

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on July 16, 2008

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

CASE 06-E-0894 - Proceeding on Motion of the Commission to Investigate the Electric Power Outages in Consolidated Edison Company of New York, Inc.'s Long Island City Electric Network - Prudence Phase.

CASE 06-M-1108 - Petition of Certain Members of the New York State Legislature Regarding Consolidated Edison Company of New York, Inc.'s Electric Service Outages.

ORDER ADOPTING TERMS OF JOINT PROPOSAL WITH MODIFICATIONS

(Issued and Effective July 24, 2008)

BY THE COMMISSION:

INTRODUCTION

By Order issued July 26, 2006,¹ this proceeding was instituted "to examine all issues associated with the failure of the feeders and the outages in the Long Island City electric

¹ Case 06-E-0894, Proceeding on Motion of the Commission to Investigate the Electric Power Outages in Consolidated Edison Company of New York, Inc.'s Long Island City Electric Network, Order Instituting Proceeding and Directing Staff Investigation (one Commissioner Order issued July 26, 2006, confirmed by order issued August 23, 2006). References in this order to "Long Island City or LIC" refer to the Consolidated Edison Company of New York, Inc.'s Long Island City electricity network and the area in Queens served by that network.

network" that commenced on July 17, 2006.² By petition filed September 13, 2006, certain members of the New York State Legislature and other elected officials requested the initiation of an investigation into the prudence of Consolidated Edison Company of New York, Inc.'s (Con Edison's or the Company's) actions and inactions regarding the July 2006 outage.³ On April 18, 2007, the scope of Case 06-E-0894 was expanded and the petition by certain members of the Assembly was granted to examine the prudence of the Company's actions and practices relating to the July 2006 Long Island City (LIC) power outages.⁴ Should imprudence be identified, the parties were directed to specify the expenditures necessitated by such actions and determine the extent to which such costs should be borne by the Company rather than its customers.⁵

During the prosecution of the case, issues were identified,⁶ prima facie support for issues was adduced,⁷ and the scope of the company's testimony and a schedule for its filing and examination was established.⁸ During the same period (August 2007 to March 2008), a number of active parties met to discuss

² Id., pp. 1-2.

³ Case 06-M-1108, supra.

⁴ Case 06-E-0894, supra, Order Commencing Prudence Investigation (issued April 18, 2007)(April Order), p. 19. Generally, prudence cases examine utility costs to determine if the costs should be recovered in rates. Prudence cases do not impose penalties (see, Public Service Law §24) or determine the civil liability of the utility for its actions.

⁵ Id., p. 16.

⁶ Ruling on Issues (issued June 15, 2007).

⁷ Ruling on Scope of Company Testimony, Schedule, and Discovery (issued February 8, 2008).

⁸ Id.

the possible terms of a settlement agreement with the assistance and facilitation of Settlement Judge Eleanor Stein.⁹

In a Joint Proposal dated April 24, 2008,¹⁰ the signatory parties submitted for Commission consideration certain terms and conditions designed to address the issues raised by the Commission's April Order and to conclude the litigation of the prudence phase of the proceeding. The Joint Proposal was signed and affirmatively supported by Con Edison, Staff of the Department of Public Service (Staff), New York State Consumer Protection Board (CBP), Western Queens Power for the People (WQFPF), New York State Assemblyman Richard L. Brodsky, the City of New York (NYC), and the Public Utility Law Project (PULP).

Statements in support of the Proposal were filed on May 9 by Con Edison, Staff, CPB, Assemblyman Brodsky, WQFPF, and PULP. In correspondence dated April 30, 2008, the Utility Workers Union of America Local 1-2, an active party in the proceedings, filed a letter stating that it does not oppose the adoption of the Joint Proposal by the Commission. "Nodutdol for Korean Community Development" submitted a letter on June 25, 2008, expressing support for the Joint Proposal and urging that it be approved. No comments in opposition were received.¹¹

⁹ The negotiations were conducted in accordance with required settlement procedures, including appropriate notification to interested parties. Case 90-M-0255, Proceeding on Motion of the Commission Concerning its Procedures for Settlement and Stipulation Agreements, and Case 92-M-10138, Rules and Regulations of the Public Service Commission contained in 16 NYCRR, Chapter 1, Rules of Procedure - Proposed Amendments to Subchapter A, General, Part 2, Hearings and Rehearing by the Addition of a New Section 2.6, Settlement Procedures, Opinion No. 92-2 (issued March 24, 1992).

¹⁰ The Joint Proposal is attached to this order.

¹¹ Pursuant to the State Administrative Procedures Act (SAPA), a notice was published in the New York State Register on April 30, 2008, regarding the prudence proceeding and comments were due June 14, 2008. No comments were received in response to the SAPA notice.

Set forth below are summaries of the Joint Proposal, parties' comments in support, and public statements, followed by our discussion of the proposal.

SUMMARY OF JOINT PROPOSAL

The Joint Proposal contains two basic monetary provisions which are offered by Con Edison in exchange for the termination of the prudence investigation instituted on April 18, 2007. The first is the disallowance of \$40 million of plant costs (and \$6 million of accrued carrying charges) incurred by Con Edison to replace and repair electricity delivery facilities in the LIC network associated with the July 2006 outages.¹² The second is Con Edison's provision of \$17 million in community-benefit funds dedicated to the community directly affected by the 2006 outage.

The \$46 million disallowance regarding repairs and replacements will not be included in the Company's earnings base and will not be collected from ratepayers. The benefits of this disallowance accrue to all Con Edison electricity customers.

