

STATE OF NEW YORK
BEFORE THE
PUBLIC SERVICE COMMISSION

Request for Investigation of Utility
Workers Union of America,
AFL-CIO, Local 1-2, Utility Workers
Union of America, New York Central
Labor Council and New York State
AFL-CIO

Case No. 12-M-0306

**MOTION FOR LEAVE TO REPLY TO RESPONSE
TO MOTION FOR EXPEDITED INVESTIGATION
AND INTERIM RELIEF**

Pursuant to Commission Rule 3.6, the Utility Workers Union of America, AFL-CIO and UWUA Local 1-2 (collectively “UWUA” or “the Union”) respectfully request that the Commission grant the Union leave to reply to the July 17, 2012, Response submitted in this proceeding by Consolidated Edison Company of New York, Inc. (“ConEd” or “Company”). The UWUA asserts that there are good reasons for the Commission to find that there are “extraordinary circumstances” present here that merit the submission of a response. *See* Commission Rule 3.6(d)(3). In particular, as demonstrated below, the Company’s response contains material factual inaccuracies, which the Commission has stated can constitute the “extraordinary circumstances” contemplated by its rule.¹ Further, the magnitude of the issues at stake – which include the safety and reliability of service to millions of customers – and the rapid and emergent way in which these issues arose merits special consideration to ensure that they are

¹ *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Steam Service*, Order, Case 09-S-0795, September 22, 2010. at 13-14.

addressed in pleadings in a complete and fair manner, and are thereafter evaluated in a Commission-conducted investigation.

In support of this request, the UWUA states:

Notwithstanding the lockout of its skilled and experienced workforce, ConEd's lawyers² represent that the Company's "customers are receiving the same level and quality of service today as they were receiving before the lockout." Response at 33; *see* Executive Summary at 3. This statement is not credible, as the Company itself acknowledges late in its own pleading. Footnotes to Appendix B to the ConEd Response, styled as a listing of "Ongoing Operating and Customer Service Functions During the Work Stoppage,"³ reveal that there are substantial services provided pre-lockout which are not being provided now, including:

Transmission operations has postponed all planned capital project and program work during the work stoppage.

Substation Operations has postponed all planned capital project and program work during the work stoppage.

Steam Distribution has suspended the physical reading of steam customer meters for a majority of customers.

Some capital work on non-regulatory required capital projects has been suspended at the Generating Stations.

Gas Operations has suspended some work in the following categories:

- Main Replacement
- System Reinforcement

² ConEd's pleading is not accompanied by the affidavit of any Company or contract employee, let alone one with sufficient knowledge to verify ConEd's extensive factual allegations.

³ The Response states repeatedly that the current circumstances involve a "work stoppage." There has been no "work stoppage" by the Union. The employees are not on the job because of a lockout by ConEd management, not a strike by the employees.

- Lower Priority Leak Repair
- Leakage Survey
- Meter Shop Operations

Customer Operations has suspended the following activities:

- Walk-in Centers in the Bronx and Manhattan are closed. The Walk-in Center in Staten Island is open. Walk-in Centers are open in Queens, Brooklyn and Westchester (Mount Vernon) but representatives are not available to handle customer inquiries except via courtesy phones available at Queens, Brooklyn and Mount Vernon centers. Signage in closed Walk-in Centers alerts customers to nearby authorized facilities for bill payment.
- Reading of residential and small commercial customer non-AMR meters is suspended, except in Staten Island.
- Customer-requested physical service turn-offs and meter reading appointments are suspended.
- Routine field investigations for personal service cases are suspended.

Appendix B, notes 34-39.

Similarly, in remarks made to the *New York Times*, one of the management employees now responsible for the safe and reliable operation of the ConEd system explains the toll the system is operating under and the risks the Company is taking. Management employee Mark Melendez is reported to have told the *New York Times* that: “As long as nothing major happens, we can maintain the system,” he said. “Obviously the longer it goes, the heat is going to take a toll.”⁴ The Union reasonably believes, and is prepared to present data in addition to the Company’s own statements, that will show that

⁴ <http://www.nytimes.com/2012/07/18/nyregion/con-ed-managers-splice-cables-or-hold-flashlights.html>

Manager Melendez's candid assessment is a far more accurate picture of the current situation than the glib portrayal offered up by Company counsel.⁵

By way of example:

- ConEd's lockout work plan is to maintain its system by relying largely upon an overtaxed and undertrained set of managers working 12-hour shifts, 6 days a week. Response at 17. This is obviously not business as usual.⁶ Even more important, and as Mr. Melendez acknowledges, the arrangement is not sustainable.
- The Union's pleading alleged deficiencies in the Company's stray voltage inspection activities. The Company claims (Response at 24) that its stray voltage system scans are "presently ahead of schedule." Even were this correct, it is immaterial: due to the potential for rapid changes in system circumstances, stray voltage inspections must be done on a regular and routine basis. Consistent with the Union's allegations, the Company concedes that such inspections cannot be occurring during the lockout because instead of deploying the 10-14 vehicles that

⁵ The Company refers in its Response to the implementation of a contingency plan, which has been in the works for some time. This plan has not been included as part of the Company's filing. As part of its investigation, the Commission should direct ConEd to file the plan.

