

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on July 15, 2021

COMMISSIONERS PRESENT:

John B. Howard, Chair
Diane X. Burman
Tracey A. Edwards
David J. Valesky
John B. Maggiore
Rory M. Christian

CASE 18-S-0448 - In the Matter of the Investigation of a Rupture at Fifth Avenue and 21st Street on July 19, 2018 in the Service Territory of Consolidated Edison Company of New York, Inc.

CASE 20-E-0422 - In the Matter of DPS Investigation into Consolidated Edison Company of New York, Inc.'s Preparation and Response to Tropical Storm Isaias.

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 Telecommunication Outages.

CASE 20-E-0587 - In the Matter of an Investigation into Consolidated Edison Company of New York, Inc.'s July 2019 Southeast Brooklyn Customer Service Outages.

CASE 20-E-0588 - In the Matter of an Investigation into Consolidated Edison Company of New York, Inc.'s July 2019 Manhattan Customer Service Outages.

CASE 20-E-0643 - In the Matter of DPS Investigation into Orange & Rockland Utilities, Inc.'s Preparation and Response to Tropical Storm Isaias.

CASE 18-S-0448 et. al.

CASE 21-E-0372 - Staff Investigation into Outages Associated with
Loss of Feeders from Rainey to Manhattan Area
Stations.

ORDER GRANTING MOTION AND ADOPTING JOINT OUTAGE
AND REGULATORY SETTLEMENT AGREEMENT

(Issued and Effective July 15, 2021)

BY THE COMMISSION:

INTRODUCTION

On July 8, 2021, Staff of the Department of Public Service (Department) filed a joint unopposed motion (Motion) requesting that the Public Service Commission (Commission) consider and adopt a Joint Outage and Regulatory Settlement Agreement (Agreement) entered into by and between the Department, Consolidated Edison Company of New York, Inc. (Con Edison), and Orange and Rockland Utilities, Inc. (O&R), and otherwise terminate any further proceedings of the cases subject to the Agreement. As discussed below, the Agreement would resolve fully and finally all issues and allegations that have or could have been raised in the following Cases: for Con Edison (1) 18-S-0448; (2) 20-E-0422; (3) 20-E-0586; (4) 20-E-0587; (5) 20-E-0588; and (6) 21-E-0372¹; and for O&R (1) 20-E-0586; and (2) 20-E-0643 (the Cases collectively, "the Subject Cases").

The Agreement itself was signed by the parties on July 7, 2021, and is attached to this Order as Appendix A. For the reasons set forth below, the Commission grants the Motion and adopts terms of the Agreement.

¹ Case Number 21-E-0372 fully incorporates internal Matter Number 20-01709 noted in the Settlement Agreement.

BACKGROUND

A. 2018 Steam Incident (Case 18-S-0448)

On July 19, 2018, at approximately 6:37 a.m., a Con Edison steam pipe ruptured in the Flatiron district of Manhattan at Fifth Avenue and 21st Street ("2018 Steam Incident"). Within minutes, Con Edison personnel arrived at the scene, initiated its emergency plan, and worked with firefighters to evacuate and secure the area. No one was seriously injured. The Commission thereafter initiated, through the Department, an investigation into the impact and root causes of the 2018 Steam Incident.

The results of the Department's investigation are summarized in a technical report (Steam Report); Con Edison also conducted an internal investigation and submitted an Investigation and Action Plan to the Department on January 22, 2020. Both Con Edison and the Department concluded that the rupture was caused by a "water hammer" event, resulting from a break in a nearby customer-owned fire suppression water line that flooded the steam pipe housing. The reports reached different conclusions regarding the prudence of Con Edison's acts and/or omissions relating to the company's operation and maintenance of the associated steam plant and its impact on the water hammer event. The Steam Report contains multiple remedial recommendations, many of which Con Edison has already completed and others that would be implemented per the terms of the Agreement (all of which are codified as an attachment to the Agreement and incorporated and adopted herein). Exploratory settlement discussions between the Department and Con Edison occurred throughout 2020; thereafter, Con Edison filed a Notice of Impending Settlement with the Secretary on June 22, 2021.

B. 2019 Summer Outages

1. 2019 Manhattan Outage (Case 20-E-0588)

On July 13, 2019, approximately 73,000 Con Edison customers on the West Side of Manhattan lost electric service. The outage started at 6:47 p.m. when a distribution feeder experienced an electrical fault in a manhole near Con Edison's West 65th Street Substation. The outage's cascading sequence of events affected the Lincoln Square, Hudson, Columbus Circle, Plaza, Rockefeller Center, and Pennsylvania networks. The resulting outage temporarily impacted commercial activities, theatrical and musical performances, residential buildings, and transportation systems. Con Edison responded and restored service to customers in three of the six networks out of service in under three hours and to customers in the remaining networks two hours later. Con Edison restored service to all customers in less than five hours the same day.

2. 2019 Brooklyn Outage (Case 20-E-0587)

On July 21, 2019, the electric system that serves the Flatbush network in Southeast Brooklyn experienced a series of events that affected the network's reliability. The sequence of events started on July 20 and accelerated on July 21 when five 27 kV feeders and a breaker failed; the loss of this equipment placed substantial stress on the Flatbush network's 4 kV grid. Con Edison operators then de-energized the Flatbush network's 4 kV grid, resulting in approximately 30,000 customers losing power. The operators' decision protected the Flatbush network from significant damage and prolonged outages, and kept power flowing to approximately 100,000 other Flatbush network customers. Con Edison began to restore service immediately on July 21 and restored service to all 4 kV grid customers by 3:00 a.m. on July 23, 2019.

3. Department Investigations

The Department began a comprehensive investigation after each of the 2019 Summer Outages. With respect to the 2019 Manhattan Outage, the Department determined that, while the event initially began with an electrical fault in a distribution cable, the outage resulted directly from Con Edison omitting ground (or neutral) wires for 87N relays located at its West 65th Street area distribution substation. Based on the investigation, the Department alleged that Con Edison missed three opportunities and thus acted imprudently in failing to detect the missing wiring associated with the Manhattan outage. The Department also alleged one violation of Con Edison's Emergency Response Plan (ERP) related to customer communications.

