." (PP.1-2) and "still lacks a sufficiently coordinated strategy and Master Plan for reliability and emergency preparedness." (P. 2)

- Con Edison's "track record. . . strongly suggests that not enough has been done" regarding emergency preparedness in light of the outages of 2006. (PP. 72-73)

- Con Edison's "corporate culture, as fostered by senior management. . . clearly fails to recognize emergency response planning as a top priority. . . ." (P. 217)

**B. Workforce Concerns.**

- Con Edison's "reduced staffing levels and the movement of supervisors and managers to new positions have created issues within the workforce that affect the Company's ability to respond to emergencies." (P. 3)

- Con Edison's "percentage of qualified workers, especially underground workers, is dangerously low." (P. 97)

- Con Edison's loss of experienced workers now and in future is of concern. (P. 98)

- Con Edison's excessive use of overtime is taking a toll on workers and lowering the

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[6] Page citations are to report.

callout response rate. (P. 98)

**C. Reliability**

- Questions are raised as to whether Con Edison "is providing adequate resources to support their infrastructure." (PP. 5, 15, 181-195)

- Con Edison must be "more proactive regarding systems, engineering, operations, and maintenance." (P. 128)

- Con Edison's "reliability performance measures began to deteriorate. . . in recent years," and "it is not clear if management was fully cognizant of these changes," because "the manner in which. . . reliability results were expressed to management minimized the appearance of the decline." (PP. 5, 195-98)

## II. The Report Is Highly Critical of Con Edison's Response To the 2006 Queens Outages And Its Observations Lend Support To The Current Prudence Review.

The auditor succinctly concludes that the Queens outages were "not directly caused by a heat wave, but by system design, philosophy of operations, maintenance practices, financial decisions and other man made decisions." (P. 236, n. 213). In particular:

- Con Edison's delayed attention to maintenance and replacement of failed components, including "an attitude of indifference to seemingly minor tasks that were delayed," precipitated the outages. (PP. 132, 246)

- Con Edison may have been better advised to shut down the Long Island City network, thereby minimizing the resulting equipment damage, length of outage and community hardship. (P. 248)

- Con Edison's communications with its customers were inadequate: "a lack of reliable

information regarding the extent of the outage, restoration estimates, and available support and services created an environment of confusion, gross inconvenience and financial losses." (PP. 248-49)

For the auditor, and for the public, the question remains whether "the LIC event was an isolated anomaly – a perfect storm of sorts – or symptomatic of incipient problems affecting all of Con Edison's networks in the future." (P. 249)

## III. The Audit Report Concludes That Con Edison Has Not Satisfactorily Handled the Numerous Recommendations Made In Response to the 2006 Outages.

The auditor concludes that "Con Edison has addressed the hundreds of recommendations from the 2006 reports on a fragmented basis with no linkages to an overall plan or strategy and no integrated approach." (P. 14) Con Edison's implementation process is "flawed" and "may not lead to permanent improvements proportionate to the cost and effort expended." (PP. 24, 47). Moreover, the auditor views "the hundreds of recommendations to be symptoms in many cases of deeper problems. . . . Success will be elusive if those deeper issues are not ferreted out and addressed." (PP. 25-6)

This concern is indeed troubling, especially given the time, energy and resources which have been brought to bear by all parties to provide analyses and recommendations that seek to hold Con Edison to substantial improvement in its emergency preparedness and response. It suggests that the Commission and Staff have not been able to exercise sufficient regulatory muscle to get Con Edison to respond effectively.

## IV. The Audit Report Raises Concerns That Even Its Own Recommendations Will Go Unheeded By Con Edison.

The auditor raises concerns that Con Edison may, in essence, shrug off the audit report as

just "the latest in a seemingly endless string of examinations of the Company." (P. 227) This is an extremely disturbing comment that requires the Commission's strong oversight to avoid.

In this regard, it is troubling that Con Edison's November 6 comments on the audit report are not more replete.[7] While the Company's response states its commitment to prepare the recommended master plan, a time frame for doing so, and a framework for considering the auditors' recommendations, it is not very detailed or specific and does not convey that Con Edison sufficiently grasps the depth and seriousness of the auditor's numerous concerns.

## V. The Commission Must Ensure That Con Edison Follows Through.

The report notes that "only Con Edison's management has the power, skill and capability" to achieve the goal of long-lasting improvements, and states bluntly that "if management does not take on that commitment, all is lost." (P. 227)

It is up to the Commission, pursuant to its statutory obligation under New York Public Service Law § 65, to ensure that Con Edison does take on the commitment. In this regard, the Commission's recent order requiring the Company to provide $18 million in ratepayer credits for its failure to meet quantitative reliability standards for 2006, however unprecedented, is an inadequate gesture.[8] Con Edison must face monetary sanctions for future failures to perform reliably that are sufficient to compel the level of performance necessary and expected in the 21st

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[7] Comments of Consolidated Edison Company of New York, Inc. On Final Report, November 6, 2007.

[8] Press Release, *Commission Cites Con Edison's Reliability – Utility Ordered to Pay $18 Million for Failing Certain Reliability Requirements* (Case No. 07095/04-E0572, November 7, 2007) http://www3.dps.state.ny.us/pscweb/webfileroom.nsf/ArticlesByCategory/7A7EB9CE7819E1C68525738C0064B3A4/$File/pr07095.pdf?OpenElement

century in New York State. The Commission should commence a rulemaking proceeding to strengthen the existing electric service reliability rules and to enhance its ability to impose monetary consequences significant enough to deter deficient performance.

## CONCLUSION

The Commission should order Con Edison to take specific steps to implement the audit findings, with deadlines to accomplish each item, and to provide regular reports documenting the implementation process to Staff and interested parties. In addition, the Commission should open a rulemaking proceeding to strengthen utility performance standards and should enhance its ability to provide significant monetary sanctions for failure to perform.

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New York, New York

Respectfully submitted,
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