

**NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE**

**In the Matter of a Three-Year Rate Proposal for
Electric Rates and Charges Submitted by the Long
Island Power Authority and Service Provider, PSEG
Long Island, LLC**

Matter No. 15-00262

**REPLY POST-HEARING BRIEF
OF THE CITY OF NEW YORK**

Dated: July 27, 2015

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PRELIMINARY STATEMENT

The City of New York (“City”) demonstrated through pre-filed testimony and exhibits and its Initial Post-Hearing Brief that the entire electric system owned by the Long Island Power Authority (“LIPA”) and managed currently by PSEG Long Island LLC (“PSEG”) ultimately must be hardened against, and made more resilient to, climate-related impacts that are projected to intensify over time.¹ This effort will require definition of the climate-related risks confronting the transmission and distribution systems, substations, and transmission interfaces, and projections of how those risks may change in the future. The storm hardening upgrades needed to mitigate these risks must be installed so that the social, economic, and public health impacts associated with climate-related electric service outages may be avoided or reduced to the extent practicable.²

Although PSEG is implementing a storm hardening program (the “FEMA Program”), the program invests a substantial amount of federal dollars to harden only certain assets damaged by Hurricane Sandy against wind and flooding. Eligible investments are limited further to five discrete project categories, and the terms of the federal grant that is financing the FEMA

¹ See generally Matter No. 15-00262, *In the Matter of a Three-Year Rate Proposal for Electric Rates and Charges Submitted by the Long Island Power Authority and Service Provider, PSEG, Long Island, LLC*, Initial Post-Hearing Brief of the City of New York (dated July 20, 2015), Pre-Filed Direct Testimony of John J. Marczewski (dated May 14, 2015) (Tr. 833-69 and Ex. 90-92), and Pre-Filed Direct Testimony of Dr. Radley Horton (dated May 14, 2015) (Tr. 870-98 and Ex. 94-97). References herein to initial post-hearing briefs filed on July 20, 2015 will be indicated by the parties’ name followed by “Br.” and the referenced page number(s) (*e.g.*, City Br. 4).

² “Storm hardening” is defined as physical changes to the electric transmission and distribution infrastructure that make it less susceptible to climate-related damage and service outages. “Resiliency” is defined as improving the system’s ability to withstand severe weather with fewer outages, and to shorten the time needed to restore service when an outage occurs. This brief conflates these distinct but related concepts into the single term “storm hardening” for ease of reference herein.

Program prohibit PSEG from applying those funds to assets that were not damaged by Hurricane Sandy. Further, the FEMA Program completely ignores system vulnerability to increased ambient temperatures and heat waves.

The City is not aware of any dispute as to the limitations of the FEMA Program. The City similarly is unaware of any dispute that a changing climate likely will increase the frequency and intensity of severe weather events that may interrupt electric delivery service, or that storm hardening investments may extend the useful life of utility infrastructure and will reduce the extent and duration of any climate-related outages. The only issue in dispute seemingly is whether PSEG (or LIPA) should lead a collaborative process that engages interested stakeholders in the continuing development of PSEG's storm hardening efforts.³

In fact, the FEMA Program is doing nothing to harden a substantial portion of LIPA's electric system. The City's Initial Brief detailed the deficiencies of the FEMA Program and recommended that the projects and design standards needed to fill those gaps be informed by a collaborative stakeholder process. In its Initial Brief, for the first time, the Department of Public Service Staff ("Staff") announced, with nary a single citation to the record in this case, that it is opposed to a collaborative.

Instead, Staff states that it "believes" that the FEMA Program reflects "many of the lessons learned from previous storms and the mitigation measures identified" in the Consolidated Edison Company of New York, Inc. ("Con Edison") Storm Hardening and Resiliency Collaborative. (Staff Br. 37.) As detailed below, Staff's "belief" is not supported by the record here. Staff also suggests that PSEG's participation in national trade association programs

³ Related to this dispute, PSEG disagrees with the City that the Company should update stale and unreliable projections of future sea level rise, and study the vulnerabilities of LIPA's electric system to climate risks.