As for the 2019 Brooklyn Outage, the Department's investigation identified seven alleged violations of Con Edison's ERP related to municipal and customer communications, and four alleged violations of the Commission's Outage Notification Incentive Mechanism Order.

On November 19, 2020, in Cases 20-E-0587 (for the 2019 Brooklyn Outage) and 20-E-0588 (for the 2019 Manhattan Outage), the Commission issued a Show Cause Order that directed Con Edison to respond to the Department's allegations and show cause why the Commission should not commence (1) a civil penalty action and/or an administrative penalty proceeding, pursuant to Public Service Law §§25 and/or 25-a, for violations of the Commission's Order Approving Electric Emergency Response Plans on an Interim Basis in Case 17-E-0758, 16 NYCRR Part 105, and the Outage Notification Incentive Mechanism Order, and/or (2) a

prudence proceeding related Con Edison's responses to the 2019 Manhattan and 2019 Brooklyn Outages.²

On December 21, 2020, Con Edison filed responses denying the Department's allegations and arguing why, in its view, the Commission should not commence either penalty or prudence proceedings. After exploratory settlement discussions between the Department and Con Edison, Con Edison filed a subsequent Notice of Impending Settlement with the Secretary on June 22, 2021, in both cases.

C. Tropical Storm Isaias (Cases 20-E-0422, 20-E-0643, and 20-E-0586)

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, causing 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. The Notices also directed Con Edison and O&R to immediately implement a series of corrective actions to prevent any potential failings in case another significant storm event occurred in 2020, including adding storm crewing capacity via retainer contracts; testing capabilities at all command and data centers, call centers and back-up command centers; and refining coordination plans with municipalities. Of note, the same directive was provided to all of the State's electric

² Cases 20-E-0588 and 20-E-0587, Order Instituting Proceeding and To Show Cause (November 19, 2020).

distribution utilities, each of which has implemented the corrective actions.

On November 19, 2020, in Case 20-E-0586, the Commission issued a Show Cause Order alleging 33 violations of Con Edison's ERP and 38 violations of O&R's ERP related to, among other things, faulty storm classifications, inadequate storm staffing, inadequate communications with municipal officials and the media, and failure to comply with metrics related to contacts with Life Support Equipment customers.³ The Show Cause Order also directed Con Edison and O&R to respond to the Department's allegations and show cause why the Commission should not commence (1) 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 May 14, 2020 Order Approving Electric Emergency Response Plans in Case 19-E-0742, and (2) a prudence proceeding regarding Con Edison's and O&R's actions taken before and during the storm.

On December 21, 2020, Con Edison and O&R filed responses, denying the Department's allegations and arguing why, in their view, the Commission should not commence a penalty or prudence proceeding. On January 21, 2021, the Commission directed that the Office of Hearings hold an evidentiary hearing regarding the Department's allegations in Case 20-E-0422 for Con Edison and Case 20-E-0643 for O&R.⁴ The parties thereafter engaged in extensive pre-hearing discovery and motion practice. On May 7, 2021, Con Edison and O&R filed a Notice of Impending Settlement with the Secretary.

³ Case 20-E-0856, Order Commencing Proceeding and To Show Cause, (November 19, 2020).

⁴ 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).

D. Tropical Storm Isaias: Rainey Substation
(Case 21-E-0372)

On August 7, 2020, at 5:13 a.m., four faults occurred at Con Edison's Rainey substation within 23 seconds. The Rainey event coincided with the first rainfall in New York City following Tropical Storm Isaias. The Isaias-related event resulted in almost 190,000 customers in the Central Park, Harlem, and Lenox Hill networks losing service for between 26 and 33 minutes until power was fully restored.

Rainey substation is situated on the East River in Queens, New York. The Department believes that the faults resulted in large part from salt deposits carried from ocean waters associated with Tropical Storm Isaias, which also coated cars, windows, and other surfaces throughout the region. The event was initiated by flashovers on 345 kV disconnect switch support insulators associated with four separate circuit breakers. Following the Rainey event, the Department opened an investigation in Matter 20-01709, later Case 21-E-0372. After exploratory settlement discussions as to the prudence of Con Edison's acts or omissions related to the Rainey event, Con Edison filed a Notice of Impending Settlement on June 22, 2021.

E. Joint Unopposed Motion to Adopt Settlement

On July 8, 2021, the Department filed an unopposed joint motion with Con Edison and O&R, seeking to have the Commission adopt the terms of the Agreement and otherwise to close the various cases subject to the Agreement. As described in the Motion and Agreement, the Parties have agreed to settle all allegations and claims raised or that could have been raised in the Subject Cases on the terms set forth in the Agreement and outlined below. The Parties agree that

the total combined settlement amount (Combined Settlement Amount) is Eighty-Two Million Fifty Thousand Dollars (\$82,050,000), divided as follows: (1) Con Edison: Seventy-Five Million Fifty Thousand Dollars (\$75,050,000); and (2) O&R: Seven Million Dollars (\$7,000,000).

As more precisely described in the Agreement (whose terms shall control over this summary):

- Con Edison and O&R agree to forgo recovery from customers of the combined cumulative amount of Twenty-Seven Million Five-Hundred Thousand Dollars (\$27,500,000) in earning any future return, equity or debt, on the remaining undepreciated value associated with existing storm hardening assets. Of this combined amount, Con Edison will forgo recovery of Twenty-Five Million Dollars (\$25,000,000) and O&R will forgo recovery of Two Million Five-Hundred Thousand Dollars (\$2,500,000).
- Con Edison and O&R agree to pay from shareholder funds the combined amount of up to Two-Million Dollars (\$2,000,000) for a Storm Preparedness Audit. Of this combined amount, Con Edison will pay up to One Million Six-Hundred Thousand Dollars (\$1,600,000) from shareholder funds and O&R will pay up to Four-Hundred Thousand Dollars (\$400,000) from shareholder funds on a pro-rata basis. The scope of the audit is Con Edison's and O&R's pre-storm: (1) weather forecasting; (2) classification; and (3) staffing mobilization (including contractors and mutual aid), with the Audit's purpose of improving the utilities' ability to prepare for and respond to future storms.
- Con Edison agrees to pay from shareholder funds up to Two Million Dollars (\$2,000,000) to provide for the maintenance, repair, storage, and availability of up to 100 additional Out-of-State Assistance Trucks. The trucks would be used for storm restoration.
- Con Edison agrees to pay from shareholder funds up to Seven-Hundred and Fifty Thousand Dollars

(\$750,000) in Customer Undergrounding Costs as part of Con Edison's undergrounding pilots.