The \$17 million in community-benefit funds is allocated for three purposes. Approximately one-half the amount will fund bill credits or direct payments to residents and businesses affected by the LIC network outages. The bill credits are proposed at \$100 for each residential customer, \$200 for each small business customer, and \$350 for each large business customer. These bill credits will be applied within 60 days following the approval of the proposal's terms by the Commission.¹³ Con Edison also will provide an equivalent payment on request to residents and businesses who were without power during the July 2006 outage, but who are no longer customers within the LIC network. Finally, Con Edison will provide payments of \$100 to residential claimants and \$200 to non-

¹² The capital cost disallowances in the Joint Proposal are in addition to \$59 million of operation and maintenance expenses previously absorbed by the Company.

¹³ Tr. 155.

residential claimants (all non-customers) who received a food spoilage claim payment following the outage.

Another purpose for these funds is to provide up to \$500,000 for a study to investigate the economic and health impacts of the outage on LIC residents and businesses.

Finally, the remaining funds (roughly half of the \$17 million community-benefit fund)¹⁴ will be used for tree planting and other environmental initiatives (a/k/a Greening Projects), designed to improve the environment in the neighborhoods directly affected by the outage. The tree planting initiative will be incremental to NYC's 1,000,000 tree program, and will be funded with approximately \$4 million (half of the funds remaining after subtracting bill credits and payments and funds needed for the impact study). The remaining funds (also approximately \$4 million) will go to a Greening Projects Administrator, to be chosen by the signatory parties, who will identify, implement, manage, and oversee various Greening Projects within the affected neighborhoods.

Section 11E of the Joint Proposal provides a dispute resolution process for those who may have moved since the outage or who received payments for food spoilage during the outage and who Con Edison concludes are ineligible for a payment or bill credit under the Joint Proposal.¹⁵ Staff of our Office of Consumer Services will issue a decision to resolve any disputes.

The Joint Proposal also requires Con Edison to forgo any New York State income tax deduction to which it would otherwise be entitled regarding its payment of \$17 million for community benefits. These funds are to be expended as expeditiously as possible, and, in any event, all should be spent no later than 36 months after adoption by the Commission of the terms and conditions of the Joint Proposal.

¹⁴ The amounts available for each of the different provisions in the proposal will not be known with precision until all direct payments and bill credits have been issued and the cost of the economic and health impact study is known.

¹⁵ Joint Proposal, pp. 9-10.

Con Edison also agrees to include an apology on the bill of those receiving credits and in a letter for those receiving direct payments.¹⁶ The apology provision reads as follows:

*Our Apology to Customers [or, where applicable Residents] in Western Queens: Consolidated Edison sincerely regrets the July 2006 Long Island City network power outage and its consequences. Our performance during the event did not meet the standards we set for ourselves nor the expectations of our customers. The credit on this bill [or, where applicable, the enclosed check] is an expression of our apology for the extended hardships experienced by many residents and businesses as a result of the outage.*¹⁷

Conditioned upon the satisfaction of the above financial and other commitments, the terms of the Joint Proposal would release Con Edison from all prudence-related claims regarding the Company's actions or omissions in connection with the July 2006 LIC network outages.¹⁸

SUMMARY OF PARTIES' STATEMENTS IN SUPPORT OF JOINT PROPOSAL

Statements in support of the Joint Proposal were filed by Staff, Con Edison, CPB, PULP, Assemblyman Richard L. Brodsky, and WQFPF.

There is much agreement among the parties who filed statements in support of the Joint Proposal. All parties agree that the \$17 million in community benefits would not be available if the prudence investigation were fully litigated. According to the signatory parties, such remedies are beyond the scope of the PSC's authority,¹⁹ thereby rendering the settlement

¹⁶ The apology letter will be translated into Spanish where appropriate.

¹⁷ Joint Proposal, p. 12.

¹⁸ Approval of the terms of the Joint Proposal will not prevent customers from pursuing civil claims.

¹⁹ See, Ruling on Scope of Company Testimony, Schedule, and Discovery (issued February 8, 2008).

more beneficial than any possible litigated outcome. Assemblyman Brodsky calls the Joint Proposal, "the best that can be achieved under state law, since state law prevents the Commission from imposing customer rebates."²⁰ Assemblyman Brodsky also argues that the Proposal is an enormous and groundbreaking accomplishment.²¹ This point is further supported by WQPEP, which also characterizes the Joint Proposal as "groundbreaking."²²

Staff states that the \$46 million rate base disallowance is a reasonable representation of the capital costs (including carrying charges) the Company expended in recovery, restoration, and repair in relation to the outage.²³ Staff supports the Proposal's exclusion of \$6 million in carrying charges as a reasonable approximation based on the LIC network recovery and restoration.²⁴ Additionally, Staff states that the \$17 million community-benefit fund is unprecedented, argues that the outage impact study and the Greening Projects are fully supported, and anticipates that the community-benefit funds will enhance energy-efficiency efforts in Queens.

Con Edison supports the Joint Proposal as a reasonable outcome and a fair resolution of the prudence investigation. The Company views the \$17 million in community benefits, along with the \$46 million in costs that will not be passed on to ratepayers, as additional to the approximately \$60 million in O&M costs related to the outage which it previously agreed not to seek from customers. The Company's comments also state that it intends to strengthen its delivery system and its communications with its customers.

While the outcome is reasonable in Con Edison's view, the Company nevertheless argues that it could have demonstrated

²⁰ Assemblyman Brodsky's Comments in Support, p. 1.

²¹ Tr. 159.

²² WQPEP's Comments in Support, p. 1.

²³ Staff's Comments in Support, pp. 6-11.

²⁴ Id. Further support was provided by Staff at the hearings (Tr. 177-179).

that its actions were prudent under the circumstances of the LIC network outages. Had the prudence proceeding continued, the Company contends that the disallowance would have been far less than what is provided in the Joint Proposal. Nevertheless, Con Edison states that it weighed the litigation risks combined with its desire to provide the community with an expression of its regret for the outage and concluded that approval by the Commission of the terms of the Joint Proposal will be in the overall public interest.