“specifically focused on flood mitigation” somehow obviates the need for or value of a local process that examines the Company’s storm hardening projects and design standards. (*Id.*) For the reasons set forth below, Staff’s apparent conclusion that PSEG’s reliance on stale and unreliable sea level rise projections that inform certain projects implemented under the limited FEMA Program is a sufficient storm hardening plan is wrong-headed and risky.

As to PSEG, it states that it is willing to engage in what amounts to a scoping process for the collaborative, and does not explicitly oppose the collaborative process per se. (*See, e.g.,* PSEG Br. 91, 94-95.) Despite this, PSEG nevertheless argues that the collaborative is not needed for reasons similar to those advanced by Staff. Like Staff, PSEG’s arguments rely on stale and unreliable climate data and an unfounded interpretation of the City’s positions.

Pursuant to the *Ruling Confirming Briefing Schedule* issued herein on June 29, 2015, the City hereby submits this *Reply Post-Hearing Brief* to rebut Staff and PSEG arguments regarding the storm hardening and resiliency collaborative proposed by the City. The City’s Reply Brief corresponds in its entirety to Point I.i (“Proposed Storm Hardening Collaborative”) of the Table of Contents appended to the June 29th Ruling.

ARGUMENT

POINT I

STAFF’S OPPOSITION TO THE PROPOSED COLLABORATIVE IS BASED ON CONCLUSIONS THAT ARE CONTRADICTED BY THE RECORD, AND SHOULD BE ACCORDED NO WEIGHT

In one short paragraph, Staff advances two arguments in opposition to the storm hardening and resiliency collaborative proposed by the City. First, Staff “believes” that the FEMA Program already reflects “many of the lessons learned from previous storms and the mitigation

measures identified in the Con Edison storm hardening collaborative.” (Staff Br. 37.) Second, Staff notes that PSEG has studied sea level rise and flood mitigation measures,⁴ and participated in a storm resiliency program sponsored by the Edison Electric Institute (“EEI”), a national utility trade association. (*Id.*) The relevance of these observations to whether or not PSEG should convene the proposed collaborative is neither clear nor explained by Staff. Finally, Staff asserts that a collaborative “nearly identical” to Con Edison’s Collaborative “would not be productive at this time.” (*Id.*) Thus, based on these conclusory observations, Staff is opposed to the comprehensive review of the climate risks, mitigation measures and design standards specific to LIPA’s service territory recommended by the City.

A. Staff Does Not Identify the Lessons Learned from Previous Storms or Mitigation Measures Adopted from Con Edison’s Collaborative, and Fails to Explain Their Relevance to the Proposed Collaborative

Staff does not provide any explanation of its “belief” that the FEMA Program reflects lessons learned from previous storms and measures identified by the Con Edison collaborative. Specifically, Staff does not identify any mitigation measures that PSEG learned and adopted from the Con Edison collaborative for implementation under the FEMA Program. More importantly, Staff makes no effort to explain why the unidentified lessons learned and mitigation measures adopted are an adequate substitute for the proposed collaborative, which would evaluate LIPA’s specific storm hardening needs. Staff provided no testimony that might elucidate its positions.

⁴ Sea level rise increases the area potentially inundated by coastal flooding. Projections of future sea levels derived from computer models inform the design standards applied to some flood mitigation measures (for example, determining the height to which utility equipment should be raised to avoid flood damage in the future), and should be based on the best available data.

On the other hand, Staff's position is at odds with the record in this case. For example, Staff fails to acknowledge – much less address – the various FEMA Program deficiencies identified by the City. For instance, the FEMA Program focuses exclusively on assets damaged by Hurricane Sandy. (City Br. at 7; Ex. 91 at 370; Tr. 140-51.) PSEG acknowledges that assets undamaged by that storm remain vulnerable to future weather events (Tr. 145), but restrictions imposed on the federal grant that is financing the FEMA Program do not allow those assets to be upgraded with grant proceeds.