- As further financial consideration for this Agreement, Con Edison has, in consultation with and by recommendation of the Department, spent or committed to spend Twenty-Four Million Three Hundred Thousand Dollars (\$24,300,000) in shareholder funds as follows:
 - (1) Seven Million Five Hundred Thousand Dollars (\$7,500,000) on customer food and medicine spoilage related to Tropical Storm Isaias, without customer release from liability;
 - (2) Six Million Dollars (\$6,000,000) over 2021 and 2022 to guarantee additional storm restoration contractor availability;
 - (3) Four Million Dollars (\$4,000,000) over 2021 and 2022 in Utility Truck Operation and Maintenance costs, as defined in Section A, Paragraph 3 of this Agreement, for Con Edison's existing fleet of Out-of-State Assistance Trucks;
 - (4) Three Million Five Hundred Thousand Dollars (\$3,500,000) in operations and maintenance expenses related to the 2018 Steam Incident, the 2019 Manhattan Outage, and the 2019 Brooklyn Outage; and
 - (5) Three Million Three Hundred Thousand Dollars (\$3,300,000) to replace steam pipe in the Flatiron area of New York City.

- As further financial consideration for this Agreement, O&R has, in consultation with and by recommendation of the Department, spent or committed to spend Four Million One Hundred Thousand Dollars (\$4,100,000) in shareholder funds as follows:
 - (1) One Million Six Hundred Thousand Dollars (\$1,600,000) on customer food and medicine spoilage related to Tropical Storm Isaias, without customer release from liability; and
 - (2) Two Million Five Hundred Thousand Dollars (\$2,500,000) over 2021 to guarantee additional storm restoration contractor availability.

- If Con Edison receives insurance reimbursement

related to the 2018 Steam Incident, Con Edison agrees to place up to One Million Four Hundred Thousand Dollars (\$1,400,000) of such reimbursement in an interest-bearing account to be used for the future benefit of Con Edison's steam customers.

- If Con Edison receives insurance reimbursement for food and medicine spoilage costs paid to customers because of Tropical Storm Isaias, Con Edison agrees to place all such reimbursement in an interest-bearing account to be used for the future benefit of Con Edison's electric customers.
- As further financial consideration for this Agreement, the Department acknowledges that Con Edison has paid or will pay back funds to customers in the form of negative revenue adjustments under the terms and schedule in its electric rate plan related to the Rainey event, the 2019 Manhattan Outage, and the 2019 Brooklyn Outage as follows:

(1) Rainey event: Five Million Dollars
(\$5,000,000);

(2) 2019 Manhattan Outage: Five Million Dollars
(\$5,000,000); and 2019 Brooklyn Outage: Ten
Million Dollars (\$10,000,000).

DISCUSSION

The Commission's obligation in reviewing a settlement agreement is to ensure that its terms, viewed as a whole, produce a result that is in the public interest. The Commission's Settlement Guidelines describe the factors to weigh in making that assessment.⁵ In general, a desirable settlement should balance protection of consumers,

⁵ Cases 90-M-0255, et al., Procedures for Settlements and Stipulation Agreements, Opinion 92-2 (issued March 24, 1992).

fairness to investors and the long-term viability of the utility. It should be consistent with the environmental, social, and economic policies of the Commission and the State; and, it should produce results that are within the range of reasonable results that would have likely arisen from a Commission decision in a litigated proceeding and the application of any appropriate mitigation measures.

The Parties believe that the Agreement is in the public interest. In their view, the Agreement is reasonable and provides substantial funding at no expense to customers that would not be available for the benefit of Con Edison and O&R respective electric customers but for the Agreement. Based on our review of the Agreement, we agree with this assessment. The Commission further finds that the Agreement is consistent with the law and regulatory, economic, social, and other policies of the Commission and the State, compares favorably with the likely result of full litigation and is within the range of reasonable outcomes. The Parties to the Agreement followed the appropriate procedures required by the Settlement Guidelines. The Agreement provides for a significant amount of funds to be paid by Con Edison and O&R shareholders and used for the benefit of ratepayers.

We note that the Agreement includes numerous remedial actions that have been or will be implemented by Con Edison and O&R to improve their future storm responses. We point in particular to increased storm staffing, additional trucks for storm use, and the Storm Preparedness Audit, which the Commission believes will assist in more timely storm responses by both utilities.

CONCLUSION

Based upon our review of the Agreement and the arguments presented by the signatories to it, we find that the terms of the Agreement are in the public interest. The record demonstrates that all procedural protections were afforded to the participants in these proceedings. The Agreement that resulted from the settlement negotiations reflect compromises made by the opposing parties with strong incentives to craft resolutions addressing their interests. The terms of Agreement are consistent with the environmental, social, and economic policies of the Commission and the State and are within the range of reasonable outcomes that could be expected after a fully litigated proceeding. We conclude that the terms of the Agreement should be adopted.

The Commission orders:

1. The July 8, 2021 Joint Motion Seeking Leave to Bring Proceeding Before the Commission in Lieu of Hearing is granted.

2. The terms of the Agreement dated July 7, 2021, which is filed and attached to this Order as Appendix A, are adopted.

3. In the Secretary's sole discretion, the deadlines set forth in this Order and/or Settlement 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.

4. Within thirty days after the issuance of this Order, the Companies shall file, in these proceedings, documents establishing that they have complied with the requirements of Section A, No. 1 of the Agreement.

5. Until all Section A actions of the Agreement are completed, Con Edison and O&R will file supporting documentations with the Secretary every six months from July 15, 2021, on the progress of each requirement of Section A of the Agreement.