CPB's support of the Joint Proposal focuses on the benefits ratepayers and customers would receive and the fact that the proposal is supported by a wide range of parties, including those who are normally adversarial. CPB claims the Joint Proposal is unique and states that it achieves CPB's objective that ratepayers not be responsible for the costs to restore the LIC network. CPB further asserts that the Proposal satisfies the standard of review used by the Commission to evaluate whether negotiated agreements are in the public interest. CPB states that the \$46 million disallowance is within the range of reasonable results that could be expected from the prudence litigation, and agrees with the rest of the signatory parties that the \$17 million in community benefits would not have been available in that litigation.

PULP, an organization which is designed to protect the interests of low- and fixed-income consumers, generally agrees with the terms and conditions of the Joint Proposal. It asserts that the Proposal's \$17 million in community benefits is appropriate, noting particularly the utility bill credits which can have a very significant impact on the lives of the people it represents. PULP also points out that customers are still free to pursue court remedies to recover damages resulting from the July 2006 outages.

HEARINGS

Public Statement hearings and education forums regarding the terms and conditions of the Joint Proposal were held in Long Island City on Tuesday, May 27 and Wednesday, May 28, 2008. Public comments were received from nine speakers

during those hearings, generating 37 pages of transcript. Speakers generally supported the Joint Proposal, contending both that it is unique in its provision of benefits directly to those who suffered through the outage and is likely the maximum available remedy under the law. Comments were also made concerning the details of the proposal, including who would be signing the apology for Con Edison, how it could be ensured that trees planted in LIC would be incremental to New York City's tree-planting program, how the trees would be maintained and protected, and whether a portion of the remaining funds should be used to expand distributed, renewable generation. Concerns were also expressed regarding the difficulty of meeting the existing legal standards to hold Con Edison liable for outage damages in a civil suit (i.e., gross negligence).

On June 4, 2008 an evidentiary hearing was held to enter the Joint Proposal and supporting comments into the record and to allow the proponents to be questioned.²⁵ At the hearing, the parties responded to questions previously identified,²⁶ but no opposition to the terms of the Joint Proposal was raised. Matters discussed at the evidentiary hearings are included in the discussion below.

DISCUSSION

For the terms and conditions of a Joint Proposal to be adopted, they must be just and reasonable and in the public interest. We have consistently determined whether the public interest has been met in our review of such proposals by considering the following:

- Are the terms and conditions consistent with the law and the regulatory, economic, social, and environmental policies of the Commission and the State?

²⁵ The record consists of 184 pages of transcript and 9 exhibits.

²⁶ Procedural Ruling (issued May 30, 2008).

- How do the terms and conditions compare with the reasonable range of results that a fully litigated case would likely yield?
- Do the terms and conditions strike a fair balance among the interests of the ratepayers and investors, and the long term soundness of the utility?
- Is there a rational basis for the terms and conditions?

We also accord additional weight to the fact that the terms and conditions of a proposal are entered into by normally adversarial parties.²⁷

In this proceeding, we note especially the number of normally adversarial parties who are signatories to the Joint Proposal, and the unusual breadth of interests represented by those signatories. The parties supporting the Joint Proposal represent the interests of the City of New York, the New York State Assembly, low-income customers and consumers generally, the utility and its shareholders, and other diverse interests, including especially the interests of the customers and citizens of the neighborhoods directly affected by the LIC outage. The diversity of interests among the signatories supports a finding that the terms of the Joint Proposal strike a fair balance among the interests of customers, investors, and the long-term viability of the utility.

We also find, as a general matter, that the terms and conditions proposed are consistent with the regulatory, economic, social, and environmental policies of the State. From a regulatory perspective, the Company will not be allowed to recover \$46 million in capital expenditures in return for the discontinuance of this proceeding. As Staff explained in some detail,²⁸ the \$46 million rate base disallowance represents approximately 100% of the prudence disallowance that could have

²⁷ Case 90-M-0255, et al., supra, Opinion No. 92-2 (issued March 24, 1992).

²⁸ Staff's Comments in Support, pp. 6-11, Tr. 173-179.

resulted had the case been fully litigated. Therefore, our directive in the April Order to identify possible imprudence and to quantify the results of such alleged actions into a recommended disallowance has been met by the terms of the Joint Proposal. Based on the record presented, it seems highly unlikely that a prudence disallowance greater than that proposed by the signatory parties would result following a full litigation of the prudence issues.

In addition to fulfilling the initial directive regarding prudence, the Joint Proposal also includes \$17 million in community benefits. As all parties have recognized, these benefits would not be available in a Commission order, except with the consent of the parties.²⁹ The purposes to which those funds are dedicated, including a study of the economic and social costs of the blackout and the funding of environmental improvement projects within the LIC area, also are consistent with and further the Commission's economic, social, and environmental policies. We expect the greening projects contemplated under the Joint Proposal to assist in improving energy efficiency and reducing demand, in part due to the cooling characteristics of adding trees and other greening projects in metropolitan areas.

Other details of the proposal set forth on the record further support our conclusion that the terms and conditions of the Joint Proposal are in the public interest. The \$40 million of disallowed capital costs are not currently in rate base, and, neither those costs nor the \$6 million of carrying costs will be charged to consumers in the future.³⁰ Bill credits will appear on customers' bills as soon as reasonably possible, and will be completely reflected on those bills within 60 days of the Commission's order.³¹

²⁹ See, Ruling on Scope of Company Testimony, Schedule, and Discovery, supra, pp. 11-12.

³⁰ Tr. 149-153.

³¹ Tr. 155.

