STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of DPS Investigation into Consolidated Edison Company of New York, Inc.'s Preparation and Response to Tropical Storm Isaias. Proceeding on Motion of the Commission of an Investigation into the Utilities' Preparation for and Response to August 2020 Tropical Storm Isaias and Resulting Electric Power Outages. In the Matter of DPS Investigation into Orange & Rockland Utilities, Inc.'s Preparation and Response to Tropical Storm Isaias.	Case Numbers 20-E-0422 20-E-0586 20-E-0643

JOINT MOTION SEEKING LEAVE TO BRING PROCEEDING BEFORE THE COMMISSION IN LIEU OF HEARING

INTRODUCTION

The New York State Department of Public Service (Department) brings this unopposed joint motion (Motion) before the Public Service Commission (Commission) on behalf of itself, Consolidated Edison Company of New York, Inc. (Con Edison), and Orange and Rockland Utilities, Inc. (O&R) (collectively, the Parties) – the only parties to the above-referenced cases.[1] This motion seeks leave to have the Commission adopt the terms of a Joint Outage and Regulatory Settlement Agreement (Agreement)

[1] Department Staff provided this Motion to trial staff representing Con Edison and O&R, who consented to the filing of the motion on the companies' behalf and represented that the companies agreed with the content of the motion and wished to proceed without any further hearings in the cases.

entered into by the Parties to resolve all issues raised or that could have been raised in the cases and otherwise bring these cases to a close absent any further hearing or administrative litigation. The Department understands that a draft Order to consider the adoption of the terms of the Agreement would be provided to the Commission in conjunction with its consideration of this motion.

BACKGROUND

On August 4, 2020, Tropical Storm Isaias struck New York State, bringing strong winds and heavy rain that had a significant impact on, among others, Con Edison's and O&R's service areas. The storm brought down many trees and limbs, which caused extensive damage to electric distribution infrastructure and service outages for a substantial number of customers. On August 19, 2020, the Department issued Notices of Apparent Violation to Con Edison and O&R regarding their preparation for and response to Tropical Storm Isaias.

On November 19, 2020, in conjunction with the Department's ongoing investigation of the companies' preparation for and response to Tropical Storm Isaias, the Commission issued a Show Cause Order alleging, among other things, that Con Edison committed 33 violations of its Emergency Response Plan (ERP) and O&R had committed 38 violations of its ERP.[2] On December 21, 2020, Con Edison and O&R filed responses denying the Department's allegations and arguing why, in their opinion, the Commission should not commence a penalty or prudence proceeding regarding the alleged violations. On January 21, 2021, the Commission directed that the Office of Hearings and Mediation hold an evidentiary hearing regarding the Department's

[2] Case 20-E-0856, Order Commencing Proceeding and To Show Cause, (November 19, 2020).

allegations in Case 20-E-0422 for Con Edison and Case 20-E-0643 for O&R (Hearing Order).[3] The parties thereafter engaged in extensive pre-hearing discovery and motion practice. After initial exploratory settlement discussions in April 2021, on May 7, 2021, Con Edison and O&R filed a Notice of Impending Settlement with the Secretary. On July 7, 2021, the Parties entered into a Settlement Agreement resolving all issues relating to Cases 20-E-0422, 20-E-0586 and 20-E-0643 as well as other matters.

ARGUMENT

The Hearing Order directed the Office of Hearings and Mediation to conduct a hearing to "address any genuine issues of material fact related to the alleged violations, demonstrate why the proposed penalties should be assessed under PSL §25-a alleged in the Show Cause Order, as well as to assess the prudency of each of the Subject Utilities' actions in preparation and response to Tropical Storm Isaias."[4] The Settlement Agreement has resolved these issues, negating the need for any further administrative litigation or hearing. There are no other parties to these proceedings that would require comment on or a postponement to the Commission ruling on this Motion.[5]

Accordingly, the Department, with full support of Con

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[3] Cases 20-E-0422, 20-E-0586, 20-E-0643, 20-E-0641, Order Directing Commencement of a Hearing and Other Related Matters (January 21, 2021).

[4] Hearing Order, p. 3.

[5] Case 18-G-0716, Proceeding on Motion of The Commission For An Enforcement Concerning A Natural Gas Incident, Order Adopting Joint Proposal, p. 7, fn. 9 (March 19, 2020) ("Under a PSL §25-a matter concerning pure enforcement actions, the only parties to the matter are Staff and the utility being investigated. ")

Edison and O&R, and following past precedent of the Department presenting enforcement settlements to the Commission,[6] respectfully seeks leave to bring the Settlement Agreement to the Commission for its consideration and a speedy resolution to these enforcement proceedings without the need for a hearing or further proceedings before the assigned Administrative Law Judges.

CONCLUSION

For the foregoing reasons, the Department, on behalf of the Parties to these proceedings, respectfully requests that its Motion be granted.

Dated: July 8, 2021
Albany, New York

Respectfully submitted,



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[6] Cases 19-E-0107 & 0108, Proceeding on Motion of the Commission Investigating Utility Preparation and Response to Power Outages During the 2018 Winter and Spring Storms, et al., Order Adopting Terms of a Joint Proposal (August 13, 2020); Case 20-E-0586, Proceeding on Motion of the Commission of an Investigation into Utilities' Preparation for and Response to August 2020 Tropical Storm Isaias and Resulting Electrical Power Outages, Order Adopting Terms of Joint Proposal (NYSEG) (January 21, 2021).

J. Carley, O&R
ALJ Moreno
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