6. These proceedings are continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

In the Matter of the
Investigation of a Rupture at
Fifth Avenue and 21st Street
on July 19, 2018 in the
Service Territory of
Consolidated Edison Company
of New York, Inc.

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 an
Investigation into Consolidated
Edison Company of New York,
Inc.'s July 2019 Southeast
Brooklyn Customer Service
Outages

In the Matter of an
Investigation into Consolidated
Edison Company of New York,
Inc.'s July 2019 Manhattan
Customer Service Outages

In the Matter of DPS
Investigation into Orange &
Rockland Utilities, Inc.'s
Preparation and Response to
Tropical Storm Isaias

Staff Investigation into
Outages Associated with Loss of
Feeders from Rainey to
Manhattan Area Stations

Case Numbers

18-S-0448

20-E-0422

20-E-0586

20-E-0587

20-E-0588

20-E-0643

Matter 20-01709

**JOINT OUTAGE AND REGULATORY
SETTLEMENT AGREEMENT**

This **Joint Outage and Regulatory Settlement Agreement** ("Agreement"), dated as of July 7, 2021, is by and between the **New York State Department of Public Service** ("Department"), **Consolidated Edison Company of New York, Inc.** ("Con Edison"), and **Orange and Rockland Utilities, Inc.** ("O&R") (each individually a "Party" and collectively, the "Parties"). This Agreement resolves fully and finally all issues and allegations that have been raised or could have been raised against Con Edison in Cases: (1) 18-S-0448; (2) 20-E-0422; (3) 20-E-0586; (4) 20-E-0587; (5) 20-E-0588 and (6) Matter 20-01709; and against O&R in Cases: (1) 20-E-0586; and (2) 20-E-0643 (the Cases collectively, "the Subject Cases").

BACKGROUND

A. 2018 Steam Incident (Case 18-S-0448)

On July 19, 2018, at approximately 6:37 a.m., a Con Edison steam pipe ruptured in the Flatiron district of Manhattan at Fifth Avenue and 21st Street ("2018 Steam Incident"). Within minutes, Con Edison arrived at the scene, initiated its emergency plan, and worked with firefighters to evacuate and secure the area. No one was seriously injured.

To initiate its investigation into the steam incident, the New York State Public Service Commission ("Commission") instituted Case 18-S-0448. Con Edison conducted an internal investigation and submitted an Investigation and Action Plan to the Department on January 22, 2020. Both Con Edison and the Department concluded that the rupture was caused by a "water hammer" event resulting from a break in a nearby customer-owned fire suppression water line that flooded the steam pipe housing.

B. 2019 Summer Outages

1. 2019 Manhattan Outage (Case 20-E-0588)

On July 13, 2019, approximately 73,000 Con Edison customers on the West Side of Manhattan lost electric service. The outage started at 6:47 p.m. when a distribution feeder experienced an electrical fault in a manhole near Con Edison's West 65th Street Substation. The outage's cascading sequence of events affected the Lincoln Square, Hudson, Columbus Circle, Plaza, Rockefeller

Center, and Pennsylvania networks. The resulting outage temporarily impacted commercial activities, theatrical and musical performances, residential buildings, and transportation systems. Con Edison responded and restored service to customers in three of the six networks out of service in under three hours and to customers in the remaining networks two hours later. Con Edison restored service to all customers in less than five hours the same day.

2. 2019 Brooklyn Outage (Case 20-E-0587)

On July 21, 2019, the electric system that serves the Flatbush network in Southeast Brooklyn experienced a series of events that affected the network's reliability. The sequence of events started on July 20 and accelerated on July 21 when five 27 kV feeders and a breaker failed; the loss of this equipment placed substantial stress on the Flatbush network's 4 kV grid. Con Edison operators then de-energized the Flatbush network's 4 kV grid, resulting in approximately 30,000 customers losing power. The operators' decision protected the Flatbush network from significant damage and prolonged outages, and kept power flowing to approximately 100,000 other Flatbush network customers. Con Edison began to restore service immediately on July 21 and restored service to all 4 kV grid customers by 3:00 a.m. on July 23, 2019.

3. Department Investigation

The Department began a comprehensive investigation after the 2019 Manhattan and 2019 Brooklyn Outages. With respect to the 2019 Manhattan Outage, the Department believed that, while the event initially began with an electrical fault in a distribution cable, the outage resulted directly from Con Edison omitting ground (or neutral) wires for 87N relays located at its West 65th Street area distribution substation (Con Edison had previously announced this finding as part of its own investigation). The Department alleged that Con Edison missed three opportunities and thus acted imprudently in failing to detect the missing wiring. The Department also alleged one violation of Con Edison's Emergency Response Plan related to communications.

With respect to the 2019 Brooklyn Outage, the Department alleged seven violations of Con Edison's Emergency Response Plan (ERP) related to communications and four violations of the Commission's Outage Notification Incentive Mechanism

Order. The Department did not allege any ERP violations related to Con Edison's decision to deenergize the 4 kV grid.

On November 19, 2020, in Cases 20-E-0587 (for the 2019 Brooklyn Outage) and 20-E-0588 (for the 2019 Manhattan Outage), the Commission issued a Show Cause Order that directed Con Edison to respond to the Department's allegations and show cause why the Commission should not commence a (1) civil penalty action and/or an administrative penalty proceeding, pursuant to Public Service Law §§ 25 and/or 25-a, for violations of the Commission's Order Approving Electric Emergency Response Plans on an Interim Basis in Case 17-E-0758, 16 NYCRR Part 105, and the Outage Notification Incentive Mechanism Order, and (2) prudence proceeding regarding Con Edison's actions with regard to the 2019 Manhattan and 2019 Brooklyn Outages.

On December 21, 2020, Con Edison filed responses denying the Department's allegations and explaining why the Commission should not commence a penalty or prudence proceeding. The cases are pending further action by the Commission.

