

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 19, 2020

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman, concurring
James S. Alesi
Tracey A. Edwards
John B. Howard

CASE 20-E-0586 - In the Matter of Department of Public Service
Staff Investigation into the Utilities'
Preparation for and Response to August 2020
Tropical Storm Isaias and Resulting Electric
Power Outages

ORDER TO COMMENCE PROCEEDING AND SHOW CAUSE

(Issued and Effective November 19, 2020)

BY THE COMMISSION:

INTRODUCTION

On the afternoon of August 4, 2020, Tropical Storm Isaias (TS Isaias or the Storm) struck New York, bringing strong winds and heavy rain that particularly impacted the Mid-Hudson Valley, New York City, and Long Island regions. The Storm caused extensive damage to electric distribution infrastructure that, in turn, led to lengthy outages for a substantial number of New York utility customers. Peak outages reached approximately 900,000 customers. The next day, Governor Andrew M. Cuomo directed the Department of Public Service (DPS, Department, or Staff) to investigate the electric service providers' performance in response to the Storm. Staff promptly initiated an investigation into New York electric service providers' preparations and responses to the Storm and launched

similar investigative efforts into telecommunication providers' efforts related to the Storm.¹

On August 19, 2020, the Governor issued a press release announcing that DPS had completed its initial phase of investigation into utility performance in regard to TS Isaias. The Governor explained that DPS had issued five Notice of Apparent Violations letters (NOAVs) in response to the apparent failures by electric service and telecommunication utility providers to properly prepare for and respond to the weather emergency and its effects on New Yorkers' access to essential utility services. DPS served these NOAVs on, among others, the electricity service providers Consolidated Edison of New York (Con Edison), Orange & Rockland Utilities, Inc. (O&R), Central Hudson Gas & Electric Corporation (Central Hudson), and PSEG Long Island (PSEG LI).² The Department sent separate letters to New York State Electric & Gas (NYSEG), Rochester Gas & Electric (RG&E), and National Grid requiring a series of immediate corrective actions to better prepare for storm impacts, including a demand to double respective capacity for line workers to speed restoration efforts in emergency events.

Con Edison NOAV

The Department's NOAV to Con Edison informed the company that its initial investigation showed that Con Edison's response to the storm was wholly inadequate in that it "failed to follow its Public Service Commission-ordered Emergency Response Plan's (ERP) requirements relating to: (1) its damage

¹ The focus of this Order is the storm preparation and performance by electric utility companies.

² The Commission's enforcement authority differs as to PSEGLI, (see Public Service Law § 3-b) and, as such, that company is noted in this Order for the purposes of describing the Department's ongoing efforts.

assessment responsibilities; and (2) its published Estimated Time of Restoration (ETR) notices." Recognizing prior instances where Con Edison's storm event response had fallen short of legal requirements, Staff provided Con Edison with notice that it would also investigate whether Con Edison's certificate of public convenience and necessity (Certificate) - the prerequisite legal requirement for exercising franchise rights necessary to provide electric service in New York - should be revoked based on the apparent violations identified in the NOAV, as well as Con Ed's prior ERP violations related to adequately preparing and responding to other emergencies and service outage events.

O&R NOAV

In regard to O&R, Staff informed the company that the Department's initial investigation showed that "O&R apparently failed to follow its Public Service Commission-ordered Emergency Response Plan's (ERP) requirements relating to Pre-Storm Crewing Assessments." As with the Con Edison NOAV, the O&R NOAV described prior instances in which the company's storm event response had fallen short of legal requirements, and provided O&R with notice that the investigation would include an evaluation of whether its Certificate should be revoked based on the apparent violations, as well as O&R's prior failures to adequately prepare and respond to outages events.

Central Hudson NOAV

The NOAV to Central Hudson informed the company that the Department's initial investigation showed that Central Hudson had "apparently failed to follow its Public Service Commission-ordered Emergency Response Plan's (ERP) requirements relating to: (1) its damage assessment responsibilities; and (2) internal website failures."

PSEG LI NOAV

Although this Order's primary focus is on providers Con Edison, O&R, and Central Hudson (collectively, the Subject Utilities), we note for information purposes that the Department likewise provided notice to PSEG LI of its initial determination that the service provider's response to TS Isaias had been wholly inadequate and provided a lengthy list of apparent violations that Staff had discovered during its initial investigation:

"PSEG LI apparently failed to follow its Department-recommended and Long Island Power Authority (LIPA) Board of Trustees-adopted Emergency Response Plan's (ERP) requirements relating to PSEG-LI's: (1) damage assessment responsibilities; (2) responsibility to maintain a functional Outage Management System (OMS); (3) responsibility to publish accurate Estimated Time of Restoration (ETR) notices; and (4) responsibility for timely and effective communication and coordination with its customers, local municipal governments, and state agencies."

Immediate Corrective Measures

DPS Staff recognized from the results of its initial investigation that many New Yorkers receiving electric service had been placed in an unreasonable and unacceptable position. Indeed, more so than any previous time, New Yorkers are depending on essential electric service as a foundation for managing their lives during the ongoing global coronavirus pandemic. The dramatic and lengthy electric service failures that Staff observed as a result of TS Isaias suggested that some electric service providers did not fully appreciate the basic need for safe and reliable electric service. As a result, Staff recognized early on in its post-Isaias investigation that electric service providers needed to better execute on their

current regulatory commitments by making immediate changes to their operations in case of another severe storm in 2020.

To meet this goal, the NOAVs directed the Subject Utilities to undertake the following corrective actions:

- Immediately begin the process of adding crewing capacity via retainer contracts from private contractors or utilities located outside of New York, with a goal to be able to secure sufficient crewing to double each company's existing internal capacity, and report bi-weekly to the Department on the company's crewing capacity for the remainder of the 2020 calendar year;
- Develop other plans to secure utility crews in addition to private contractor and mutual aid provided by the NAMAG [i.e., North American Mutual Aid Assistance Group] before and during storms, and report bi-weekly to the Department on the company's progress for the remainder of the 2020 calendar year;
- Test capabilities at all command and data centers, call centers and back-up command centers to ensure capability to handle an outage impacting 90% or more of each company's customers in the company's service territory and provide confirmation back to the Department regarding the results of this test within 10 days;
- Refine coordination plans with municipalities tailored to each county (road clearing, local liaisons, etc.) and provide to the Department within 20 days a written confirmation from each county Emergency Operations Center that they understand and accept the plan; and
- Update Life Support Equipment and Critical Infrastructure lists to remove or add customers as necessary and file such updated lists to the Department within 10 days.

As to PSEG LI, Staff made similar demands, as well as the following additional demand:

- Test, repair or upgrade the Outage Management System to guarantee functionality as well as all

communication systems to receive and respond to extraordinary high customer call volumes, and certify to the Department within 10 days of this letter that PSEG LI command and communication systems and Outage Management System will effectively handle such high call volumes. See 16 NYCRR §105.4(b)(9).

