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Chanoch Lubling  
Vice President  
Regulatory Services

May 9, 2008

**Via Overnight Mail**

Hon. Jaclyn A. Brillling  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223-1350

Re: Cases 06-E-0894 and 06-M-1108  
Long Island City Network Outage

Dear Secretary Brillling:

Enclosed please find an original and ten copies of the Statement in Support on behalf of Consolidated Edison Company of New York, Inc. of the Joint Proposal filed April 24, 2008 in the above-captioned proceedings.

Very truly yours,

Enc.

c: Hon. Jeffrey E. Stockholm  
Parties to Case 06-E-0894

06-E-0894

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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CASE 06-E-0894 - 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-M-1108 - Petition of Certain Members of the  
New York State Legislature Regarding Consolidated  
Edison Company of New York Inc.'s Electric Service  
Outages.

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**STATEMENT IN SUPPORT OF**  
**JOINT PROPOSAL ON BEHALF OF**  
**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

May 9, 2008

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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**STATEMENT IN SUPPORT OF  
JOINT PROPOSAL ON BEHALF OF  
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

This Statement is submitted by Consolidated Edison Company of New York, Inc. ("Con Edison or the Company") in support of the Joint Proposal filed on April 24, 2008 in these proceedings ("Joint Proposal"). The Joint Proposal, which is subject to approval by the Public Service Commission (the "Commission"), would resolve all of the issues raised in these proceedings in connection with the prudence investigation relating to the July 2006 electric outage in the Long Island City ("LIC") network and is supported by normally adversarial parties representing a broad array of interests. The Joint Proposal gives consideration to the interests of customers, and its terms are within the range of likely outcomes were the matters at issue to be fully litigated. Moreover, the Joint Proposal provides the communities affected by the July 2006 outage with benefits that would not be available in a litigated outcome. The Joint Proposal should be approved by the Commission in all respects.

## **I. Background**

By order issued July 26, 2006, the Commission directed the Staff of the Department of Public Service (“Staff”) to investigate the circumstances surrounding the electric outage in Con Edison’s LIC service network that occurred in July 2006, as well as other issues relating to the events that led to the outage, Con Edison’s response and the costs incurred by Con Edison as a result of the outage. Shortly thereafter, by petition filed on September 13, 2006, and supplemented on September 14, 2006, certain members of the New York State Legislature and other elected officials requested the Commission to initiate a proceeding to investigate the prudence of Con Edison’s actions in connection with the July 2006 outage and the impact of those actions on consumers. Based on Staff’s recommendation that the Commission review the prudence of Con Edison’s actions and omissions prior to and during the July 2006 outage, as well as in response to the September 2006 petition by the various elected officials, the Commission, by order issued April 18, 2007, expanded the proceeding to determine the prudence of the acts and practices of Con Edison related to the LIC network outage.

During the pendency of this proceeding, Administrative Law Judge Jeffrey E. Stockholm conducted several prehearing conferences and issued various procedural rulings addressing, among other things, the scope of the issues to be addressed in the prudence phase of this proceeding, the schedule for the proceeding, and various discovery matters. In addition, as part of its investigation, Staff conducted a thorough and extensive discovery of the Company. Over the course of this proceeding, Con Edison provided thousands of pages of documents, made numerous personnel available for interview by Staff, and responded to over 1,000 multi-part interrogatories.

Settlement negotiations in this proceeding were first explored in April 2007, without success. In September 2007, settlement negotiations recommenced under the guidance of

Administrative Law Judge Eleanor Stein, who was designated as the Settlement Judge.

Negotiations were held on various days during 2007 and 2008, following appropriate notice to all parties. As a result of these efforts, the active parties to the negotiations have reached a proposed resolution encompassing all of the issues raised by these proceedings, which is embodied in the Joint Proposal filed with the Commission on April 24, 2008.

## **II. Provisions of the Joint Proposal**

The key provisions of the Joint Proposal are as follows:

1. The Company will not seek to recover \$40 million in capital costs invested by the Company in the Long Island City network during and after the July 2006 outage, and \$6 million of the carrying charges accrued on those capital costs.

2. The Company will make available \$17 million in community-benefit funds, which will be used to provide the following:

A. One-time bill credits to affected customers in the LIC network, plus equivalent payments to indirect customers that submitted food spoilage claims.

a. Residential customers (e.g., SC1) living in the affected areas who lived there in July 2006 will receive a bill credit of \$100;

b. Small non-residential customers (e.g., SC2) located in the affected areas who were located there in July 2006 will receive a bill credit of \$200;

c. Large non-residential customers (e.g., SC4, SC9) located in the affected areas who were located there in July 2006 will receive a bill credit of \$350;

- d. Indirect customers (e.g., tenants in master-metered buildings) who received food spoilage claims will be entitled to a payment of either \$100 (residential) or \$200 (non-residential); and
  - e. Direct or indirect customers who resided or were located in the affected areas in July 2006 but have since moved will be allowed to file a claim (with evidence) for their applicable credit or payment.
- B. Up to \$500,000 will be used to fund a study of the economic and health impacts of the outage on the affected communities.
- C. About one-half of the remaining funds would be used for tree planting in the LIC network area to supplement New York City's Million Tree initiative in Queens. The remainder would be used for other greening initiatives in the affected communities.
3. Con Edison will not seek any New York State income tax benefits pertaining to the \$17 million made available to the residents.
4. Con Edison will include an apology with respect to the July 2006 outage on bills that contain the credit/payment.
5. The prudence investigation and the referenced proceedings would be closed without any determination, and the Company will be released from all prudence-related claims that were or could have been asserted in any PSC proceeding relating to the July 2006 outage, other than with respect to any damage to the Long Island City network, or incremental costs, that are neither known nor reasonably foreseeable.