C. Tropical Storm Isaias (Cases 20-E-0422, 20-E-0643 and 20-E-0586)

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 territories. 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. The Notices also required Con Edison and O&R to immediately implement a series of corrective actions to prevent any potential failings in case another significant storm event occurred in 2020. Con Edison and O&R have implemented the corrective actions.

On November 19, 2020, in Case 20-E-0586, the Commission issued a Show Cause Order alleging 33 violations of Con Edison's ERP and 38 violations of O&R's ERP. The Show Cause Order also directed Con Edison and O&R to respond to the Department's allegations and show cause why the Commission should not commence (1) 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 May 14, 2020 Order Approving Electric Emergency Response Plans in

Case 19-E-0742, and (2) a prudence proceeding regarding Con Edison's and O&R's actions taken before and during the storm.

On December 21, 2020, Con Edison and O&R filed responses denying the Department's allegations and explaining why the Commission should not commence a penalty or prudence proceeding. On January 21, 2021, the Commission directed that the Office of Hearings and Mediation hold an evidentiary hearing regarding the Department's allegations in Case 20-E-0422 for Con Edison and Case 20-E-0643 for O&R. The parties thereafter engaged in extensive pre-hearing discovery and motion practice, after which, by notice issued on May 7, 2021, Con Edison and O&R submitted notices of impending settlement negotiations.

D. Tropical Storm Isaias: Rainey Substation (Matter 20-01709)

On August 7, 2020, at 5:13 a.m., four faults occurred at Con Edison's Rainey substation within 23 seconds. The Rainey event coincided with the first rainfall in New York City following Tropical Storm Isaias. The Isaias-related event resulted in almost 190,000 customers in the Central Park, Harlem, and Lenox Hill networks losing service for between 26 and 33 minutes until power was fully restored.

Rainey substation is situated on the East River in Queens, New York. The Department believes that the faults resulted in large part from salt deposits carried from ocean waters associated with Tropical Storm Isaias, which also coated cars, windows, and other surfaces throughout the region. The event was initiated by flashovers on 345 kV disconnect switch support insulators associated with four separate circuit breakers. Following the Rainey event, the Department opened an investigation in Matter 20-01709.

E. Acknowledgement

The Department acknowledges that Con Edison and O&R were cooperative throughout the Department's investigations of the Subject Cases. The Department further acknowledges and supports Con Edison's and O&R's timely and robust internal investigations of the Subject Cases, self-disclosure of their findings, voluntary identification of action items, and voluntary acceptance of action items identified by the Department. The results of the Company's internal

investigations supplemented the Department's independent investigations.

TERMS OF THE SETTLEMENT

The Parties have agreed to settle all allegations and claims raised or that could have been raised in the Subject Cases on the terms set forth in the following Paragraphs, including the agreement by Con Edison and O&R to pay from shareholder funds up to \$82.05 million for the benefit of ratepayers.

A. Financial Consideration

1. **Forgone Return**. As financial consideration for this Agreement, Con Edison and O&R agree to forgo recovery from customers of the combined cumulative amount of Twenty-Seven Million Five-Hundred Thousand Dollars (\$27,500,000) in earning any future return, equity or debt, on the remaining undepreciated value associated with existing storm hardening assets. Of this combined amount, Con Edison will forgo recovery of Twenty-Five Million Dollars (\$25,000,000) and O&R will forgo recovery of Two Million Five-Hundred Thousand Dollars (\$2,500,000). Con Edison and O&R would have otherwise been entitled to collect these funds from customers. Within 30 days of the Commission issuing an order approving this Agreement as set forth in Section C, Paragraph 6 of this Agreement, Con Edison and O&R shall adopt an accounting procedure implementing this Paragraph.
2. **Storm Audit Costs**. As further financial consideration for this Agreement, Con Edison and O&R agree to pay from shareholder funds the combined amount of up to Two-Million Dollars (\$2,000,000) for the Storm Audit set forth in Section B, Paragraph 1 of this Agreement. Of this combined amount, Con Edison will pay up to One Million Six-Hundred Thousand Dollars (\$1,600,000) from shareholder funds and O&R will pay up to Four-Hundred Thousand Dollars (\$400,000) from shareholder funds on a pro-rata basis. The Parties agree that \$2 million is a reasonable, good faith estimate of Storm Audit Costs. The Parties further agree that any failure to spend the amount estimated in this Paragraph will not be a

failure to fulfill the terms of this Agreement, or the cause of any adverse regulatory action by the Department, provided that Con Edison and O&R pay all Storm Audit Costs up to \$2 million. In the event that actual Storm Audit costs are less than \$2 million, Con Edison will pay 80 percent and O&R will pay 20 percent of such costs.

3. **Additional Utility Trucks.** Con Edison currently has 90 utility trucks that it reserves for storm restoration contractors or utility mutual aid personnel who arrive from outside New York State to assist in storm restoration ("Out-of-State Assistance Trucks"). This program enables Con Edison to obtain storm restoration assistance from a wider pool more quickly by removing driving distance as a barrier to rendering aid. Instead, assistance workers travel to the Company's service territory without trucks and the Company then provides them with trucks. Con Edison currently plans to use reasonable commercial efforts to obtain up to 100 additional Out-of-State Assistance Trucks. As further financial consideration for this Agreement, Con Edison agrees to pay from shareholder funds up to Two Million Dollars (\$2,000,000) to provide for the maintenance, repair, storage, and availability (collectively, "Utility Truck Operation and Maintenance") of up to 100 additional Out-of-State Assistance Trucks. The Parties acknowledge that \$2 million is a reasonable, good faith estimate of Utility Truck Operation and Maintenance costs for up to 100 additional Out-of-State Assistance Trucks and that actual costs may differ and are dependent on, among other things, the number of Out-of-State Assistance Trucks Con Edison is able to acquire. The Parties agree that any failure to spend the amount estimated in this Paragraph will not be a failure to fulfill the terms of this Agreement, or the cause of any adverse regulatory action by the Department, provided that Con Edison absorbs 12 months of actual Utility Truck Operation and Maintenance costs for the number of additional Out-of-State Assistance Trucks it is able to purchase. In furtherance of this Paragraph, Con Edison shall report on its plan and/or progress in acquiring additional Out-of-State Assistance Trucks to the Department in its next electric rate case filing. If Con Edison does not file for new electric rates by March 1, 2022, then Con Edison will report on its plan and/or progress in acquiring additional Out-of-State Assistance Trucks to the

Department by July 1, 2022. The Department further agrees that nothing in this Agreement prevents Con Edison from using any Out-of-State Assistance Truck (in the current fleet or a future addition) for other customer service purposes, and Con Edison agrees that any such alternate use does not relieve it of its obligations under this Paragraph.