To date, the Department has undertaken a wide-ranging investigation of the utilities' storm response, including: issuing document preservation notices and over one hundred Interrogatory Requests to the relevant utilities; undertaking a forensic review of tens of thousands documents; interviews of approximately forty high-level utility employees and persons with important knowledge regarding utility performance; separate depositions under oath of utility employees; incorporation and consideration of TS Isaias legislative hearing comments and recommendations; consideration of customer complaints filed with DPS regarding the utilities' TS Isaias performance; and meetings with multiple municipal officials to identify and understand performance shortcomings.³

Considering the need for prompt accountability for the apparent deficient performance, on November 19, 2020, Staff published an interim Storm Report (Interim Report).⁴ The Interim Report addresses, among other topics, preliminary findings addressing the extent to which the performance of the Subject Utilities fell short of what is required by law, regulation,

³ The New York State Department of Financial Services has provided staff and resources to assist the Department in its investigation.

⁴ A subsequent final report from the Department's OREP team is anticipated that will identify and provide, for Commission consideration, additional remedial actions to all electric utilities, including utilities not within the scope of this Order. We anticipate that the final report will focus on remedial actions.

rule, and/or Commission Order. The Interim Report also speaks to performance deficiencies more generally and offers recommendations for improved performance moving forward.

In consideration of the Interim Report and the underlying information that Staff has obtained during the investigation, this Order initiates proceedings against the Subject Utilities to formally investigate and adjudicate the apparent violations of legal requirements delineated below in regard to their preparation and response to TS Isaias. The Subject Utilities are directed to respond to the allegations of noncompliance herein and/or explain why civil penalties should not be imposed by the Commission for such apparent violations. Specifically, each of the Subject Utilities is ordered to show cause why (1) civil penalties or appropriate injunctive relief should not be imposed to remedy such noncompliance, and (2) a prudence proceeding should not be commenced against it for potentially imprudent expenditures of ratepayer funds related to the subject of this Order.

The Commission also notes that the Interim Report also provides the Department's preliminary results of its technical investigation as PSEGLI's preparation for and response to TS Isaias.⁵ We briefly summarize the aspects of the Interim Report related to PSEG-LI for informational purposes. Staff identified numerous failures by PSEG LI of its ERP which both confirm many of the apparent violations in the NOAV as well as provide the basis for other violations regarding requirements related to downed wires, damage assessment, estimate times of restoration

⁵ As LIPA's service provider, PSEG-LI is subject to a different regulatory regime than the Subject Utilities. Specifically, PSL §3-b(3)(c) provides DPS to with authority to investigate PSEG LI's Storm preparation and response and to provide recommendations to LIPA regarding the results of its investigation.

(ETRs), make safe to clear (MSTC) work, call answer rates, reporting to the department, customer complaints, lack of training, and interactive voice response system messaging. As the investigation into these apparent failures is continuing, the Department will issue its recommendations consistent with PSL §3-b(3)(c)(ii). In this respect, we understand that the Department plans to provide the Interim Report to the LIPA Board of Directors, along with a letter that recommends proposed remedial actions and potential legal options.

BACKGROUND

TS Isaias initially made landfall on the east coast of the United States in North Carolina, and then quickly moved north, striking eastern New York State on the afternoon and evening of August 4, 2020. After moving through PSEG-LI's territory, TS Isaias then hit Con Edison's service territory with sustained winds of approximately 60 mph and gusts above 70 mph. O&R and Central Hudson experienced only slightly lower winds across their service territories. Peak outages across New York reached approximately 900,000 customers, and approximately 1.3 million customers experienced a power outage during the event. Restoration of ninety percent of New York's electric customers whose service was affected took five days and full restoration occurred some three days later on August 12, 2020.

At its peak, outages reached 330,000 for Con Edison, 189,093 for O&R, and 116,000 for Central Hudson.⁶ Con Edison restored 95% of customers by August 9 and the remainder of its customers by August 12 (an eight-day total restoration). O&R restored 90% of customers by the evening of August 8 and achieved full restoration by the morning of August 10 (a seven-day total restoration). For its part, Central Hudson achieved

⁶ PSEGLI experienced 645,000 customer outages.

full customer restoration on August 8, 2020 (a four-day total restoration). Network telephone, cable and internet service outages persisted even longer than the electric outages, as these services "follow the power" and in many circumstances require power to operate.⁷ To put this in context, thousands of New Yorkers forced to work from home because of the coronavirus pandemic lacked electric, telephone, cable, and internet service for extended periods of time during which temperatures reached or exceeded 90°F.

LEGAL AUTHORITY

PSL § 65(1) requires that utilities provide "service, as shall be safe and adequate and in all respects just and reasonable." PSL § 66(2) empowers the Commission to hold utilities to this obligation, by vesting it with the authority to investigate utilities and their performance, as well as to order utilities to make reasonable improvements that are in the public interest. PSL § 66(21) requires each electric utility to file its ERP on or before December 15 of each year for Commission review and approval, and 16 NYCRR Part 105 specifies the content and information to be included in the utility's ERP.

The Commission has significant regulatory authority to ensure that utilities meet their obligations to provide safe, adequate, and reliable service. As to utilities' response to emergencies that threaten this service, the Commission's oversight can generally be categorized as having three ongoing and interrelated phases: (1) oversight of utility preparation for emergency events; (2) oversight of utilities' real-time response to emergencies; and (3) post-emergency analysis of

⁷ PSEG LI restored 90% of customers by August 10, and the remainder of its customers by August 12 (an eight-day total restoration).

utility performance. This continual process of oversight and analysis informs each of the utilities' respective ERP, which New York law requires to be submitted to and approved by the Commission.⁸ The ERPs detail the preparation and response procedures that each utility has committed to abide by in regard to emergency response.

As is clear from the plain language of 16 NYCRR Part 105, ERPs include binding legal requirements, not aspirational goals. When the Commission reviews, modifies, and approves ERPs, it does so to establish binding utility-response requirements. Commission regulations make clear that the ERPs describe only "adequate utility response for storm and storm-like emergencies" with which utilities "shall comply."⁹

In May 2020, the Commission issued an Order Approving Amended Electric Emergency Response Plans (the "ERP Order").¹⁰ The ERP Order made operative the respective draft ERPs submitted by each of the Subject Utilities.¹¹ The 2020 ERPs thus provide binding legal requirements by which the Subject Utilities were required to comply in preparation and response to TS Isaias.

PSL § 25-a(3) and (5) authorize the Commission to commence an administrative penalty proceeding against a combination gas and electric corporation to determine whether it violated the PSL or an order or regulation adopted pursuant to the PSL. Under PSL § 25-a, the Commission may assess a civil penalty not exceeding the greater of \$500,000 or "four one-hundredths of one percent of the annual intrastate gross

⁸ PSL § 66(21).

⁹ 16 NYCRR § 105.1 (emphasis added), § 105.6.