The Proposal also establishes a dispute resolution procedure should customers or residents be denied a bill credit or other payment to which they believe they are entitled. Customers of Con Edison already have available the dispute resolution procedures of the Department's Office of Consumer Services to resolve such disputes, but non-customers of the Company have no such option in the absence of the Joint Proposal. For such non-customers, our Office of Consumer Services will finally resolve such disputes and the further provisions of Part 12 of 16 NYCRR will not apply. This provision temporarily expands our services to the public and is reasonable.³²

To ensure that the tree plantings provided by the proposal are incremental to New York City's million-tree program, tree plantings under the proposal will be done by entities unrelated to New York City's program to maintain a distinction between the planting efforts. Further, the City of New York, a signatory party, agreed that the trees funded by this proposal will not be considered a portion of the City's plan.³³

As noted, the tax provision of the Joint Proposal which prevents the Company from deducting the \$17 million community-benefit payment on its New York State income taxes, prevents any portion of the Company's costs from being covered by State taxpayers.³⁴

A question was raised regarding the signature that should appear on the apology agreed to by the Company and whether a formal letter, like that provided to non-customers receiving payments, should go to all customers.³⁵ In our view, the apology is a key element in this proposal and we believe it more appropriate that a formal letter, rather than a bill

³² Tr. 155-158.

³³ Tr. 161-165.

³⁴ Tr. 165-170.

³⁵ The Joint Proposal provides that customers receiving credits would have the apology printed on the bill.

message, be used to communicate the apology. Con Edison had no objection to preparing the letters or having them sent over the signature of the Company's Chief Executive Officer.³⁶ We believe such an approach would be more appropriate. No party objected to these minor additions to the terms of the Joint Proposal and we adopt them.

Finally, we note that the Joint Proposal does not specify the organization(s) or administrator(s) that would be chosen for the tree planting and greening projects. A process is established under the Joint Proposal, based on majority vote, to identify the chosen organization or administrator, but that approach leaves open the possibility of a dispute among the signatory parties. Accordingly, we are directing the parties to file with the Commission and serve on the Commissioners and parties an identification of the chosen organization or administrator for the tree planting efforts and greening projects as soon as that decision is made, together with a justification for the selection.³⁷ If, following Commission consideration, that choice is not rejected within 45 days of its filing with the Commission, Staff is authorized to allow Con Edison to release the funds for the projects as provided by the terms of the Joint Proposal.

CONCLUSION

We conclude that the public interest will be served by adopting the terms and conditions of the Joint Proposal filed by the signatory parties on April 24, 2008, as modified in this order, in satisfaction of the prudence phase of these proceedings.

³⁶ Tr. 148.

³⁷ This filing should include identifying information on the principal officers and executives of the chosen entities, including address and contact information and federal tax identification number.

The Commission orders:

1. The terms and conditions of the Joint Proposal filed April 24, 2008, as modified and discussed herein are adopted as the Commission's order in the prudence phase of Case 06-E-0894 and in Case 06-M-1108.

2. Consolidated Edison Company of New York, Inc. and the other parties to the Joint Proposal are authorized and directed to take all steps necessary to implement the terms of this order. When the signatory parties have completed their selection of the organization or administrator for the tree-planting efforts and the greening projects, they shall file with the Commission and serve upon the Commissioners and all parties to these proceedings a justification for the selections and the information discussed herein. Consolidated Edison's authorization to disburse funds for the above projects as otherwise discussed in the Joint Proposal will not be effective until the conclusion of the Commission's 45-day review period without a rejection of the parties' selection(s).

3. Cases 06-E-0894 and 06-M-1108 are continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**CASE 06-E-0894 – Proceeding on Motion of the Commission to Investigate the
Electric Power outages in Consolidated Edison Company of New
York, Inc.’s Long Island City Electric Network.**

**CASE 06-M-1108 – Petition of Certain Members of the New York State Legislature
Regarding Consolidated Edison Company of New York Inc.’s
Electric Service Outages.**

JOINT PROPOSAL

April 24, 2008

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

CASE 06-E-0894 – Proceeding on Motion of the Commission to Investigate the Electric Power outages in Consolidated Edison Company of New York, Inc.’s Long Island City Electric Network.

CASE 06-M-1108 – Petition of Certain Members of the New York State Legislature Regarding Consolidated Edison Company of New York Inc.’s Electric Service Outages.

JOINT PROPOSAL

THIS JOINT PROPOSAL (Joint Proposal), resolving the issues raised in connection with the prudence investigation relating to the July 2006, electric outages in the Long Island City (LIC) network, is made this 24th day of April 2008, by and among Consolidated Edison Company of New York (Con Edison), the Staff of the Department of Public Service (DPS Staff), the New York State Consumer Protection Board (CPB), the members of the Western Queens Power For the People (WQPFP), New York State Assemblyman Richard L. Brodsky, the City of New York (NYC), and such other parties whose signature pages are attached to this Joint Proposal (hereinafter referred to collectively as the “Signatory Parties”).

I. BACKGROUND

By order issued July 26, 2006, the Public Service Commission (Commission) directed DPS Staff to conduct a comprehensive investigation of the electric outages that occurred in July 2006 in Con Edison’s LIC service network, including, among other things, the events that led to the outages, Con Edison’s response, and the costs incurred by Con Edison as a result of the outages. By petition filed on September 13, 2006, and supplemented on September 14, 2006, certain members of the New York State Legislature and other elected officials

requested the Commission to initiate a proceeding to investigate the prudence of Con Edison's actions before and during the July 2006 outages and to address the ratepayer impact of those actions. Con Edison submitted its own investigation reports and conclusions on September 25, 2006 and October 12, 2006. In its February 9, 2007 report on the LIC network investigation, DPS Staff recommended, among other things, that the Commission review the prudence of Con Edison's actions and omissions leading up to and during the LIC network events. The Commission received comments on the DPS Staff report from Con Edison, members of the New York State Assembly, the Office of the New York State Attorney General (OAG), NYC, CPB, the Public Utility Law Project (PULP), TransGas Energy Systems, Inc., (TransGas), Union, and WQPFP, an ad hoc group made up of members of the Queens community who lost power during the July 2006 event.