### **III. Support For the Joint Proposal**

The Joint Proposal has been executed by the following parties, each of whom has also

agreed to individually support the Joint Proposal and request implementation of its terms by the Commission: Con Edison; Staff; Hon. Richard L. Brodsky, Member, New York State Assembly; New York State Consumer Protection Board; The Public Utility Law Project of New York, Inc.; City of New York; and the members of the Western Queens Power For the People, an ad hoc group made up of members of the community who lost power during the July 2006 outage. Other parties who actively participated in the negotiations and have indicated that they will support, or not oppose, implementation of the terms of the Joint Proposal by the Commission include the Office of the Queens Borough President, the Office of the New York State Attorney General, and the Utility Workers Union of America, AFL-CIO, Local 1-2. The parties to the negotiations represent a broad array of interests, including those of state and city government, the legislature, labor and consumers.

#### **IV. The Reasonableness of the Proposal**

The Joint Proposal reflects a substantial effort to address all issues raised by the parties to the process. All parties had the opportunity to voice their positions, and numerous compromises were negotiated in order to reach agreement. The Company assessed the risks and prospects of pursuing litigation, the enormous burden and cost of continued litigation, and the potential distraction to operations created by the proceeding, and concluded that the Company's best interests were served by resolving this almost two-year-old proceeding. Moreover, the Company saw the resolution of the proceeding through settlement as a further opportunity to express to the affected communities the Company's regret for the hardships caused by the outage by providing \$17 million in community benefit funds to be used per the parties' consensus. The \$17 million to be provided by the Company is in addition to the \$46 million in capital costs and associated carrying charges that the Company agreed to absorb as part of this settlement and is over and

above the almost \$60 million in O&M costs related to the July 2006 outage that the Company had previously voluntarily committed not to seek recovery from customers.

Importantly, as a result of the July 2006 outage, the Company has learned much both about its system and about its customers and their expectations and needs. As a result of the Company's investigation of the July 2006 outage, as well as the comprehensive investigations conducted by Staff and others, the Company has implemented, or is in the process of implementing, well over one hundred recommendations that will strengthen its delivery system and its communications with its customers.

In evaluating the reasonableness of the Joint Proposal, it is useful to consider the evidence that would have been presented by the parties concerning the prudence of the Company's management decisions. While Staff and intervenors would have marshaled the evidence in an attempt to show managerial imprudence, there is, as always, another side to the story. To provide some balance to the parties' allegations, the Company respectfully submits that the evidence it would have presented, consisting of hundreds of pages of sworn testimony and supporting exhibits by experts in the field, would have shown that the Company's decisions and actions with respect to the July 2006 outage were consistently reasonable and prudent under all of the circumstances existing at the time those decisions were made and actions taken. The Company would have further demonstrated that although some parties have alleged that certain acts or omissions by the Company were the result of mismanagement or imprudence, those allegations are, for the most part, based on hindsight. That is, parties have concluded, with the inevitable use of hindsight, that any course of action that did not avoid or shorten the outage was per se unreasonable and imprudent. The Commission, however, has long and consistently held that hindsight is not a proper basis for a determination of imprudence.

In addition to demonstrating the Company's prudent management, the Company was also prepared to demonstrate, through detailed analyses of the transmission and distribution facilities underlying the capital expenditures at issue, that, when properly calculated, the incremental capital costs subject to disallowance upon a finding of imprudence were far less than claimed by Staff and the other parties. This is because the majority of the capital costs incurred in the LIC network during and since the July 2006 outage were not for repair or replacement of damaged network cable and equipment, but for reinforcement and other reliability-enhancing upgrades in the LIC network, which would not be subject to disallowance.

In short, the issues raised in this proceeding are complex and highly technical, leaving ample room for disagreements, as well as an adequate basis for the parties' belief that a settlement of the proceeding is in the public interest.

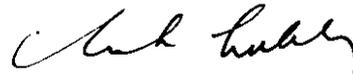
In the final analysis, the Company assessed the risks and prospects of pursuing litigation and, based on that assessment -- and its desire to provide the community affected by the outage with benefits that would not be available in litigation, as an expression of the Company's regret of the hardships endured by the community as a result of the outage -- the Company concluded that the terms of the Joint Proposal were acceptable on an overall basis, given the give and take inherent in any compromise.

## **V. Conclusion**

The Joint Proposal resolves the wide range of complex issues presented in a manner that fully satisfies all of the standards for gauging whether a settlement is in the public interest prescribed by the Commission's procedures and guidelines for settlements adopted in Opinion

No. 92-2.<sup>1</sup> The Joint Proposal should be approved in all respects as in the public interest. If it is not approved in its entirety, Con Edison respectfully requests that the Commission remand the Joint Proposal to the parties to enable them to pursue their respective positions and remedies. For all the reasons set forth above, the Commission should approve the Joint Proposal in its entirety as in the public interest.

Respectfully submitted,



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Dated: May 9, 2008  
New York, New York

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<sup>1</sup> Case 90-M-0255 et al., Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines, Opinion No. 92-2, issued March 24, 1992.