4. **Absorption of Customer Undergrounding Costs.** Con Edison is planning three pilot programs to underground distribution facilities in Westchester County, Queens, and Staten Island. Under Con Edison's electric tariff, certain customers anticipated to participate in the pilot would be responsible for an estimated Seven-Hundred and Fifty Thousand Dollars (\$750,000) in undergrounding costs associated with the pilots ("Customer Undergrounding Costs"). As further financial consideration for this Agreement, Con Edison agrees to pay from shareholder funds up to Seven-Hundred and Fifty Thousand Dollars (\$750,000) in Customer Undergrounding Costs as part of Con Edison's undergrounding pilots. The Parties acknowledge that \$750,000 is a reasonable, good faith estimate of Customer Undergrounding Costs for the anticipated pilots and that actual costs may differ due to many factors, including customer consent to participate. The Parties agree that any failure to spend the amount estimated in this Paragraph, after using reasonable commercial efforts, will not be a failure to fulfill the terms of this Agreement, or the cause of any adverse regulatory action by the Department, provided that Con Edison implements the pilot and pays all Customer Undergrounding Costs up to \$750,000. In furtherance of this Paragraph, Con Edison will report on its plan and/or progress regarding the three undergrounding pilots to the Department in its next electric rate case filing. If Con Edison does not file for new electric rates by March 1, 2022, then Con Edison shall report on its plan and/or progress regarding the three undergrounding pilots to the Department by July 1, 2022.

5. **Con Edison Actions Taken in Consultation With and By Recommendation of the Department.** As further financial consideration for this Agreement, Con Edison has, in

consultation with and by recommendation of the Department, spent or committed to spend Twenty Four Million Three Hundred Thousand Dollars (\$24,300,000) in shareholder funds as follows: (1) Seven Million Five Hundred Thousand Dollars (\$7,500,000) on customer food and medicine spoilage related to Tropical Storm Isaias, without customer release from liability; (2) Six Million Dollars (\$6,000,000) over 2021 and 2022 to guarantee additional storm restoration contractor availability; (3) Four Million Dollars (\$4,000,000) over 2021 and 2022 in Utility Truck Operation and Maintenance costs, as defined in Section A, Paragraph 3 of this Agreement, for Con Edison's existing fleet of Out-of-State Assistance Trucks; (4) Three Million Five Hundred Thousand Dollars (\$3,500,000) in operations and maintenance expenses related to the 2018 Steam Incident, the 2019 Manhattan Outage, and the 2019 Brooklyn Outage; and (5) Three Million Three Hundred Thousand Dollars (\$3,300,000) to replace steam pipe in the Flatiron area of New York City.

6. **O&R Actions Taken in Consultation With and By Recommendation of the Department.** As further financial consideration for this Agreement, O&R has, in consultation with and by recommendation of the Department, spent or committed to spend Four Million One Hundred Thousand Dollars (\$4,100,000) in shareholder funds as follows: (1) One Million Six Hundred Thousand Dollars (\$1,600,000) on customer food and medicine spoilage related to Tropical Storm Isaias, without customer release from liability; and (2) Two Million Five Hundred Thousand Dollars (\$2,500,000) over 2021 to guarantee additional storm restoration contractor availability.
7. **Commitment to Return Insurance Proceeds to Customers.** As further financial consideration for this Agreement, if Con Edison receives insurance reimbursement related to the 2018 Steam Incident, Con Edison agrees to place up to One Million Four Hundred Thousand Dollars (\$1,400,000) of such reimbursement in an interest-bearing account (the carrying costs to be applied at the Other Customer-Provided Capital Rate) to be used for the future benefit of Con Edison's steam customers. In addition, if Con Edison receives insurance reimbursement for food and medicine spoilage costs paid to customers because of

Tropical Storm Isaias, Con Edison agrees to place all such reimbursement in an interest-bearing account (the carrying costs to be applied at the Other Customer-Provided Capital Rate) to be used for the future benefit of Con Edison's electric customers. Con Edison shall use all commercially reasonable efforts to recover its 2018 Steam Incident and Tropical Storm Isaias insurance claims.

8. **Funds Returned to Customers.** As further financial consideration for this Agreement, the Department acknowledges that Con Edison has paid or will pay back funds to customers in the form of negative revenue adjustments under the terms and schedule in its electric rate plan related to the Rainey event, the 2019 Manhattan Outage, and the 2019 Brooklyn Outage as follows: (1) Rainey event: Five Million Dollars (\$5,000,000); (2) 2019 Manhattan Outage: Five Million Dollars (\$5,000,000); (3) 2019 Brooklyn Outage: Ten Million Dollars (\$10,000,000).
9. **Total Financial Consideration.** The Parties agree that the total combined settlement amount for Con Edison and O&R as set forth in Section A, Paragraphs 1-8 of this Agreement is Eighty-Two Million Fifty Thousand Dollars (\$82,050,000), divided as follows: (1) Con Edison: Seventy-Five Million Fifty Thousand Dollars (\$75,050,000); and (2) O&R: Seven Million Dollars (\$7,000,000).
10. **Earnings Sharing Normalization.** The impact of the items set forth in Section A, Paragraphs 1-6 of this Agreement on Con Edison's and O&R's individual earnings sharing mechanism calculation shall be normalized so that customers will not forgo a sharing amount that they would have normally received absent this Agreement.