After considering the September 13, 2006 petition by various elected officials, DPS Staff's conclusions and recommendations resulting from its investigation and party comments, the Commission, on April 18, 2007, issued an order initiating a prudence investigation in connection with the July 2006 outages in the LIC network. By letter to the Secretary to the Commission dated April 5, 2007, Con Edison had requested that the potential for alternative resolution of the prudence of the Company in connection to the July 2006 outages be explored. A public exploratory conference was conducted by the settlement judge, ALJ Eleanor Stein on April 16, 2007, at which the parties expressed a strong preference for the commencement of a prudence investigation by the Commission.

Following the submission by parties of proposed issues to be addressed in the litigated proceeding, Con Edison's responses to the parties' submission, and oral argument regarding those issues at a pre-hearing conference on June 7, 2007, the litigation judge, ALJ Jeffrey Stockholm, issued a Procedural Ruling on June 15, 2007, setting forth a list of issues on which parties were permitted to submit prima facie offerings challenging the prudence of Con Edison's actions in connection with the July 2006 outages in the LIC network. On July 10, 2007, several parties, including DPS Staff, CPB, PULP, Union and WQPFP, submitted prima facie

offerings on various issues and the OAG and CPB also requested that the issue of gross negligence be considered in the prudence investigation upon party motion. Con Edison objected to the July 10 filings on August 31, 2007, and DPS Staff provided its rebuttal to Con Edison on September 8, 2007. By ruling issued February 8, 2008, the litigation judge identified the issues with respect to which Con Edison had the obligation to come forward with its evidence of prudent conduct in its direct case and granted the requests for consideration of gross negligence upon party motion. In addition, the litigation judge set forth a tentative schedule for filing testimony and evidentiary hearings, although his tentative schedule has been subsequently modified to allow for negotiations.

Between July 2007 and March 2008, a number of the active parties, including Con Edison, DPS Staff, CPB, WQFPF, OAG, Assemblyman Richard L. Brodsky, the Queens BP, NYC, PULP, and the Union met several times in an attempt to reach agreement on possible terms of a settlement agreement to be included in a Joint Proposal that would be presented to the Commission. Negotiations were facilitated by the settlement judge, and were conducted in accordance with the Commission's Settlement Procedures, as set forth in 16 NYCRR § 3.9, including appropriate notification to all interested parties prior to the negotiations, except to the extent that parties agreed that confidentiality rules would not extend to a party's own proposals and positions. As a result of their efforts, the Signatory Parties have reached a comprehensive proposed resolution of the issues, as described below.

II. OVERVIEW OF THE JOINT PROPOSAL

This Joint Proposal provides for the complete resolution of the issues raised by the Commission and the parties, in connection with the prudence investigation relating to the July 2006 outages in Con Edison's LIC network, as well as the issues raised in the September 13, 2006 petition to the Commission by certain members of the New York State Legislature and other elected officials. Based on the extensive discovery conducted by the parties, the pleadings filed in

pursuit of litigation, and the rulings issued by the litigation judge, the Signatory Parties believe that the terms contained herein are within the range of likely outcomes were the matters at issue to be fully litigated. In addition, the Joint Proposal provides the Queens communities affected by the July 2006 outages with benefits that would not be available in a litigated proceeding before the Public Service Commission.

Specifically, the Joint Proposal will provide rate benefits to all of Con Edison's customers by disallowing the inclusion in rate base of \$40 million of plant costs incurred by Con Edison to replace and repair electric delivery facilities in the LIC network associated with the July 2006 outages. Con Edison will also not seek to recover from customers \$6 million of the carrying charges accrued on the \$40 million of plant costs. In addition, Con Edison will make available \$17 million in community-benefit funds that will be used to benefit the communities directly affected by the LIC network outages. As specified in more detail below, the \$17 million in community-benefit funds will be used to (1) provide bill credits or direct payments to residents and businesses affected by the 2006 LIC network outages, accompanied by an apology to affected customers for any hardships they encountered by virtue of the July 2006 outages; (2) provide for the cost of a study, by an independent third party, that will investigate the impacts, including the economic and health impacts, of the July 2006 outages on the affected Queens communities; and (3) fund tree planting and other initiatives to improve the environment in the neighborhoods directly affected by the July 2006 outages. The foregoing are separate from and in addition to the expenses and customer claims related to the July 2006 LIC network outages totaling approximately \$59 million that the Company has absorbed, as identified by DPS Staff in February 2007.

Finally, the Joint Proposal recommends that the Commission terminate the prudence investigation relating to the LIC network outages.

III. GENERAL PROVISIONS

1. This Joint Proposal is subject to issuance by the Commission of

an order providing for the implementation of its terms in this proceeding and will have no effect in the absence thereof. It is understood that each provision of this Joint Proposal is in consideration and support of all the other provisions and each provision is expressly conditioned upon issuance by the Commission of an order implementing the terms of this Joint Proposal in its entirety without change. If the Commission fails to issue such an order, any Signatory Party may withdraw its acceptance of this Joint Proposal by serving written notice on the other Signatory Parties within seven days of the Commission's action or order and, upon the service of such notice, the Signatory Parties shall be free to pursue their respective positions in these proceedings without prejudice. If the Commission issues such an order to implement the terms of the Joint Proposal or to implement a modification to the Joint Proposal that is acceptable to the Signatory Parties, the Signatory Parties intend that this Joint Proposal be implemented in accordance with its terms.