¹⁰ Case 19-E-0742, In the Matter of December 15, 2019 Electric Emergency Plan Review (Issued and Effective May 14, 2020).

¹¹ PSEG LI ERP's was filed December 15, 2019, and the Department's recommendations were issued to the LIPA Board of Trustees on May 12, 2020, in Matter 19-0753.

operating revenue of the corporation, not including taxes paid to and revenues collected on behalf of government entities, whichever is greater," with respect to a finding of a violation of "an order or regulation . . . designed to protect the overall reliability and continuity of electric service, including but not limited to the restoration of electric service following a major outage event or emergency."

In accordance with PSL § 25(4), the Commission is also authorized to commence a case in New York State Supreme Court against a public utility company to assess a civil penalty of \$500,000 for each separate and distinct offense pertaining to a showing that such company knowingly failed or neglected to obey or comply with a provision of the PSL or an order or regulation adopted under the PSL "designed to protect the overall reliability and continuity of electric service."¹²

Finally, the Commission is authorized, pursuant to PSL § 68(2), to commence a proceeding to revoke the Certificate of a combined electric and gas corporation, "based on findings of repeated violations" of the PSL or the rules or regulations adopted thereto "that demonstrate a failure of such corporation to continue to provide safe and adequate service." Whenever the Commission has reason to believe that a combined electric and gas corporation's Certificate may be subject to revocation or modification, it is required to "notify such corporation of the facts and nature of each act or failure to act allegedly warranting such revocation or modification, and the statute, regulation or order allegedly violated."

The Commission is otherwise authorized to "consider the following factors" in determining whether revocation or modification of the Certificate is appropriate:

¹² See also PSL § 26 for the Commission's injunctive remedies.

(a) the factors identified in subdivision one of this section for issuance of a certificate of public convenience and necessity;

(b) whether another person, firm or corporation is qualified, available, and prepared to provide alternative service that is adequate to serve the public convenience and necessity, and that the transition to such alternative person, firm or corporation is in the public interest; and

(c) upon any other standards and procedures deemed necessary by the commission to ensure continuity of safe and adequate service, and due process.¹³

The Commission is also authorized to initiate a prudence proceeding against a utility. Prudence is an essential component of utility regulation that is determined by judging whether the utility acted reasonably, under the circumstances at the time, "considering that the company had to solve its problems prospectively rather than in reliance on hindsight."¹⁴ The Commission has stated that, "...in effect, our responsibility is to determine how reasonable people would have performed the task that confronted the company."¹⁵ In general, the Commission's power to investigate the propriety of costs incurred by a utility derives from its duty to set just and reasonable utility rates.¹⁶ That duty may require the Commission to determine which utility costs should be shouldered by the

¹³ PSL § 68(2).

¹⁴ Case 27123, Con Edison - Proceeding to Investigate 1976 Outage of Indian Point No. 2, Opinion No. 79-1, at 6 (issued January 16, 1979).

¹⁵ Id. The standard is not actual knowledge, but one of reasonableness under the circumstances. New York Telephone Co. v. PSC, 190 A.D.2d 217 (3rd Dept. 1993); Long Island Lighting Co. v. PSC, 134 A.D.2d 135 (3rd Dept. 1993).

¹⁶ PSL §§ 66(12), 72.

utility's shareholders rather than its ratepaying customers.¹⁷ It would be neither just nor reasonable for a utility's customers to bear the cost of inefficient management or poor planning.

APPARENT VIOLATIONS

The DPS Interim Report discusses utility failures that appear to constitute violations of their respective ERPs and, therefore, violations of the Commission ERP Order and the aforementioned regulations requiring ERP compliance. We find that the Interim Report along with information obtained during the post-storm investigation provides credible information that merits ordering the Subject Utilities to respond to the apparent violations set forth herein. Each alleged violation is set forth by date and brief factual description.¹⁸ Each utility is hereby noticed that, unless otherwise provided, the Commission will consider imposing, for each established violation, a civil penalty of up to the greater of five hundred thousand dollars or four one-hundredths of one percent of the annual intrastate gross operating revenue of the utility at issue.¹⁹

¹⁷ Rochester Gas & Elec. Corp. v. PSC, 51 N.Y.2d 823, 825 (1980), appeal dismissed, 450 U.S. 961 (1981).

¹⁸ The Commission may supplement this Order by providing further details regarding factual descriptions and/or dates and times regarding those allegations specifically set forth in this Order. If Staff chooses to provide supplemental notice on any issue to be decided by the Commission pursuant to PSL § 25-a, it must do so in a reasonably timely manner so as to provide the respective utility reasonable notice and opportunity to respond prior to a final determination.

¹⁹ See PSL §25-a(2)(b).

I. Storm Classification & Staffing: Con Edison (20 Apparent Violations); O&R (15 Apparent Violations); Central Hudson (10 Apparent Violations)

According to the Interim Report, an early, underlying, and consequential problem that prevented timely restoration for the Subject Utilities was their inability to accurately predict the impacts of TS Isaias. As discussed in the Interim Report and in light of the lengthy restoration times after the Storm, the Department Staff maintain that the Subject Utilities had not retained, in the days before the Storm, a sufficient number of contractors to reasonably respond to the restoration needs resulting from the actual impacts of TS Isaias. The multiple references to weather forecasting in the ERPs of Con Edison, O&R, and Central Hudson leave no doubt that ascertaining reasonably accurate weather forecasts plays a critical prerequisite starting point for the Subject Utilities' ability to meet numerous storm preparation and restoration commitments set forth in the respective ERPs.²⁰

The Department's investigation revealed that the Subject Utilities use weather forecasts (whether provided through an in-house meteorologist, a third-party weather forecast provider, or a combination of both) that is inputted into a service territory impact model. The impact model then predicts the number of expected restoration jobs, customer

²⁰ See Con Ed ERP §§ 4.1A, 4.2, 4.3, 4.4, 5.3, 5.3.3, 6.3, 7.2, 7.2.2, 9.1, 9.4, 9.5.2, 10.1; O&R ERP §§ 2.3.1, 2.3.3, 2.5, 2.9, 3.1, 3.2, 4.5 and 5.8; Central Hudson ERP §§ 3.2, 6.2, 6.8, 6.9, 6.10.2, 7.3.4, 7.7.2, and 7.9.1.

outages, and other data, used to classify a storm.²¹ These data are then used to determine storm restoration staffing needs, which can be filled via internal personnel, through pre-arranged outside contractor agreements, or via regional utility mutual aid personnel from inside and outside New York. As a storm approaches that is expected to impact a large geographic region,²² restoration resources become particularly difficult to obtain as entities "hold" such resources until the storm passes and impacted areas are restored. Accurate weather prediction is thus essential to providing the utilities with the foresight to obtain adequate restoration resources. By contrast, a poor weather forecast can greatly diminish the ability of a utility to obtain adequate resources when the storm arrives, potentially delaying restoration by days.