Further, PSEG customers currently and regularly experience heat-related service outages. (City Br. at 8-10; Ex. 91 at 362-66.) In fact, the day after Staff filed its Initial Brief (which ignored the susceptibility of LIPA's electric system to heat-related outages), PSEG reported that hot weather had caused equipment failures that interrupted electric service to approximately 5,000 customers.⁵ Those outages occurred on the second consecutive day in which the air temperature exceeded 90° F.⁶ Climate models currently estimate that the number of days per year on Long Island that equal or exceed 90° F may almost double by the 2020's, increasing from 18 days to as much as 33 days. (City Br. 22; Tr. 880.) The FEMA Program is not addressing this vulnerability; yet Staff seems unconcerned.⁷ The FEMA Program is not addressing lessons learned from prior storms, which illustrate the need to harden utility infrastructure against future climate risks and not simply to address damage caused by the last storm. Although some

⁵ Thousands Lose Power in New York City Area Amid Hot Weather Blast, NBC New York (July 21, 2015), available at <http://www.nbcnewyork.com/news/local/NYC-Hot-Weather-Dog-Days-Summer-100-Degrees-Heat-Advisory-Air-Quality-Humid-Muggy--316989871.html>.

⁶ *Id.* Con Edison similarly reported heat-related service outages caused by feeders and overhead wires failing due to the high temperature. (*Id.*)

⁷ Although PSEG has argued that its present storm hardening efforts are adequate, it has not rebutted the FEMA Program deficiencies identified by the City.

mitigation measures identified in the Con Edison Collaborative may be included in the FEMA Program, many measures identified in the Con Edison Collaborative are not reflected in the FEMA Program but may increase system resilience and improve reliability.

In stark contrast to PSEG, Con Edison is implementing a comprehensive storm hardening program that addresses its electric system on a much broader basis than is allowed by the limited scope of the FEMA Program. Staff should be aware of this clear difference, given its extensive participation in the Con Edison Collaborative. That process engages customers and other interested stakeholders in promoting the implementation of a comprehensive and cost-effective program to improve system reliability. As a result of that process, Con Edison's customers will benefit from capital investments that extend the lifespan of utility assets while improving the utility's ability to provide reliable electric service to customers.

The record here establishes that, given the FEMA Program's limited project scope, a substantial portion of LIPA's transmission and distribution systems, substations, and the transmission interfaces are not being considered for hardening upgrades at this time. (City Br. 10-17.) The City proposed to address these deficiencies through a storm hardening and resiliency collaborative that would analyze the system's needs on a holistic basis utilizing the most current climate projections and storm hardening design standards. The proposed collaborative is a risk-based approach that compares the benefits and cost of the status quo with the benefits and cost of additional storm hardening investments. The goal is to maximize reliability via the deployment of cost-effective storm hardening measures. Staff's new-found opposition to a collaborative process that would benefit LIPA's customers is perplexing, to say the least.

B. Unreliable Sea Level Rise Projections and Industry Trade Association Discussions Cannot Substitute for the Proposed Collaborative

As explained above, Staff notes that PSEG conducted studies on sea level rise and flood mitigation, and participated in a storm resiliency program sponsored by the EEI, a national utility trade association. (Staff Br. 37.) Neither point, however, provides any justification for not convening the stakeholder collaborative proposed by the City.

Staff's reliance on PSEG's sea level studies is ill-founded. The City explained in detail why the sea level rise analysis and projections prepared by Worley Parsons and adopted by PSEG are outdated, inadequate, and unreliable to serve as the basis of a storm hardening design standard. (City Br. 18-21; Tr. 893-97.) The City also explained that these analyses are inconsistent with current climate science because they: (a) do not consider relevant advances in climate science known when the study was prepared; (b) recommended sea level rise projections based on unreliable and unsound methods by projecting into the future a linear extrapolation of historic data; and (c) assumed only a low-end scenario of potential sea level rise without considering the possibility of rapid ice melt. (City Br. 20-21; Tr. 895-96.)