2. The terms and conditions of the Joint Proposal apply solely to and are binding on each Signatory Party only in the context of this prudence proceeding. None of the positions taken herein by any Signatory Party, including agreement to the terms and provisions of this Joint Proposal and including any methodology or principle utilized herein, may be referred to, cited or relied upon by any Signatory Party or any other party in any fashion as precedent in any other proceedings before the Commission, or any other regulatory agency, or before any court of law for any purpose except in furtherance of the purposes and results of the Joint Proposal. Moreover, the Signatory Parties recognize that this Joint Proposal resolves only the Commission's prudence investigation and does not address other matters being considered in Case 06-E-0894, such as implementation of recommendations.

3. The Signatory Parties agree to submit this Joint Proposal to the Commission and to individually support this Joint Proposal and request that the Commission expeditiously adopt its order implementing the terms of this Joint Proposal, as set forth herein, in their entirety.

4. The Signatory Parties recognize that certain provisions of this Joint Proposal require that actions be taken in the future to effectuate fully this Joint Proposal. Accordingly, the Signatory Parties agree to cooperate with each other in good faith in taking such actions.

5. In the event of any disagreement over the interpretation of this Joint Proposal or implementation of any of the provisions of this Joint Proposal, which cannot be resolved informally among the Signatory Parties, such disagreement shall be resolved in the following manner: (a) the Signatory Parties shall promptly convene a conference and in good faith attempt to resolve any such disagreement; and (b) if any such disagreement cannot be resolved by the Signatory Parties, any Signatory Party may petition the Commission for resolution of the disputed matter.

6. This Joint Proposal is being executed in counterpart originals, and shall be binding on all of the Signatory Parties when the counterparts have been executed.

7. The Signatory Parties agree to submit testimony and exhibits, if any, that they may choose to sponsor or that may be requested by the litigation judge to be included in the evidentiary record in these proceedings. In addition, Statements in Support will be submitted by the Signatory Parties in support of this Joint Proposal as a part of the record in these proceedings.

8. Nothing contained in this Joint Proposal is intended to prevent Con Edison from implementing recommendations made in Case 06-E-0894.

IV. TERMS OF JOINT PROPOSAL

9. Con Edison will permanently adjust its rate base by excluding therefrom \$40 million of the capital costs incurred by Con Edison prior to the execution of this Joint Proposal to replace and repair electric delivery facilities in the LIC network associated with the outages in July 2006. All other capital investments in the LIC network, made prior to the execution of this Joint Proposal, will not be disallowed by reason of imprudence.

10. Con Edison will not seek to recover from its electric ratepayers \$6 million of the carrying charges accrued on the above-referenced \$40 million in capital costs. Con Edison will not be required to make any further adjustment by reason of imprudence, for any other carrying charges accrued prior to the date of this agreement and associated with such capital costs.

11. Con Edison will make a total contribution of \$17 million for the benefit of the communities affected by the July 2006 outages, which will not be chargeable to electric ratepayers, to be applied in the following manner:

A. Con Edison will provide a bill credit of \$100 to each residential customer (including customers taking electric service under Service Classifications Nos. 1, 7, 21, 41, 51, 116, 901, and 907) that was among the approximately 70,400 customers who received bill credits pursuant to the Commission's August 3, 2006 *Order Temporarily Waiving Tariff Provisions* in Case 06-E-0894 (Waiver Order), provided such residential customers have the same account number at the time the \$100 bill-credit is to be applied as they had when the Waiver Order was implemented. Such bill credits shall be applied in full to bills beginning in the second month following the month in which the Commission issues its order implementing the terms of this Joint Proposal and such bill credits will be completed within three months following the month in which the Commission issues its order implementing the terms of this Joint Proposal.

B. Con Edison will provide a bill credit of \$200 to each small non-residential customer (including customers taking electric service under Service Classifications Nos. 2, 6, and 117) that was among the approximately 70,400 customers who received bill credits pursuant to the Waiver Order, provided such small non-residential customer has the same account number at the time the \$200 bill credit is to be applied as they had when the Waiver Order was implemented. Such bill credits shall be applied in full to bills beginning in the second month following the month in which the Commission adopts its order implementing the terms of this Joint Proposal and such bill credits will be completed within three

months following the month in which the Commission adopts its order implementing the terms this Joint Proposal.

C. Con Edison will provide a bill credit of \$350 to each large non-residential customer (including customers taking electric service under Service Classifications Nos. 4, 8, 9, 12, 29, 40, 50, and 412) that was among the approximately 70,400 customers who received bill credits pursuant to the Waiver Order, provided such large non-residential customer has the same account number at the time the \$350 bill credit is to be applied as they had when the Waiver Order was implemented. Such bill credits shall be applied in full to bills beginning in the second month following the month in which the Commission issues its order implementing the terms this Joint Proposal and such bill credits will be completed within three months following the month in which the Commission adopts its order implementing the terms of this Joint Proposal.

D. Con Edison will issue a payment of \$100 to each of the 2,850 residential claimants to whom Con Edison paid a claim for spoilage in connection with the July 2006 outages in the LIC network, although such claimant was not a customer of record, and a payment of \$200 to each of the 139 non-residential claimants to whom Con Edison paid a claim for spoilage in connection with the July 2006 outages in the LIC network, although such claimant was not a customer of record. These payments will be mailed to the same address as the claim payment in the second month following the month in which the Commission issues its order implementing the terms of this Joint Proposal.

E. The Signatory Parties recognize that there are residents and businesses who were affected by the July 2006 outages in the LIC network who will not receive a bill credit or payment pursuant to paragraphs 11(A) through 11(D) because, with respect to direct customers who received bill credits pursuant to the Waiver Order, some of such customers have since relocated, and, with respect to indirect customers, some of such customers who received payments for spoilage may have since relocated. In order to provide such direct and indirect customers who were affected by the July 2006 outages in the LIC network an opportunity to receive

the benefits specified by paragraphs 11(A) through 11(D), Con Edison shall provide a payment corresponding to the credits/payments required pursuant to paragraphs 11(A) through 11(D) to any affected resident or business who submits a request for such payments accompanied by (1) proof of identity and (2) sufficient evidence that such claimant was a customer or business that resided or was located in the LIC network and was affected by the July 2006 outages. Such evidence of former residence or location may include proof of receipt of the bill credits provided pursuant to the Waiver Order, dated bills for utility service, copies of leases, or any other document evidencing residence or location in the affected Queens communities during the July 2006 outages. Within ten days after adoption by the Commission of its order implementing the terms of this Joint Proposal, Con Edison shall provide the Signatory Parties with an address and fax number for submissions of claims, as well as a claim form that may be used by claimants. To be eligible for consideration, all requests for payments must be in writing and must be received by Con Edison within 180 days after issuance by the Commission of its order implementing the terms of this Joint Proposal. Requests received after such date will not be considered for payment. Requests for payments shall be promptly reviewed by Con Edison and Con Edison shall respond to such requests by issuing the appropriate payment, requesting additional documentation, or rejecting the request within 60 days after receipt of evidence from the direct or indirect residential or non-residential customer. Any rejection of a request for payment shall specify the reason for the denial of payment, the right of the claimant to seek a review of the denial by DPS Office of Consumer Services within thirty days of the issuance of the denial, and the procedure to be used for seeking such review. Con Edison shall provide a further response, if necessary, to such request for payment in accordance with the determination by DPS Office of Consumer Services of such appeal. Part 12 of 16 NYCRR will not apply to a DPS Staff determination. The determination by DPS Office of Consumer Services of such appeal shall be final and shall not be appealable to the Commission. Within thirty days after the completion by DPS Office of Consumer Services of its review of all such claims, Con Edison will

submit the remaining funds to the Greening Projects Administrator identified in paragraph 15 below.

F. The payments to customers pursuant to paragraph 11 shall be made by Con Edison and received by the customer without prejudice to any civil claim made by such customer against Con Edison or any other entity, arising out of the July 2006 outages.

G. Con Edison will provide payment of up to \$500,000 to a research entity for the completion of a study of the impact, including the economic and health impacts, of the July 2006 outages on the affected communities. Con Edison shall make the payments to such research entity in the manner and amount as instructed by DPS Staff. Any such DPS instructions shall be made known to the specific entity which will complete this study and the Signatory Parties prior to the entity's selection. Such research entity will be selected by the WQPFP and the other Signatory Parties, by majority vote, within two months of the Commission's adoption of its order implementing the terms of this Joint Proposal. The Queens BP will host meetings to facilitate the process of choosing the entity that will complete the study, including solicitation of proposals from at least three qualified entities. The selected entity shall be required to provide a written outline of the conduct of the study and shall report periodically to DPS Staff as to the status of the study,

Nothing in this Joint Proposal shall be construed as an agreement or recognition by any Signatory Party that the findings or conclusions of the foregoing study shall have or not have any probative value or be binding on the Signatory Parties or the Commission in any manner. The parties are free to question or dispute the accuracy, reliability, or completeness of the study or its results, as well as the expertise of the selected research entity.

H. Con Edison shall provide for the payment of the portion of the \$17 million community-benefits fund remaining after deduction of (1) all bill credits applied pursuant to paragraphs 11(A) through 11(C), above and (2) all payments made pursuant to paragraphs 11(D) through 11(G) above (such remaining funds hereinafter referred to as Unencumbered Funds). One half of such

Unencumbered Funds shall be paid to the tree-planting organization identified pursuant to paragraph 14, below, for the planting of trees in the affected communities, and the remainder of such funds shall be paid to the Greening Project Administrator (as defined below) for other environmental initiatives (collectively referred to as Greening Projects), as described more fully in paragraph 15, below.

12. Con Edison will include an apology on bills providing the credits described in paragraphs 11(A) through 11(C), above, and with payments issued pursuant to paragraphs 11(D) and 11(E), above, which will state the following:

Our Apology to Customers [or, where applicable Residents] in Western Queens: Consolidated Edison sincerely regrets the July 2006 Long Island City network power outage and its consequences. Our performance during the event did not meet the standards we set for ourselves nor the expectations of our customers. The credit on this bill [or, where applicable, the enclosed check] is an expression of our apology for the extended hardships experienced by many residents and businesses as a result of the outage.

The apology will be translated into Spanish on bills which are printed in Spanish for Spanish language customers.

13. Con Edison will forgo any New York State income tax deduction to which it may be otherwise entitled in connection with its provision of \$17 million for community benefits.

14. As soon as possible after submission of this Joint Proposal to the Commission, but no later than 90 days after the issuance by the Commission of its order implementing the terms of this Joint Proposal, the Signatory Parties will choose, by majority vote, from among the one or more existing tree-planting organizations that shall be proposed by WQFPF, an organization to plant trees in the Borough of Queens. At least one half the Unencumbered Funds shall be paid to the tree planting organization chosen to be used for planting trees. Such funding will be used by the chosen tree-planting organization for the planting and maintenance of trees and the installation of tree guards in the neighborhoods affected by the July 2006 outages in the LIC network and a customary

administrative fee, as determined by DPS Staff. It is the intent of the signatory parties that the trees planted by virtue of this joint proposal will be in addition to those which have been otherwise planned by the City of New York for planting in the Borough of Queens, the City of New York agrees that trees planted as a result of the Joint Proposal will not be counted as trees planted as a result of the 1,000,000 tree program. The tree-planting organization shall be required to provide to DPS Staff, with electronic copies to all Signatory Parties, periodic reports detailing all expenditures made and shall be entitled to a customary administrative fee, as determined by DPS Staff, to administer the tree-planting. If a tree-planting organization is not chosen within 90 days, DPS Staff will either (i) choose, in consultation with all Signatory Parties, such organization from among those nominated by WQFPF, or (ii) choose another organization upon agreement of WQFPF and in consultation with all Signatory Parties. Con Edison shall make any and all disbursements to the tree-planting organization no later than 30 days after receiving direction from the DPS Staff to disburse such funds.

15. As soon as possible after submission of this Joint Proposal to the Commission, but no later than 90 days after the issuance by the Commission of its order implementing the terms of the Joint Proposal, the Signatory Parties will choose, by majority vote, from among the one or more existing community-focused foundations that shall be proposed by WQFPF, a foundation (Greening Projects Administrator) to administer the remaining Unencumbered Funds for Greening Projects. If no agreement on selecting a Greening Projects Administrator is reached within 90 days, DPS Staff will either (i) choose, in consultation with all Signatory Parties, such organization from among those nominated by WQFPF, or (ii) choose another organization upon agreement of WQFPF and in consultation with all Signatory Parties. Con Edison shall make any and all disbursements to the chosen Greening Projects Administrator no later than 30 days after receiving direction from the DPS Staff to disburse such funds.

At the direction of DPS Staff, Con Edison will pay to the Greening

Projects Administrator that portion of the Unencumbered Funds designated for payment to the Greening Project Administrator in paragraph 14 above. The Greening Projects Administrator shall be required to provide to DPS Staff, with electronic copies to all Signatory Parties, periodic reports detailing all expenditures made and shall be entitled to a customary administrative fee, as determined by DPS Staff, to administer the remaining Greening Projects. The remaining Greening Projects may include additional tree planting, the installation of measures that improve indoor or outdoor air quality, and other initiatives to improve the environment, it being understood that it is the desire and intent of the Signatory Parties that (i) the Greening Projects funded by the Unencumbered Funds shall be undertaken exclusively within the Queens communities affected by the July 2006 outages in the LIC network; (ii) the funds provided under this Joint Proposal are intended to supplement funds available from other sources, not to supplant existing funding; therefore, the Greening Projects shall not include initiatives that are likely to be funded from other government-sponsored sources before 2015; and (iii) the Greening Project funds shall be expended as expeditiously as possible, but no later than 36 months after adoption by the Commission of its order implementing the terms of this Joint Proposal. None of the Signatory Parties shall be eligible to apply for any funding from the Greening Projects that are funded by the Unencumbered Funds.

The responsibilities of the Greening Projects Administrator will include, but will not be limited to, working with WQPFP and other Signatory Parties in advertising the availability of refunds to customers pursuant to the procedures in paragraph 11.E of this Joint Proposal (which advertising, at a cost not to exceed \$20,000, will be paid for from or credited against the Unencumbered Funds), and in identifying, implementing, managing, and overseeing Greening Projects adopted and implemented pursuant to this Joint Proposal. If no Greening Projects Administrator is agreed upon within 90 days of adoption by the Commission of its order implementing the terms of this Joint Proposal, the availability of refunds will be advertised by Con Edison through publication in

newspapers of local and general distribution, such newspapers to be selected upon advice and consent of PFP.

16. This Joint Proposal provides for the complete resolution of the issues subject to the Commission's jurisdiction, raised by the Commission and the parties, in connection with the prudence investigation relating to the July 2006 outages in Con Edison's LIC network, as well as the issues raised in the September 13, 2006 petition to the Commission by certain members of the New York State Legislature and other elected officials. In return for, and conditioned upon satisfaction of, the above financial commitments, Con Edison will be released and discharged from all prudence-related claims that were or could have been asserted in these or any other Public Service Commission proceedings relating to Con Edison's actions or omissions in connection with the July 2006, outages in the LIC network. The prudence investigation of the July 2006 outages in the LIC network shall be terminated, without a determination as to Con Edison's prudence, and shall not be reinstated or renewed at a future time. Notwithstanding the foregoing, (1) any damage to the LIC network or incremental costs that are not known and could not have been reasonably foreseen by reasonable experts at the time of execution of this Joint Proposal and that may be determined in the future as attributable to the July 2006 outages is not affected by this Joint Proposal, and (2) nothing in this Joint Proposal shall be construed as an admission by any party with respect to the prudence or imprudence of any decision, action or inaction by Con Edison related to the July 2006 outages in the LIC network or as to the remedies appropriate in such case.

This JOINT PROPOSAL agreed to as of the 14 day of April, 2008.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

By: _____
Chanoch Lubling, Esq. |

This JOINT PROPOSAL agreed to as of the ___ day of April, 2008.

NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE

By: _____
Diane T. Dean, Esq.

By: _____
Guy R. Mazza, Esq.

This JOINT PROPOSAL agreed to as of the 14 day of April, 2008.

FOR WESTERN QUEENS POWER FOR THE PEOPLE

By: _____
Alyssa Bonilla

By: _____
Patrick Barnhart

By: _____
Molly Charboneau

This JOINT PROPOSAL agreed to as of the 23rd day of April, 2008.

Assemblyman Richard L. Brodsky

This JOINT PROPOSAL agreed to as of the 14th day of April, 2008

NEW YORK STATE CONSUMER PROTECTION BOARD

By: John M. Walters, Esq.

This JOINT PROPOSAL agreed to as of the 14 day of April, 2008.

on behalf of
THE CITY OF NEW YORK

By: _____
Moshe Bonder, Esq.

This JOINT PROPOSAL agreed to as of the 14th day of April, 2008.

PUBLIC UTILITY LAW PROJECT OF NEW
YORK, INC.

By: _____
Gerald A. Norlander, Esq.