The Department's investigation identified information supporting its conclusion that the Subject Utilities failed to reasonably forecast the Storm and model its impacts, resulting in unreasonably inadequate restoration efforts and delayed restoration that apparently violated each of the utilities'

²¹ See, e.g., Con Edison ERP Section 4.2: "[T]he following chapter specifies the criteria that the Company uses for determining the severity of electric emergencies and their incident classification. When determining incident classification, [Con Edison] incorporates multiple factors, including the geographical scope of the emergency, the estimated time required to restore general service, the type of expected damage to the electric system, and other factors specific to the incident type (e.g., winter storm, coastal storm, etc.). In addition, this chapter details how [Con Edison] then uses regional *Incident Classification Matrices* to determine whether Company personnel alone, or the Company plus supplementary (e.g., mutual assistance) crews, will be needed to the restore service and repair projected amounts of damage to the Company's electric distribution system."

²² By definition, a tropical storm is a tropical cyclone that has maximum sustained surface winds ranging from 39-73 mph.

respective ERPs. The Department's investigation revealed that, days before the storm when additional resources were obtainable, multiple (although not every) well-established weather models predicted that TS Isaias would shift in a westward direction with sustained winds and gusts occurring over and around the New York City metropolitan area and neighboring counties. More specifically, the Department points to evidence that, on each day starting on July 31, 2020, and until the Storm struck on August 4, 2020, the respective utilities failed to adequately account for and respond to the considerable possibility that TS Isaias would have the dramatic impacts on electric service that actually resulted when the Storm struck New York. Although the weather on July 31, 2020, may not have prompted the utilities to staff up as if a tropical storm would strike their service territories that same day,²³ the Department points to evidence indicating that significant increases in staffing were reasonably necessary given the contemporaneous forecasts.

The Department submits that, because weather is generally forecasted on a daily basis, each day a utility makes an unreasonable weather forecast, including by failing to consider countervailing forecasts made by reputable entities like the NWS, represents a separate, discrete violation of Part

²³ See, e.g., the University Corporation for Atmospheric Research (UCAR), Archive of Real-Time Late Track Plots for (AL09), (presenting track guidance updates from the evening of July 30, 2020 through the morning of August 4, 2020), available at http://hurricanes.ral.ucar.edu/realtime/plots/northatlantic/2020/al092020/track_late/; UCAR, Archive of Real-Time Early Intensity Plots for (AL09) (presenting intensity guidance updates from the evening of July 30, 2020 through the morning of August 4, 2020), available at http://hurricanes.ral.ucar.edu/realtime/plots/northatlantic/2020/al092020/intensity_early/.

105.²⁴ Applied here, the Department submits that Con Edison, O&R and Central Hudson, for the fact specific reasons discussed next, used unreasonable weather forecasts or inputs into models related to such forecasts for five separate days -from July 31-August 4.²⁵

Con Edison: The Department's investigation revealed that for prior storms Con Edison employed two in-house meteorologists to determine its weather forecasts: one meteorologist was assigned to the Transmission team; while the other meteorologist was assigned to the Emergency Preparedness team. The Department understands that an important aspect of the two meteorologists' job responsibilities in the context of a potential storm was to challenge each other to produce a unified forecast for use in the company's impact model. However, at the time when TS Isaias hit New York, the Emergency Preparedness meteorologist had only recently left the company, causing the company to rely upon the unchallenged opinion of a single meteorologist. The Department's investigation revealed that in the run up to the Storm, this now solo meteorologist, when considering the multiple available weather models at his disposal, disregarded numerous models that conflicted with his opinion.²⁶ Even hours before TS Isaias struck New York and the Con Edison service territory, he provided an email to an external meteorologist dismissing the National Hurricane Center

²⁴ 16 NYCRR § 105(4)(b)(3), (6).

²⁵ See fn. 22 for a list of models predicting potential tropical storm impacts to the Subject Utilities' service territories.

²⁶ The Department's investigation revealed that Con Edison does not normally issue a revised outage forecast unless the weather drastically changes. The Department states that this "all or nothing" approach to storm preparation and staffing is unreasonable.

(NHC) forecast that had predicted extensive impacts to the region and stating his belief that the NHC was "really fluffing th[e] storm up." (Emphasis added).

The investigation revealed that, apparently based on inaccurate internal weather forecasts, Con Edison turned away resources days before the TS Isaias hit its territory on July 31st and August 1st.²⁷ Indeed, at 12:00 p.m. on August 3, 2020, the day before the Storm, Con Edison publicly pronounced that it was "prepared to respond to any service problems caused by Isaias." (Emphasis added). Despite this claim, on the evening of the storm, only hours after the Con Edison meteorologist claimed the NHC was fluffing the storm, Con Edison requested an additional 1,200 mutual aid resources to staff its restoration efforts - what the Department understands was nearly double the Con Edison staff and contractors from only hours before. Mutual aid sources that day were able to provide twenty-seven resources, apparently due in part to the fact that other northeastern utilities were "holding" restoration resources.

Based on the foregoing, the Department submits that Con Edison is in apparent violation of four ERP requirements for each of five separate days - from July 31-August 4. Thus, all told, the Department alleges a total of twenty separate and

²⁷ The Department's investigation on the subject seemed to demonstrate confusion, and potential resource delays, as to whether it could use line resources (categorized by Governor Cuomo as essential resources and exempt from COVID-related travel quarantine restrictions) from states categorized by New York as requiring quarantine. No such restriction applied to these line resources.

distinct violations related to storm classification and staffing.²⁸

O&R: The Department's investigation revealed that O&R relied on certain storm-related forecasting services from Con Edison - an affiliate of O&R's, including Con Edison's weather forecasting services. Thus, the inaccuracies of Con Edison's forecast directly impacted O&R's ability to respond to TS Isaias. O&R also relied upon Con Edison to make mutual aid staffing requests on its behalf.²⁹ Based on the foregoing, the Department submits that O&R is in apparent violation of three ERP requirements for five separate days, forming the basis of fifteen separate and distinct violations.³⁰

Central Hudson: The Department determined that Central Hudson did better than Con Edison and O&R with respect to its restoration efforts. Nevertheless, the Department's investigation revealed apparent violations related to inputs into a weather model relied upon by Central Hudson to estimate necessary restoration resources. The Department learned from its investigation that Central Hudson relies on a third-party provider for its storm forecast, which forecast is then inputted into a model created and operated by the University of Albany under a NYSERDA grant. This model uses numerous inputs, including impacts from Central Hudson's prior storm-related outages. However, the Department's investigation revealed that

²⁸ Con Ed ERP, §§ 4.1 (Incident Classification Definitions/ Response Levels), 4.2 (Regional Incident Classification Matrices), 4.3 (Consideration of Other Factors), 4.4 (Minimum Staffing), See also Attachment 02, ERP § 10 (Mutual Aid).