Worley Parsons' failure to consider how an increased rate of melting ice may impact sea level rise is a critical omission given the practical impact of such potential outcome, and that the ClimAID 2011 study on which Worley Parsons relied discussed the need to account for this scenario. (Ex. 94 at 19.) The significance of this omission is not an academic matter. The ClimAID 2011 study explained that increased ice melt could induce sea level rise of 37 to 55 inches by the 2080's. (*Id.*) The study explained that the "potential for rapid ice melt should be considered, in part, because of its potential for large consequences. ... To assess the risk of accelerated sea level rise over the coming years, scientific understanding as well as many key

indicators should be monitored and reassessed on an ongoing basis.” (*Id.*) It increasingly appears that the rate of ice sheet melting is accelerating at a pace much faster than previously estimated, and may result in sea level rise that exceeds even the upper bound of the estimate presented in the ClimAID 2011 study.⁸

Staff does not acknowledge these points, which were detailed in Dr. Horton’s pre-filed direct testimony and have not been rebutted in this proceeding, much less attempt to explain why the unreliable Worley Parsons’ studies justify rejecting the proposed collaborative. Worse, PSEG stated that it does not intend to update the Worley Parsons analyses in the near-term even though those studies are outdated and do not reflect current advances in climate science. (Tr. 148.) Staff’s embrace of the Worley Parsons studies inexplicably ignores record evidence that establishes that the studies are flawed and may be inadequate to achieve their intended purpose of mitigating the risk of flooding and climate-related service outages.⁹ Regardless, sea level rise projections are one of many issues that the collaborative should examine, and the collaborative would be needed even if the projections adopted by PSEG were based on reliable analyses.

⁸ See, e.g., Warming Seas Drive Rapid Acceleration of Melting Antarctic Ice, National Geographic (December 6, 2014), available at <http://news.nationalgeographic.com/news/2014/12/141204-antarctic-ice-melt-sea-level-climate-environment-science/>; West Antarctic Melt Rate Has Tripled, American Geophysical Union (December 2, 2014), available at <http://news.agu.org/press-release/west-antarctic-melt-rate-has-tripled/>; The Big Melt Accelerates, New York Times (May 19, 2014), available at http://www.nytimes.com/2014/05/20/science/the-melting-isnt-glacial.html?_r=0; The world’s most famous climate scientist just outlined an alarming scenario for our planet’s future, The Washington Post (July 20, 2015), available at <http://www.washingtonpost.com/news/energy-environment/wp/2015/07/20/the-worlds-most-famous-climate-scientist-just-outlined-an-alarming-scenario-for-our-planets-future/>; Climate researcher blasts global warming target as ‘highly dangerous’, Science Magazine (July 21, 2015), available at <http://news.sciencemag.org/climate/2015/07/climate-researcher-blasts-global-warming-target-highly-dangerous>.

⁹ Staff never explains why the Worley Parsons studies should be considered reliable.

As to the EEI, the City does not understand why PSEG's involvement with a storm resiliency program sponsored by a utility trade association is relevant to whether the Company should commence the proposed collaborative. Staff does not explain how, if at all, information gleaned from that program has been incorporated into the FEMA Program, or otherwise may substitute for the proposed stakeholder process. The proposed collaborative would consist of local stakeholders that focus exclusively on the specific circumstances and vulnerabilities of the LIPA/PSEG service territory. A generic program offered by a national trade organization is certainly no substitute for such a specific study, and Staff's argument to the contrary makes no sense.

C. Staff Is An Active Participant in Con Edison's Collaborative, and Should Be Presumed to Understand How the Con Edison and PSEG Collaboratives Would Differ

Staff opposes the collaborative proposed by the City, in part, because it purportedly would be "nearly identical" to the Con Edison collaborative. (Staff Br. 37.) This argument grossly misrepresents the City's position.

The City agrees with PSEG that "Con Edison and LIPA are different entities with differing service territories and needs, differing histories in addressing storms and hardening of their respective systems, and differing organizational structures and responsibilities." (PSEG Br. 95.)¹⁰ Accordingly, the City has recommended that PSEG convene a collaborative that is modeled on the Con Edison collaborative, *but tailored to address the specific facts and circumstances of LIPA's electric system*, which are different than Con Edison's system. (City Br. 23-27.)

¹⁰ The City and PSEG diverge substantially, however, with respect to the import of this factual statement.

Staff has been an active participant in Con Edison's Collaborative and should understand how that initiative may be modeled for a similar effort by a different utility. A collaborative administered by PSEG could be similar to Con Edison's Collaborative but it would focus on the climate vulnerabilities of LIPA's electric system. The collaborative proposed for PSEG would focus on its distinct assets and their vulnerability to climate-related risks. Therefore, there is no basis for presuming that a PSEG collaborative would be "nearly identical" to Con Edison's initiative, and Staff does not justify this odd conclusion.

Con Edison's storm hardening program has been improved by the collaborative process (as Staff should know from its active participation in that initiative), but the programmatic and investment decisions informed by that process are specific to Con Edison's service territory. There simply is no denying that PSEG customers would benefit from the implementation of a similar effort relative to the electric system that serves them.

POINT II

PSEG HAS NOT CONTESTED THE FEMA PROGRAM DEFICIENCIES IDENTIFIED BY THE CITY, OR EXPLAINED WHY THOSE DEFICIENCIES SHOULD NOT BE ADDRESSED VIA THE COLLABORATIVE RECOMMENDED BY THE CITY

The City anticipated in its Initial Brief some of the arguments that PSEG would advance in response to the proposed collaborative. This Reply Brief, therefore, incorporates by reference the positions advanced in the Initial Brief and will not focus on those common arguments. The City instead will focus on arguments previously unanticipated, or to clarify the City's positions in the context of arguments presented in PSEG's Initial Brief. The City's decision

not to respond to particular statements or arguments, therefore, should not be construed as agreement with them.

PSEG generally advanced three arguments in opposition to the City's recommendation. First, PSEG interpreted the City's recommendation as "dictat[ing] in this proceeding how the collaborative should be structured and what studies should be performed." (PSEG Br. 91.) Notwithstanding this complaint – which grossly distorts the City's recommendation – PSEG next argues that it would be unreasonable to "expect" that the Company would "agree to participate" in a collaborative unless the City specifies the ratepayer costs and benefits, scope of the collaborative, and "impact on existing storm hardening commitments." (*Id.*) Third, PSEG presents a high-level summary of its storm hardening efforts and suggests that those efforts obviate the need for the proposed collaborative. (*Id.* at 92-93.) These arguments are inconsistent and unsupported and should be rejected.

Initially, it is noteworthy that PSEG states that it is willing to meet with interested stakeholders including, but not limited to, the City, "to discuss establishing a storm hardening collaborative that could inform PSEG LI's and LIPA's decisions on future cost-effective storm hardening and bring value to LIPA's electric customers." (*Id.* at 95.) PSEG also states that the Company "would be interested in meeting with the city, as well as other interested governmental entities and stakeholders, to discuss" storm hardening issues. (*Id.* at 91.) The City appreciates this willingness to discuss the issues, and notes that the County of Suffolk ("Suffolk"), Suffolk County Comptroller ("Suffolk Comptroller"), and the Natural Resources Defense Council ("NRDC") each stated in their Initial Briefs that they support the proposed collaborative (Suffolk Br. 2-3; Suffolk Comptroller Br. 3-4; NRDC Br. 3-5) – and, therefore, presumably would like to join the discussions offered by PSEG.

Given its willingness to meet to discuss a collaborative, PSEG's opposition to a collaborative is difficult to understand. Contrary to PSEG's apparent position, the City has *not* attempted to dictate the structure of the collaborative. The City recommended that a collaborative modeled on Con Edison's initiative should be commenced, but it did not advance more specific recommendations. The City, PSEG, Suffolk, the Suffolk Comptroller, and the NRDC each have expressed a willingness to discuss the collaborative, and LIPA does not oppose a collaborative. (Tr. 62.) The City assumes that these parties would hold one or more scoping meetings to discuss the parameters of a storm hardening and resiliency collaborative that PSEG would administer.¹¹ When a consensus framework has been developed, the parties then would proceed to the substantive work of the collaborative. Thus, the collaborative structure, goals and processes would be defined by consensus of the participating stakeholders, including PSEG and LIPA.¹² The City is not dictating any of these results by simply recommending that the collaborative scoping process commence.