B. Additional Provisions

1. **Storm Audit.** Con Edison and O&R agree to a Department audit of their preparation for storms that may impact their electric distribution systems. The scope of the audit is Con Edison's and O&R's pre-storm: (1) weather

forecasting; (2) classification; and (3) staffing mobilization (including contractors and mutual aid). The Department agrees that no information discovered or disclosed in connection with the audit can form the basis of, or be used against Con Edison or O&R in, a future enforcement, penalty, or prudence proceeding. Within 90 days of the final audit recommendations, Con Edison and O&R will submit reports (or a single report) to the Department explaining how they intend to implement the audit's recommendations. Con Edison and/or O&R shall be able to recover incremental costs that result from implementation of any audit recommendation. For any audit recommendations that Con Edison or O&R reject or modify, they will explain the basis for their position. If the Department and Con Edison and/or O&R disagree over the disposition of a recommendation and cannot resolve the disagreement, the Department may refer the disagreement to the Commission for decision. In the event of such referral, both the Department and Con Edison and/or O&R (as applicable) shall have the opportunity, before the Commission renders a decision in an order, to file comments and reply comments setting forth their positions. The Commission's Secretary shall establish the comment schedule.

2. **Steam Action Items**. Con Edison agrees to the steam action items ("Steam Action Items") set forth in Attachment 1.
3. **Consistency with Steam Action Plan**. To the extent applicable, Con Edison shall implement the Steam Action Items set forth in Attachment 1 of this Agreement consistently with its January 22, 2020, "Investigation Summary and Action Plan." However, the deadlines set forth in this Agreement shall supersede any conflicting or reasonably similar deadlines in the Investigation Summary and Action Plan.
4. **No Recovery of Civil Judgements**. Neither Con Edison nor O&R will seek recovery from its customers of any payments to third parties for civil judgments that may result from claims related to the Subject Cases.

C. General Terms

1. **Full Release.** This Agreement fully and finally resolves all issues raised and/or asserted, or that could have been raised and/or asserted, in the Subject Cases and the Commission Orders issued therein. Upon such Commission ratification or approval as described in Section C, Paragraph 6 of this Agreement, Con Edison and O&R and their respective directors, officers, employees, agents, shareholders or affiliates shall be fully and finally released from any and all liability or claims arising out of the Subject Cases that could be brought by the Department under Public Service Law §§ 24, 25, and 25-a, the Commission's prudence disallowance authority, or other statutory, regulatory, or common law.
2. **Parties' Representation Regarding the Public Interest.** The Parties agree that this Agreement is in the public interest because, in their view, the Agreement is reasonable and provides substantial customer benefits that would not be available but for the Agreement. The Parties further agree that the Agreement is consistent with the law and regulatory, economic, social, and other policies of the Commission and the State and compares favorably with the likely result of full litigation and is within the range of reasonable outcomes.
3. **Department's Recommendation.** The Department will recommend that the Commission not institute or cause to be instituted against Con Edison and O&R or their respective directors, officers, employees, agents, shareholders or affiliates, a penalty or prudence action under the Public Service Law, or under any other statute, regulation, or Commission order, with respect to the Companies' actions, inactions, or practices, directly or indirectly related to the Subject Cases (the "Recommendation").
4. **Presentation to the Commission.** The terms of this Agreement that pertain to the Subject Cases shall be presented to the Commission for review and approval via a draft order presented by the Department.
5. **Termination of Investigations.** Upon such Commission ratification or approval as described in Section C, Paragraph 6 of this Agreement, the investigative

examinations by the Department initiated in the Subject Cases are deemed completed as they relate to Con Edison and O&R.

6. **Subject to Commission Approval.** This Agreement is subject to ratification or approval by the Commission and will have no effect in the absence thereof. Unless the Commission approves this Agreement in its entirety, without modification, and accepts the Recommendation of the Department not to institute or cause to be instituted against Con Edison and O&R and their respective directors, officers, employees, agents, shareholders or affiliates, a penalty action under the Public Service Law, or under any other statute or regulation or Commission order, with respect to Con Edison's and O&R's actions, inactions or practices, directly or indirectly related to the Subject Cases, Con Edison and O&R may withdraw their acceptance of this Agreement by serving written notice on the Commission, and shall be free to pursue their positions without prejudice. If the Commission approves this Agreement or modifies it in a manner acceptable to the Con Edison and O&R, the Parties intend and agree that this Agreement will be thereafter implemented in accordance with its terms.
7. **Representation as to Authority.** The execution, delivery, and performance of this Agreement by each Party is within its corporate or statutory powers, as appropriate, has been duly authorized by all necessary corporate or statutory action, and does not and will not (i) require any governing or governmental consent or approval except as required by Section C, Paragraph 6 herein, (ii) contravene its organizational documents or enabling legislation, or (iii) violate applicable law.
8. **Voluntary Agreement and Release.** The Parties have entered into this Agreement voluntarily. The Parties have determined that this Agreement constitutes a fair and reasonable resolution as to all outstanding issues in the Subject Cases and avoids litigation. This Agreement is not, and should in no way be construed as: (1) an admission by Con Edison or O&R of a violation of any law, regulation, or order; or (2) an admission by Con Edison or O&R that the events at issue in the

Subject Cases are amenable to suit under Sections 24 and 25 of the PSL or other statutory or common law, a penalty action under Section 25-a of the PSL, an admission under Section 25-a of the PSL, or a disallowance of costs for imprudence. In addition, this Agreement and the financial consideration set forth herein is not and should not be construed as an assessment of a fine or penalty.

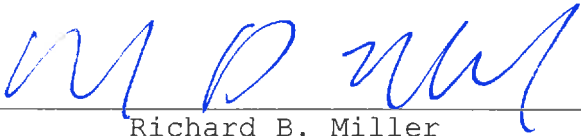
9. **Signature**. This Agreement may be executed by original, facsimile, or electronic signature, each of which shall be equally binding.
10. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same.
11. **Entire Agreement**. This Agreement, including all attachments, exhibits and appendices, if any, represents the entire agreement of the Parties with respect to the Subject Cases and the commitments made herein.
12. **Dispute Resolution**. In the event of any disagreement over the interpretation of this Agreement or implementation of any of the provisions of this Agreement, which cannot be resolved informally among the Parties, such disagreement shall be resolved in the following manner: (a) the Parties shall promptly convene a conference and in good faith attempt to resolve any such disagreement and/or request the assistance of the Commission's Office of Alternative Dispute Resolution for mediation or other appropriate process; and (b) if any such disagreement cannot be resolved by the Parties or alternative process, any Party may petition the Commission for resolution of the disputed matter.
13. **Secretary's Authority to Extend Deadlines**. The Parties recommend that the Commission authorize the Commission Secretary, in the Secretary's sole discretion, to extend any deadlines set forth in this Agreement.