²⁹ Thus, for example, on August 4, 2020, Con Edison requested 750 resources on behalf of O&R; they were allocated only sixteen.

³⁰ O&R ERP, §§ 3.1 (Pre-Event Preparations), 3.2 (Event Classification), 3.3 (Notification and Mobilization)/2.9 (Mutual Aid), see also Attachment 12.

Central Hudson appears to have provided the University with inaccurate historic storm data to be inputted into the University's model. The Department believes that, because Central Hudson failed to provide the requisite data to be used in the University's model, it appears the model may have thus provided inaccurate outputs for restoration.³¹ Based on this information, the Department submits that Central Hudson apparently violated two ERP sections, and did so on five separate days, forming the basis of ten separate and distinct violations.³²

II. Interactive Voice Response System: Con Edison (3 Apparent Violations); O&R (7 Apparent Violations)

Interactive Voice Response Systems or IVRs allow for the efficient dissemination of critical information regarding utility service and restorations. These outage "phone trees and messages" provide callers with important information such as outage areas and estimated times of restoration. Emergency response plans require each utility to update IVR systems within one hour of a press release.³³ This requirement, in turn, contains two separate components: (1) that the utility update the IVR in response to a press release, and (2) that the IVR update is timely. Con Edison and O&R appear to have failed to meet this standard on multiple distinct occasions.

³¹ On August 4th, 2020, the day the storm hit Central Hudson's territory, Central Hudson requested o Central Hudson requested 200 additional line workers from mutual aid but were allocated only sixteen.

³² CH ERP, §§ 1.10 (Storm Staffing) and 1.1 (Introduction, Storm Classification Guidelines), see also ERP §§ 4.2.3 (Mutual Assistance) and 7.9 (Mutual Assistance Procedure).

³³ Con Edison ERP, § 8.3.1 (Customer Calls); O&R ERP § 4.4 (Customer Assistance Center).

As to Con Edison, the Staff investigation uncovered that the company appears to have provided one press release without ever issuing an updated IVR; specifically, on or about August 6, 2020, Con Edison issued a press release noting, among other things, the location of cooling and charging stations within Con Edison's service territory. The subsequent IVR message, however, failed to include mention of the terms charging or cooling center; instead the IVR used the term "open municipal emergency centers." The Department submits that the information in the IVR message was inconsistent with the information in the press release in that the IVR failed to denote where customers could go for purposes of charging cell phones and the like, and cooling. Additionally, Con Edison made two individual IVR updates (one on August 7, 2020, and the second on August 10, 2020) later than the required hour after the issuance of associated press releases, which the Department submits constitute two separate apparent violations of the ERP. Accordingly, the Department submits that each of these oversights constitutes a total of three apparent violations of the noted ERP requirements.

The Department submits that O&R's public communication efforts involved similar apparent violations. On six distinct occasions, the Department asserts that O&R apparently failed to update its IVR within one hour of issuance of a press release, and each of these apparent failures constitute a distinct violation of the ERP requirement, resulting in a total of six apparent violations.³⁴ Further, the Department submits that, on August 7, 2020, O&R failed to update its IVR following a press

³⁴ See DPS IR DPS-22.

release issued on or around 8:15 p.m., constituting a seventh apparent violation.³⁵

III. Call Center Staffing: Central Hudson (1 Apparent Violation)

In terms of providing appropriate customer service and information dissemination during an emergency event, there is no substitute for an adequate number of call center workers who can offer dynamic responses to the needs of customer-callers. According to Central Hudson's ERP, the company committed to staffing its call center in a "Disaster Event" with 18 individuals, a metric that changes as restoration occurs, from the period from 12:00 a.m.-6:00 a.m.³⁶ The Department's investigation indicates that on August 5, during the period from 12:00 a.m. to 6:00 a.m., Central Hudson reported average staffing of 15 representatives during a period when 18 were required. The Department submits that this oversight constitutes apparent violation of CH's ERP.

³⁵ See Scorecard at Appendices 18/19; compare with O&R's Part 105, p. 57, which again notes O&R claiming it updated its IVRs on time. Of note, O&R initially provided IVR and press release timing data in its scorecard at Appendix 19. These data showed that O&R was late on updating the IVR within one hour of the press releases seven times. However, O&R's Part 105 Report at p. 57 states that "[t]he Company continuously updated outgoing messages on the telephone lines or IVR system throughout Isaias. All updates were made within one hour from the release of a new communication release." The Department's investigation revealed that the times originally reported in the Scorecard matched the website press release data, thus providing the basis for the seven apparent violations.

³⁶ CH ERP, § 6.11 (Contact Center Staffing).

IV. Call Answer Rates: Con Edison (2 Apparent Violations); O&R (2 Apparent Violations); Central Hudson (3 Apparent Violations)

During an emergency event, customers reasonably expect to be able to place a call to the utility and reach a live utility representative within a reasonable period of time. During a storm event, each of the Subject Utilities is required to have their personnel from their respective call centers answer 80% of calls related to an outage within 90 seconds.³⁷ In light of the fact that utilities make new staffing decisions related to the metric at least daily, this standard is intended to be assessed by daily performance during an emergency event.

Con Edison reported that it failed to meet this minimum answer rate on two separate days, August 4 and August 5. On those days, Con Edison had, respectively, a 6.9% and 51.1% compliance rate of answering calls within the 90-second standard. The Department submits that these instances of non-compliance constitute two apparent violations of Con Edison's ERP.

Likewise, O&R reported non-compliance on two separate days. O&R answered only 22.5% of calls within the allotted time on August 4, and 67.19% of calls within the allotted time on August 10. The Department submits that these instances of non-compliance constitute two apparent violations of O&R's ERP.

Central Hudson appears to have missed the same metric on three separate days. According to Central Hudson's reports, on August 4, August 5, and August 8, Central Hudson had respective answer rates of 51.0%, 60.7%, and 76.8% based on the 90-second standard. The Department submits that these reported

³⁷ Con Ed ERP § 8.3.2 (Call Center Staffing); O&R ERP § 4.4 (Customer Assistance Center), Attachment Emergency Response Performance Measurement Guide, at 8; CH ERP § 6.11 (Contact Center Staffing).

instances of non-compliance constitute three apparent violations of Central Hudson's ERP.

V. Estimated Time of Restorations: Con Edison (5 Apparent Violations); O&R (3 Apparent Violations)

Providing reasonable Estimated Time of Restorations or ETRs to customers is essential to providing municipal officials and customers with important information on which to make their future plans. For example, as set forth in Con Edison's ERP, ETR protocols are "considered minimum requirements necessary to ensure the public and the Department are adequately informed."³⁸ Con Edison's ERP provides specific requirements related to ETR compliance:

Regional and local ETRs will be used and applicable to at least 95% of the affected customers in the reported level. Regional ETRs are to be provided on a county basis and local ETRs are to be provided on a town or municipal basis. Global ETRs may be used initially for outage events expected to last greater than 48 hours and applicable to at least 90% of the affected customers. Once all regional ETRs have been issued references to the global ETR will be eliminated.³⁹

For an outage event in Con Edison service territory expected to last more than 48 hours, the utility must provide a global ETR within 24 hours of the restoration period.⁴⁰ It then must provide the public regional/county ETRs within 48 hours of the

³⁸ See Con Edison ERP, § 7.1.2 (Compliance with the ETR Protocol), Attachment 12 (ETR Protocols), see also Con Edison ERP § 12.1 (Guiding Principles).