The Company currently relies on sea level rise projections that were unreliable when produced.¹³ PSEG is doing nothing to address system vulnerability to heat-related outages,

¹¹ See also City Br. 2 (recommending that the collaborative should commence by “focus[ing] on the scope of the collaborative, including how interested parties can assist PSEG and LIPA to address system vulnerabilities, design standards and storm hardening program enhancements”).

¹² PSEG states that “[i]t is unclear how the Collaborative concept comports with” the obligations imposed by the federal grant that is financing the FEMA Program. (PSEG Br. 92.) The City previously commended PSEG for maximizing the use of federal funds under that grant (*see, e.g.,* City Br. 1-2), and agrees that that effort should continue. The stakeholders participating in the collaborative, including PSEG and LIPA, would have to discuss how additional storm hardening work may be integrated with the FEMA Program.

¹³ PSEG repeatedly cites those studies as one reason why a collaborative is unnecessary, but the company has not challenged the City's criticisms of the analyses and results presented by Worley Parsons.

which already are impacting the reliability of PSEG’s electric service. (City Br. Table 1; Ex. 91 at 407.) There has been no examination of how the reliable operation of LIPA’s system may deteriorate in response to increasing ambient temperature and the occurrence of heat waves on Long Island.¹⁴ PSEG has not explained why it should be allowed to continue ignoring a threat to system reliability that only is expected to increase over time.

PSEG next argues that it would be unreasonable to “expect” that the Company would “agree to participate” in a collaborative unless the City specifies the ratepayer costs and benefits, scope of the collaborative, and “impact on existing storm hardening commitments.” (PSEG Br. 91.) Initially, PSEG’s arguments are self-contradictory: it complains that the City is attempting to dictate how the collaborative should be structured and implemented while simultaneously arguing that the City has not gone far enough in dictating those details. Moreover, this latter argument “puts the cart before the horse” by requiring the specification of outcomes that cannot be known in advance of the collaborative, which would define the parameters noted by PSEG. To the extent that PSEG is concerned with the lack of detail in the City’s general recommendation, the scoping meeting(s) recommended above should address the Company’s concerns. Those meetings may be commenced immediately following the active work in this proceeding (*i.e.*, after all briefs have been submitted).

Finally, PSEG seemingly argues that a new collaborative process is not needed because (i) the FEMA Program is upgrading certain assets damaged by Hurricane Sandy to withstand the winds and flooding associated with a Category 3 hurricane, (ii) the Company has collaborated with “other utilities and governmental entities,” and (iii) the Company has participated in storm hardening and resiliency discussions through the EEI and Electric Power

¹⁴ The proposed climate vulnerability study should examine these risks.

Research Institute (“EPRI”). (PSEG Br. 91-94.) The City supports PSEG’s efforts under the FEMA Program. However, the record here clearly establishes that the FEMA Program does not address all climate-related vulnerabilities of LIPA’s electric system. (*See generally* City Br.; Tr. 833-98; Ex. 90-92, 94-97.) There is no explaining how an effort to harden specific assets on LIPA’s electric system damaged by Hurricane Sandy obviates the need for a collaborative that would provide storm hardening solutions for the entire system. Further, PSEG has not detailed its discussions with other utilities or governmental entities, or otherwise specified how those discussions might obviate the need for a storm hardening collaborative. Finally, as noted above, participation in storm hardening discussions through the EEI (or EPRI) cannot substitute for the localized stakeholder process that the City recommends. In fact, it appears that the proposed collaborative would mark the first time that PSEG or LIPA has engaged customers in storm hardening discussions.

CONCLUSION

For the reasons described herein and in the City’s Initial Brief, the City respectfully urges that PSEG and LIPA be directed to commence a collaborative stakeholder process to examine ongoing storm hardening activities, and inform how those activities should be modified.

Dated: July 27, 2015
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Respectfully submitted,

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