IN WITNESS WHEREOF, each of the Parties has executed this Agreement as of the date first written above.

**NEW YORK STATE DEPARTMENT
OF PUBLIC SERVICE**

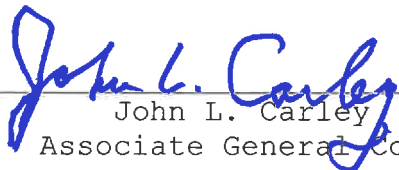
Joseph Suich
Deputy General Counsel & Director, OIE

**CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.**



Richard B. Miller
Vice President, Energy and Environmental Law

**ORANGE AND ROCKLAND
UTILITIES, INC.**



John L. Carley
Associate General Counsel

IN WITNESS WHEREOF, each of the Parties has executed this Agreement as of the date first written above.

**NEW YORK STATE DEPARTMENT
OF PUBLIC SERVICE**



Joseph Suich
Deputy General Counsel & Director, OIE

**CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.**

Richard B. Miller
Vice President, Energy and Environmental Law

**ORANGE AND ROCKLAND
UTILITIES, INC.**

John L. Carley
Associate General Counsel

ATTACHMENT 1

Joint Outage and Regulatory Settlement Agreement

Steam Action Items

1. By September 30, 2021, Con Edison will submit to the Commission's Secretary or Records Access Officer, as appropriate, a revised procedure that requires non-destructive examination of 50 percent of all field welds made on existing steam pipe facilities within a month rather than the 10 percent required by the Commission's regulations. If operational constraints and/or unforeseen circumstances prevent Con Edison from non-destructively examining 50 percent of welds performed in a given month, Con Edison shall submit a report to safety@dps.ny.gov, by the 15th day of the following month, explaining the circumstances and listing the welds that had not been non-destructively examined that month. By September 30, 2022, Con Edison will meet with DPS Staff to review the results of the increased non-destructive examination of field welds and discuss potential changes to the percentage of welds to be non-destructively examined.
2. By September 30, 2021, Con Edison will submit a revised procedure to the Commission's Secretary or Records Access Officer, as appropriate, that: (1) requires Con Edison to monitor the functionality of the Remote Monitoring System ("RMS") float and associated Remote Telemetry Unit ("RTU") box when a pump in a steam manhole is left in continuous operation and, if the RMS is not functioning, perform daily inspections to monitor pump functionality; (2) identifies a maximum timeframe that a pump can be left in continuous operation; and (3) identifies a timeframe within which a non-working pump will be repaired or replaced.
3. By September 30, 2021, Con Edison will evaluate and submit to the Commission's Secretary or Records Access Officer, as appropriate, a report on the feasibility of inspecting its steam pipe housings for blockages.
4. By September 30, 2021, Con Edison will submit to the Commission's Secretary or Records Access Officer, as appropriate, revised design specifications that include

the requirement of drainage continuity through steam main housings for new construction, repairs, and retirement projects.

5. By October 30, 2021, Con Edison will develop and submit to the Commission's Secretary or Records Access Officer, as appropriate, (1) a steam main rupture risk assessment program and; (2) a steam main inspection program based on the results of its risk assessment and; (3) a remediation plan based on the assessment and preliminary inspection results, including a description of any mitigation actions taken since the start of the assessment and inspection program.
6. Con Edison will evaluate a prototype condensate level detection device. By December 31, 2021, Con Edison will submit to the Commission's Secretary or Records Access Officer, as appropriate, a report reviewing its preliminary findings on the device's performance, reliability, and practicality.
7. Con Edison will evaluate current trap temperature and water level alarming RMS strategies to identify potential enhancements. By December 31, 2021, Con Edison will submit to the Commission's Secretary or Records Access Officer, as appropriate, a report on the feasibility of proceeding with any potential enhancements.
8. Con Edison will evaluate a prototype acoustic/vibration sensing device. By December 31, 2021, Con Edison will submit to the Commission's Secretary or Records Access Officer, as appropriate, a report reviewing its preliminary findings on the device's performance, reliability, and practicality.
9. Con Edison will continue its RMS R&D program to enhance the current design of the RTU and associated devices while continuing to work on improving RMS reliability at critical locations. The Company is developing new prototypes that will seek to improve reliability and will test viable prototypes in the laboratory and field. By January 31, 2022, Con Edison will meet with the Department to review the results of these efforts and discuss potential RMS reliability goals. Con Edison's reliability goals and reporting will apply to critical locations until Con Edison proposes otherwise in a rate

case or petition, or the Commission orders otherwise in a proceeding on the record and subject to notice and comment.

10. Con Edison will evaluate the feasibility of reducing steam pressures during portions of the year, including determining which customers require high pressure steam (greater than 100 psig). By September 30, 2021, Con Edison will submit to the Commission's Secretary or Records Access Officer, as appropriate, a report discussing the results of this assessment.
11. Con Edison will contract with a third-party to study the causes of steam main corrosion and identify mitigation methods. The study will examine the corrosion susceptibility of pipes of varying vintages and include a fracture mechanics evaluation to determine the effect various sized corrosion related flaws have on the structural stability of steam mains. Con Edison will submit the study to the Commission's Secretary or Records Access Officer, as appropriate, by November 30, 2021.
12. Con Edison Steam will evaluate the adoption of American Petroleum Institute Recommended Practice (API RP) 1173 "Pipeline Safety Management Systems." The evaluation will include a baseline assessment/gap analysis of the steam system by a third-party vendor. Con Edison will submit the evaluation results to the Commission's Secretary or Records Access Officer, as appropriate, by March 31, 2022.