³⁹ "The ETR Protocol (Attachment 12) is triggered in response to storms or storm-like electric emergencies that result in a service interruption of more than 30 minutes impacting either more than 5,000 customers within a County/Borough or more than 20,000 customers Companywide." Con Edison ERP, Table 7.1.2A.

⁴⁰ Id.

restoration period, and then provide local/town municipality ETRs no later than 60 hours from the beginning of the restoration period.⁴¹ O&R's ERP contains similar requirements.⁴²

Con Edison's and O&R's global and regional ETRs for two days lacked transparency and accuracy. Specifically, rather than using the above-noted 90% to 95% ERP restoration standards, both companies in their August 5 and 6, 2020 global and regional ETR-related press releases communicated that the "vast majority" of customers would be restored by Sunday night. This opaque phrasing did not communicate to customers and governmental entities the more precise and useful 90/95% information,⁴³ which the Department submits is necessary for the purpose of providing accuracy and transparency. Accordingly, the Department submits that Con Edison and O&R each apparently violated the 90% and 95% metrics on two separate occasions.

The Department's investigation also revealed that Con Edison and O&R each appear to have violated the local ETR requirements in their respective ERPs. On August 6th, Con Edison and O&R issued what each company termed "local" ETRs that were merely populated with the information from the regional ETRs. Indeed, many localities received a "local" ETR identical to the regional ETR. This practice contradicts the plain purpose of local ETR requirement, which is to provide customers and municipalities with a finer grain of accuracy of restoration for their immediate geographic vicinity. The Department submits

⁴¹ Id.

⁴² O&R ERP, § 2.4 (Estimated Timers of Restoration (ETRs)).

⁴³ Since the press release contained the number of customer outages, if Con Edison provided the exact percentage (versus the imprecise term "vast majority") then the public would have been better able to evaluate the situation and plan accordingly.

that Con Edison and O&R each apparently violated the local ETR requirement on at least one occasion.

Finally, the Department's investigation showed that Con Edison failed to ensure ETR targets were met or updated as required.⁴⁴ Specifically, on August 9 and 10, 2020,⁴⁵ Con Edison repeatedly failed to update ETRs before they expired, and it left customers and municipal officials who were trying to obtain revised ETRs with the message "More Work Required." The Department's Interim Report notes that this phrase does not constitute an ETR on the grounds that it provides no meaningful restoration information. Accordingly, the Department submits that Con Edison's failure to appropriately specify ETR targets for two days constitutes two additional apparent violations of ERP requirements.

VI. Website Information/Updates: O&R (8 Apparent Violations); Central Hudson (16 Apparent Violations)

Utility websites provide customers, first responders and government officials access to critical outage information, as well as through a format that cannot be replicated through other channels such as phone calls. As discussed below, the Department alleges apparent violations of website information requirements against both O&R and Central Hudson.

⁴⁴ See Con Edison ERP, § 5.3.1("Throughout restoration, the Regional ETR Officer shall initiate conference calls with the regional ETR team (including ETR Supervisors who are situated within Operations-based Cells) and shall work closely with the RPT Unit and Operations Section to ensure ETR targets are met or updated if they need to be revised.").

⁴⁵ See Con Edison response to DPS IR DPS 30-6. The Department's investigation revealed that at one point on the August 10 there were 39 towns designated with the "More Work Required" as their putative ETRs. On August 9, eight towns received the "More Work Required" statement as an ETR.

According to O&R's ERP, during a storm recovery effort, "an outage information section will be available on the O&R website. The website is available 24/7 and will be updated at least hourly during an event."⁴⁶ O&R appears to have failed to meet its obligation for hourly updates of its website outage information on eight discrete occasions as follows:

1. On August 4, the outage map did not update between 5:29 p.m. and 9:53 p.m.;
- 2-5. On August 5, the map did not update between 2:28 a.m. and 3:53 a.m., 3:53 a.m. and 5:14 a.m., 8:25 a.m. and 10:21 a.m., and 3:28 pm and 4:30 p.m.;
6. On August 6, the map did not update between 12:01 a.m. and 5:59 a.m.;
7. August 7, the map did not update between 12:15 p.m. and 1:47 p.m.; and
8. On August 8 between 6:21 a.m. and 8:02 a.m.

The Department submits that each of O&R's failures to update the outage map on its website constitutes eight separate and distinct apparent violations of O&R's ERP.

Central Hudson's ERP recognizes that among the "minimum requirements necessary to ensure the public . . . [is] adequately informed" is the requirement that the company continuously refine [its] ETRs and update . . . [its] websites"⁴⁷ Central Hudson's ERP also commits the company to creating a devoted storm webpage during "the most severe events" upon which "outage information will be updated at least every hour."⁴⁸

⁴⁶ O&R ERP, § 5.8 (Corporate Communications).

⁴⁷ CH ERP, § 7.1 (Estimated Time of Restoration Protocols).

⁴⁸ CH ERP, § 6.9 (Social Media, Email, Website and Text Messaging).

According to Interim Report, due to the loss of full internet functionality, at 2:59 p.m. on August 4, Central Hudson stopped being able to adequately update its external website, including Central Hudson's storm specific website (stormcentral.cenhud.com), with any critical information, including outage information. Central Hudson restored its website with updated information at approximately 7:00 am on August 5, 2020, albeit sixteen hours after it lost functionality. The Department's investigation revealed that the website outage was caused by the loss of internet connection to a Central Hudson's office. While Central Hudson engineered a redundancy capability (at ratepayer cost) to a second office should internet connection to the main office fail, this secondary connection also did not work. The Department asserts that the inoperability of the redundant system resulted at least in part from Central Hudson's failure to identify basic IT engineering requirements as to differing IP addresses. In other words, the problem with the redundant system should have been known and fixed long before Tropical Storm Isaias hit Central Hudson's service territory.

In its Part 105 Report, Central Hudson acknowledged that its website went down for several hours on August 4th but claims that it nevertheless complied with the ERP-requirement to maintain updated website information on the grounds that "critical issues forced it to be down for repair." However, as noted, the Department submits that Central Hudson should have known that the redundant system was also inoperable. Central Hudson's website was not down due to the fiber optic cable damage at the primary location (as its backup center should have provided this service); rather, the investigation revealed that the direct cause of the outage was the improper design of

Central Hudson's redundancy system.⁴⁹ In the Department's view, Central Hudson should have realistically tested its systems to identify this issue before it needed to activate, and rely on, the systems during an actual storm event.