⁶ For example, in public comments filed with this Commission in this proceeding, a commenter identified as New York City Fire Department Battalion Chief Gerard Quinn states in part that:

I have seen first hand the temporary repairs that have been made recently, to restore power to a Con Ed customer. There is no longer a command structure when operating at an incident with Con Ed. Hopefully nothing tragic happens to a family or home owner by a tempo[r]ary repair all for the sake of trying to prove a point.

<http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=40285>. The Union asserts that the absence of "white hat" supervision at incident sites poses a potentially serious risk to both workers and the public, especially when the workers may not be sufficiently qualified.

routinely conduct mobile scans on a daily basis, Con Edison is “using one vehicle daily to perform mobile scans at this time” Response at 24.

- The Union raised concerns about the Company’s ability to respond to gas leaks. The Company’s pleading claims, without support, that during the “work stoppage,” ConEd has reduced the number of gas leaks from 115 to 80. Response Appendix A at 48. The Union’s understanding is that as of the time of the lockout, there was a backlog of as many as 1500-1700 gas leaks in Westchester County alone. The Company’s figure, if it is correct, may well be limited to new “Class 1” leaks or customer reports of gas odor, which are the most serious. However, Class 2 and 3 leaks may become Class 1 leaks (and present immediate safety concerns) if not addressed in a timely way. Absent its operating workforce, ConEd is not a position to address the substantial gas leak backlog throughout its system, and has admitted to suspending lower priority leak repairs.
- ConEd’s attorneys claim that “[t]hrough July 15, the Company has respond[ed] to 90.6% of gas leak or odor calls within 30 minutes and responded to 99.4% of gas leak or odor calls within 45 minutes.” Response Appendix A at 48. ConEd elides whether these are data from July 1 (when the lockout began) or from the beginning of the year, or from some other starting point. Likewise, there is no statement as to what constitutes a “respon[se]” to a leak or odor, and how many of the current calls are in fact being handled by the New York City Fire Department rather than ConEd.
- The Company’s claim that service is being provided in the usual manner is belied by the current situation in Bensonhurst, in which customers have been

disconnected from the grid due to transformer issues and are now being served through a combination of mobile generators and above-ground primary lines that run through city streets. The Union's understanding is that this is the type of measure typically used in disaster circumstances, and not used by ConEd since September 11, 2001, when extraordinary measures were needed to restore service to lower Manhattan.

- ConEd contends that its current workforce is properly trained, noting that underground cable splicers, a "critical core function," consist of managers who at some prior point completed a "full splicer training program," and more recently underwent a three-day "skills refresher training class." Response at 20 & n.9. The Company does not state when these individuals originally received full training, meaning that it may have been years ago (if not longer). By contrast, Union members who are splicers, and perform these functions daily, receive two weeks of refresher training every few years. The "graduate" of a three-day "refresher" course cannot reasonably substitute for workers who are trained consistent with current and far more rigorous ConEd splicer training protocols.
- ConEd's pleading discusses network transformer inspections (Response at 21). While not mentioned in ConEd's pleading, the Union's understanding is that at the time of the lockout, there were 32 transformers scheduled to be changed, and another 95 transformers that were candidates for replacement. We do not know the status of activities with respect to these essential facilities. The Company likewise nowhere addresses the inspection of critical service transformers, which are those that provide service to hospitals, schools, and large customers (including

the financial centers in Manhattan and Brooklyn). The Union's understanding is that those transformers are to be inspected annually, if not more frequently.

In addition, the Union reasonably believes that the Company does not have the crew levels, especially during overnight periods, to perform (1) necessary engineer switch checks or load, voltage, and temperature checks; and (2) inspections in instances in which fuses in transformer network protection systems have blown or there have been periods of heavy rain (such as the storm experienced in New York City this past Wednesday, July 18). These are critical inspections. We likewise believe that ConEd is in violation of their own Heat-Storm Response protocol, which identifies the crew levels needed for certain of these tasks, and is also in violation of related Commission requirements. We urge that as part of any investigation in this proceeding the Commission direct the Company to produce its emergency response procedure for heat-storms.

- The Union believes that due to the press of work and the Company's inadequate resources, essential and routine operations and maintenance record keeping is not being performed during the lockout, such as the writing of CINDE (Computerized Inspection of Network Distribution Equipment) report cards that document inspections of underground transformers. The lack of adequate O&M records creates an undue risk to system performance and safety.

Again, the foregoing list is illustrative and not exhaustive of the information the Union seeks leave to present in support of its request for a Commission investigation.

There should be no question as to the significance of the matters at issue in this proceeding. Determining whether ConEd is providing safe and adequate service to its

customers in these unprecedented circumstances is central to this Commission's statutory obligations. Consistent with the fulfillment of those obligations, the Commission should afford the Union opportunity to reply to ConEd's July 17 pleading.

WHEREFORE, for the foregoing reasons, the UWUA respectfully requests that it be granted leave to reply to ConEd's July 17 Response.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon the following persons, by first class mail and electronic service:

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Dated on this 20th day of July, 2012.



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