The Department submits that, because the Central Hudson ERP requires outage information to be updated on an hourly basis, the approximately 16 hours during which the website became inoperable amounts to sixteen distinct and separate per hour violations.

VII. Life Support Equipment (LSE) Customer Contacts: Con Edison (3 Apparent Violations); O&R (3 Apparent Violations); Central Hudson (2 Apparent Violations)

Pursuant to 16 NYCRR § 105.4, "each electric corporation's emergency plan shall . . . state the procedures for contacting within 24 hours, and policies for responding to the needs of, life support customers (those who require electrically operated machinery to sustain basic life functions) during an electrical emergency." These are daily requirements.⁵⁰ As discussed below, Con Edison, O&R, and Central Hudson failed to satisfy those portions of their respective ERPs establishing procedures for contacting LSE customers.

Con Edison contacts LSE customers in the event of an outage either by (1) making contact with the customer by phone, or (2) ensuring that an external agency (such as "NYPD/

⁴⁹ The Department's investigation revealed that, even prior to TS Isaias, Central Hudson appeared to be looking into additional fiber redundancy.

⁵⁰ See Case 13-E-0198, Order Approving Electric Emergency Plans (August 16, 2003), p. 18, Life Support Equipment (LSE) and Special Needs Customers: "Each utility's emergency plan must clearly define a process to contact affected LSE and special needs customers daily, which shall continue until the utility confirms that power is restored for all of these customers." (Emphasis added).

Westchester Police Department") or a Con Edison employee visits the customer's residence and attempts to make contact.

According to its ERP, Con Edison committed to compliance with the following requirements related to ERP customer contact: (1) contacting 80% of affected LSE customers within 12 hours of an event and, for LSE customers that were unable to be contacted on the first attempt, making at least a second contact attempt within twelve hours; and (2) contacting 100% of affected LSE customers or referring such customers to an emergency service agency within 24 hours.⁵¹

The Department submits that Con Edison failed to meet the LSE contact criteria on at least three separate occasions, each constituting a distinct violation of its ERP. First, Con Edison's Part 105 Report indicates that it contacted less than 80% of its LSE customers within twelve hours of the outage event. Second, Con Edison failed in at least one instance to make a second attempt to contact an LSE customer.⁵² Third, Con

⁵¹ Con Ed ERP, § 8.3.3 (Storm/Incident Communications with Life Support Equipment Customers): "As per the PSC Scorecard and Performance Guide), 80% of affected LSE customers will be contacted within 12 hours; LSE customers that were unable to be contacted will have at least two contact attempts made within 12 hours; and 100% of affected LSE customers will be contacted or referred to an emergency service agency within 24 hours. Call Center personnel must make at least one additional attempt, within the same 12-hour period, to contact any LSE customer who was not contacted on the first attempt."

⁵² See Con Edison ERP, 2.4; Con Ed Scorecard, at 43.

Edison, in what appears to be at least twenty-two times,⁵³ failed to refer the LSE customers to whom it was unable to contact to emergency service agencies within the required twenty four hour period.⁵⁴

O&R's ERP holds the company to the same substantive LSE requirements as were discussed in regard to Con Edison.⁵⁵ The Department submits that, like Con Edison, O&R committed three apparent violations regarding the LSE customer contact requirements delineated in its ERP. First, O&R acknowledges that it failed to contact 80% of affected LSE customers within 12 hours, and indeed that it contacted only 56% percent of such customers during that timeframe.⁵⁶ Second, based on the data

⁵³ Con Edison Part 105 Report, p. 26: "Throughout the storm and restoration, the Company estimated that 1,033 life support equipment customers lost service. On its first call attempt, the Company successfully contacted 530 customers. The Company called 501 of the 503 remaining life support equipment customers (99.6 percent) a second time within the 12-hour period and successfully reached 314 additional customers." One of those customers was referred for a wellness check five hours after that customer lost service. The second customer was referred for a welfare check within 25 hours of losing service. The Report further states, however, that:[t]he Company also measures its contact at the 24-hour mark. Of the 1,033 life support equipment customers who lost service, within 24 hours the Company either contacted or referred to an emergency services agency 1,011 (98 percent)."

⁵⁴ Con Ed Response to DPS-15 (15-1) (9/15/20).

⁵⁵ O&R ERP, § 9; 4.5 (Special Response Team ("SRT")): "As per the PSC Scorecard Number 16: 80% of affected LSE customers will be contacted within 12 hours, LSE customers that were unable to be contacted will have at least two contact attempts made within 12 hours and 100% of affected LSE customers will be contacted or referred to an emergency services agency within 24 hours (Attachment 22)"; see also Attachments 16 and 22

⁵⁶ O&R Scorecard, at 36; O&R Part 105 Report at p. 56. The Department understands O&R to have 518 registered LSE customers in its service territory per its Part 105 Report.

provided to the Department, O&R made two attempts to contact for a second time only 81% (rather than the required 100%) of the 518 LSE customers it was unable to contact on the first attempt. Third, O&R failed to comply with the requirement that 100% of LSE customers be contacted or referred to emergency services within 24 hours after the outage event, acknowledging that it complied with this metric for only 63% of such customers.⁵⁷

For its part, Central Hudson committed in its ERP to "attempt[ing] to contact all LSE customers who have reported or been predicted to have no power by telephone twice within 12 hours from when their outage was first reported or predicted. This process will occur each day for LSE customers that have reported an outage or are in a predicted outage case."⁵⁸ Central Hudson also committed to refer LSE customers not contacted to an appropriate agency.⁵⁹ The Department submits that Central Hudson is in apparent violation of two separate LSE customer contact requirements of its ERP.⁶⁰ First, Central Hudson acknowledged that it failed to contact twenty-one affected LSE customers during one of the daily periods during the TS Isaias event, resulting in an apparent ERP violation.⁶¹ Second, the Department's investigation revealed that, in addition to Central Hudson not calling these individuals, it also did not refer their status to appropriate agencies.

⁵⁷ Id.

⁵⁸ CH ERP, § 7.3.4 (Contacts During Storm Events).

⁵⁹ Id.

⁶⁰ See Central Hudson's response to IR DPS-010(d).

⁶¹ Id.; see also CH Scorecard, p. 33.

DISCUSSION AND CONCLUSION

Recommendations and Areas of Improvement

The Department's investigation regarding the performance of Con Edison, O&R and Central Hudson in preparation for and response to Tropical Storm Isaias identified many opportunities for improvement. Further, the Department, through its August 19, 2020 letters and NOAVs to Con Edison, O&R, CH, PSEGLI, NYSEG, RG&E and National Grid demanded the companies undertake several immediate corrective actions, including the doubling of available line workers, to help ensure that the companies would be better prepared for potential future storms. Con Edison, O&R, CH, NYSEG, RG&E and National Grid, through this Order, are directed to continue implementation of the enumerated remedial measures by the provided timelines in said letters and NOAVs.⁶²

Apparent Violations and Prudence

In light of the Department's identification of apparent violations of the PSL § 66, 16 NYCRR Part 105, the Subject Utilities' ERPs, and the ERP Order, the Subject Utilities are ordered to show cause within 30 days of the issuance of this Order why the Commission should not seek the imposition of court-imposed or administrative penalties related to the apparent violations. Given that the Department's investigation is continuing in nature, the Commission notes that it may amend this Order to include any subsequently determined apparent violations identified by the Department.

Further, through this Order and the referenced Interim Report, the Commission hereby provides the Subject Utilities

⁶² Consistent with the PSL, this Commission Order condition does not apply to PSEGLI, although the results of the Interim Report will be provided to LIPA along with additional recommendations from the Department.

with notice under PSL § 25-a of the dates and descriptions of the facts and nature of each act or failure to act for which a penalty is proposed, a list of each statute, regulation, or order that the Commission alleges has been violated, and the amount of each penalty that the commission proposes to assess. The Subject Utilities are hereby placed on notice that, unless otherwise provided, the Commission proposes, for each established violation, the assessment of a civil penalty of five hundred thousand dollars or four one-hundredths of one percent of each utility's annual intrastate gross operating revenue, whichever is greater.⁶³ After the Subject Utilities have submitted their responses to this Order, the Commission leaves to the Department the discretion concerning next steps, including that it may hold an evidentiary hearing to demonstrate why any proposed penalty or penalties under PSL § 25-a should be assessed against the Subject Utilities.

At this juncture, the Commission makes no determination concerning whether the Subject Utilities' actions related to the TS Isaias outages were prudent. Going forward, the Subject Utilities shall show cause why the Commission should not initiate a prudence proceeding and respond to Staff's contentions contained in the Report and as summarized above, after which we may direct a focused proceeding, overseen by an Administrative Law Judge, concerning prudence related issues

⁶³ This Order satisfies the notification requirements of PSL § 25-a. The penalties the Commission proposes to assess against the Subject Utilities under PSL § 25-a, aside from any penalties or remedies under PSL § 25, for a lack of prudence, or for revocation or modification of their certificates under PSL § 68(2), are as follows: (1) Central Hudson, 32 violations at up to \$500,000 each or a total of \$16,000,000; for O&R, 38 violations at up to \$500,000 each, or \$19,000,000; and for Con Edison, 33 violations at up to approximately \$3,100,000 each, or \$102,300,000 based on its annual intrastate gross operating revenue.

concerning the Isaias related outages in their respective service territories.

The Department shall designate appropriate trial staff to investigate the alleged violations and imprudence allegations and pursue any potential penalties under PSL §§ 25 and/or 25-a, if necessary. Once designated, the Subject Utilities may consult with trial staff during the development of its response.

Revocation or Modification of Con Edison's and O&R's Certificate

The Commission hereby provides notice to Con Edison and O&R that, should the Commission confirm some or all of the apparent violations identified in this or other Orders, and should such respective confirmed violations be classified as findings of repeated violations of the PSL or rules or regulations adopted thereto that demonstrate a failure of Con Edison and/or O&R to continue to provide safe and adequate service, the Commission would commence a proceeding under PSL § 68(2) to revoke or modify Con Edison's and/or O&R's Certificate as it relates to its service territory or any portion thereof. Prior to the commencement of such a proceeding or proceedings, should the Commission have reason to believe that Con Edison's and/or O&R's Certificate may be subject to revocation or modification, it will notify Con Edison and/or O&R of the facts and nature of each act or failure to act allegedly warranting such revocation or modification, and the statute, regulation, or order allegedly violated.

With respect to the issue of Certificate revocation or modification, the Commission notes that it recently approved a Settlement Agreement entered into between the Department, Con Edison, and O&R related to apparent violations the utilities committed in 2018 during the Riley and Quinn storm events and service outages. In addition to requiring the two companies through their shareholders to pay \$10.75 million for the benefit

of ratepayers, Con Edison and O&R admitted five violations of their respective ERPs as follows:

1. Failure to maintain an operational Outage Management System during Winter Storm Riley (Con Edison);
2. Failure to perform follow up calls to Life Sustaining Equipment Customers during Winter Storm Riley (Con Edison);
3. Failure to document Life Sustaining Equipment Customer status updates for customers referred to Emergency Operations Center during Winter Storm Riley (Con Edison);
4. Failure to maintain website/Outage Map during Winter Storm Riley (O&R); and
5. Prolonged website outages, inconsistent information, and untimely updating of website during Winter Storm Quinn (O&R).⁶⁴

The Commission also notes that it issued today a separate Order to Show Cause related to the Department's allegation of apparent violations committed by Con Edison related to the Manhattan and Brooklyn outages that occurred in July 2019.

⁶⁴ The language from the Joint Settlement Agreement in Cases 19-E-0107/0108 states: "Con Edison acknowledges and admits the three (3) violations identified in Attachment A to this Agreement, and O&R acknowledges and admits the two (2) violations identified on Attachment A to this Agreement (together the 'Admitted Violations"). The Companies further agree that the Companies' actions did not comply with the Companies' Emergency Response Plans, the Commission orders adopting and approving those Plans, and Commission regulation 16 NYCRR Part 105. The admissions in this paragraph relate only to the violations identified in Attachment A to this Agreement."

To the extent that the Commission finds in subsequent orders that Con Edison or O&R committed violations consistent with the apparent violations identified in the body of this Order and/or that Con Edison committed violations consistent with the apparent violations identified in the Order to Show Cause related to the 2019 Manhattan and Brooklyn outages, it would conduct a separate inquiry into whether either company has committed "repeated" violations within the meaning of PSL § 68(2) and, if so, whether either company is able to continue providing safe and adequate service. In the context of Isaias-related enforcement actions under PSL § 68(2), the term "repeated violations" would include another violation associated with a separate event that is based on PSL § 66(21), Part 105 or the company's ERP. Thus, because utility ERPs are tied to PSL § 66(21), the Commission would consider a utility's violations of its ERP during separate storm or emergency events to constitute "repeated violations" within the meaning of PSL § 68(2).

The Commission orders:

1. A proceeding is instituted and Consolidated Edison Company of New York, Inc., Orange & Rockland Utilities, Inc., and Central Hudson Gas & Electric Corporation are ordered to show cause, within 30 days of the date of this Order, why the Public Service Commission should not commence a civil penalty action and/or an administrative penalty proceeding, pursuant to Public Service Law §§ 25 and/or 25-a, for violations of 16 NYCRR Part 105, the Commission's Order Approving Electric Emergency Response Plans (Case 19-E-0742, In the Matter of December 15, 2019 Electric Emergency Plan Review (issued May 14, 2020)), and/or regarding the prudence of the Subject Utilities' actions and/or omissions discussed in the body of this Order to Show Cause or the Department's Interim Report.

2. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

3. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary