

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 15, 2005

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin

CASE 04-M-0159 – Proceeding on Motion of the Commission to Examine the Safety of
Electric Transmission and Distribution Systems.

ORDER ON PETITIONS FOR REHEARING AND WAIVER

(Issued and Effective July 21, 2005)

BY THE COMMISSION:

INTRODUCTION

In the aftermath of the tragic death of a New York City resident in January 2004, we began an investigation into Consolidated Edison Company of New York, Inc.'s (Con Edison) procedures to ensure the public's safety.¹ Because the information gathered as part of our investigation demonstrated that stray voltage concerns are not limited to Con Edison's service territory, we broadened the scope of the proceeding to consider the need for and appropriateness of statewide measures. On January 5, 2005, we adopted a set of statewide safety standards that apply to the electric utilities subject to our jurisdiction.² In the Safety Order, we took positive, proactive steps towards ensuring the

¹ Case 04-M-0159, Safety of Consolidated Edison Company of New York, Inc.'s Electric Transmission and Distribution Systems, Order Instituting Proceeding, Requiring Additional Testing and Any Necessary Repair and Report on Status of Electric System (issued February 11, 2004).

² Case 04-M-0159, supra, Order Instituting Safety Standards (issued January 5, 2005) (Safety Order).

safety of the public from stray voltage and enhancing electric utility reliability in the State of New York. The safety standards include: (1) annual stray voltage testing of electric facilities accessible to the public, using qualified voltage detection devices; (2) inspections of utility electric facilities on a minimum of a five-year cycle; (3) recordkeeping, utility officer certification, and reporting requirements; and (4) adoption of the National Electric Safety Code as the minimum standard governing utility construction, maintenance, and operations. The safety standards also require that where a utility finds stray voltage, it must immediately make the facility safe and repair it within a short time period. We also adopted a performance mechanism to ensure that the utilities maintain proper focus on safety and comply with the safety standards. The utilities were required to file implementation plans within 45 days after the Safety Order was issued.

On February 4, 2005, we received a joint petition for rehearing from Central Hudson Gas & Electric Corporation (Central Hudson), New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation (Niagara Mohawk), and Rochester Gas and Electric Corporation (RG&E) (collectively, the "Upstate Utilities"); a petition for rehearing from Orange and Rockland Utilities, Inc. (O&R); and, a separate petition for rehearing from NYSEG and RG&E. The Upstate Utilities and O&R state that the time frame given to perform stray voltage testing is not adequate and request extension of the deadline for completion. The Upstate Utilities and O&R also question the inclusion of fiberglass handholes in the inspection process. They raise concerns regarding cost recovery and the certification process and dispute the performance mechanism. NYSEG and RG&E seek reconsideration of the Safety Order's treatment of cost recovery for associated expenditures.

Additionally, Niagara Mohawk, Central Hudson, NYSEG, and RG&E filed petitions seeking waivers of compliance with the November 30, 2005 completion date for stray voltage testing established in the Safety Order. Each of the utilities instead request August 30, 2006 as the deadline for completion of stray voltage testing on all publicly accessible electric facilities.

In this Order, we modify the initial schedule for stray voltage testing of some facilities for electric utilities other than Con Edison. All utilities, however, are still required to complete testing on underground facilities and streetlights in accordance with the Safety Order.³ Additionally, we clarify the certification requirements and eliminate the need for interior inspections of fiberglass handholes. The requests for modifications of the performance mechanism and cost recovery requirements are denied. Finally, we adopt some additional refinements to the safety standards.

SUMMARY OF PETITIONS FOR REHEARING

Upstate Utilities

Schedule for Stray Voltage Testing

Pursuant to the Safety Order, electric utilities are required to conduct tests for stray voltage on all publicly accessible electric facilities by November 30, 2005. The Upstate Utilities state that such testing can be performed within urban settings, but they argue that the timetable set is impractical for the non-urban portions of their service territories. They cite the large geographic areas that need to be tested, approximately 50,000 square miles overall, in comparison to Con Edison's 630 square mile system.⁴ They indicate that the effort needed to test the remote and sparsely populated regions will dwarf the effort to test the urban networks in their territories. For Niagara Mohawk alone, over 64,000 circuit miles would need to be traversed and in excess of 800,000 stray voltage tests would need to be conducted in less than one year. With respect to the potential risks in non-urban areas, they claim that "[t]here is no demonstration that the risks associated with stray voltage in the Upstate Utilities' service territories is in any way comparable to the risk in a dense urban network" (p. 5). The Upstate Utilities indicate

³ As used herein, the term "streetlights" has the same definition as in the Safety Order.

⁴ Central Hudson provides service in territory that covers 2,812 square miles, NYSEG, 18,359 square miles, Niagara Mohawk, 24,500 square miles, and RG&E, 2,700 square miles.

that, according to the 2000 U.S. Census data, the population densities for the downstate urban areas are between 10,000 and 230,000 persons per square mile, and densities in the upstate areas are between 40 and 80 persons per square mile. Therefore, they claim that the risk posed to pedestrians in their territories is a small fraction of the risk in the downstate regions and this differential supports prioritizing stray voltage testing based on population density.

The Upstate Utilities express concerns regarding startup or implementation of the program, claiming that such efforts will make it difficult to meet the schedule for stray voltage testing in 2005. They state that time is needed to design programs for stray voltage testing, inspections, and quality assurance before any field work can occur. Additionally, the utilities must develop systems for recordkeeping, field collection, tracking and reporting, as well as conduct appropriate training for employees and contractors prior to testing. They also state that they need to acquire certified test equipment, produce maps outlining the overhead and underground distribution facilities, transmission facilities, and streetlighting systems, and supply the materials to the testers. They note that certain tasks need to take place sequentially (e.g., procedures must be developed before training), which further extends the process.

They assert that completion of the startup tasks will take several months at a minimum and contend that it is not reasonable to expect voltage testing as well as safety inspections to begin prior to May 2005. They view the identification of the location of facilities that require testing to be an overwhelming task, particularly for streetlights owned by municipalities. In addition, they claim that identification of municipally-owned facilities has required them to ask and await a response from each municipality as to the locations of the municipality's facilities requiring stray voltage testing. Absent this information, the Upstate Utilities claim that they would need to walk or drive every road of each municipality within their respective service territories to identify non-utility owned facilities. This information gathering process is out of their control, the Upstate Utilities continue, and could delay stray voltage testing of these facilities. They assert that we did not consider these limitations nor the differences in non-urban systems

compared to dense urban networks when we established the stray voltage testing schedule in the Safety Order.

As a result, the Upstate Utilities seek to extend the deadline for stray voltage testing of certain facilities located in sparsely populated and low pedestrian traveled areas, referred to as "Remotely Accessible Areas," past the date specified in the Safety Order. However, they did not specify a uniform time frame to complete that testing. Instead, they propose to provide utility-specific information in their individual implementation plans, based on each utility's evaluation of its service territory and resources. They state that this proposal would still require them to meet the November 30, 2005 requirement for facilities outside the Remotely Accessible Areas. In their opinion, such an approach would allow the utilities time to design and implement testing and inspection programs properly and perform testing in the higher risk areas by the end of the first year. Additionally, they contend that the time extension for Remotely Accessible Areas would not force them to assign qualified personnel to conduct stray voltage testing and divert these resources from other utility work. Finally, they assert their requested delay would not compromise public safety.

The Upstate Utilities also express concern that the testing must be performed every year, indefinitely. They ask that we confirm that we will consider the results of the programs to determine the appropriate extent of future testing.

Performance Mechanism

The Upstate Utilities dispute our authority to enforce the performance mechanism included in the Safety Order. They contend that the performance mechanism is contrary to Public Service Law (PSL) §25, contravenes separation of powers, is inconsistent with due process, and contains rate adjustments that are arbitrary and capricious. They argue that the performance mechanism is unnecessary, in general, to ensure that they make an effort to comply with the Safety Order.

They contend that we do not have authority to impose penalties other than those identified in PSL §25. The Safety Order indicates that the performance mechanism is designed to operate in a similar fashion as those found in multi-year rate plans. The

Upstate Utilities, however, assert that performance mechanisms included as part of multi-year rate plans are agreed to voluntarily as part of a joint proposal. They continue that we cannot diverge from the penalty structure in PSL §25 without the utilities' consensual agreement.

They further contend that the punitive nature of the performance mechanism is unmistakable and should not be considered an incentive mechanism for ratemaking purposes. Labeling the performance mechanism a ratemaking adjustment does not change its administrative penalty nature, and, as defined, the potential revenue adjustments are penalties, not ratemaking adjustments. The Upstate Utilities argue that the performance mechanism is directly contrary to the PSL §25 because it is intended to punish the utilities for failure to comply with the standards. They claim this contradiction between the Safety Order and statutory requirements makes the performance mechanism unlawful because it violates the separation of powers doctrine.

The Upstate Utilities also argue that the performance mechanism is inconsistent with the due process allowed when a utility violates a Commission order. They claim that the Safety Order is self-executing and fails to provide notice, opportunity for hearing, or right to a jury. They contend that this is inconsistent with the statutory schemes of PSL §§24 and 26, and that fundamental requirements of due process. They also indicate that utilities should have the right to a jury trial, given the magnitude of the rate adjustment.

Additionally, the Upstate Utilities assert that the two rate adjustments are arbitrary and capricious and that the performance mechanism lacks a rational basis because it is disproportionate and does not reflect any degree of non-compliance (i.e., missing tests on only one or most facilities results in the same rate adjustment). The structure fails to consider exculpatory factors and does not recognize good faith efforts to comply with the Safety Order. The Upstate Utilities claim the performance mechanism would not withstand judicial scrutiny.

Cost Recovery

The Upstate Utilities raise several concerns about the methodology for cost recovery as they implement the Safety Order. They contend that certain language in the Safety Order is in need of clarification. They do not understand why the Safety Order denies requests for cost recovery when none of the companies filed such a request. If our intent was to pre-determine cost recovery requests in the Safety Order, they continue, it would be void because statutorily required procedures, such as a hearing, were not followed.

The Upstate Utilities are also concerned that our restatement in the Safety Order of the three-part test we typically apply in evaluating deferral requests supercede provisions of their rate plans. Most troubling to them is that the Safety Order specifies that requests not meeting the three elements of the traditional process would not be favorably considered. They object to requirements that alter rate plans, particularly given that we did not find the rate plans unjust or unreasonable. The Upstate Utilities state that no notice was provided to them indicating that rate implications were being considered as part of this proceeding. They also claim that, pursuant to PSL §66, we are obligated to hold hearings prior to imposing new ratemaking provisions, but that no such hearings were held prior to the issuance of the Safety Order. The Upstate Utilities argue that it would be unlawful to supercede the rights and procedures established in rate plans without following the requirements of PSL §§66 and 72. They therefore seek clarification of our intent regarding rate recovery and relationship of the Safety Order to their rate plans.

Certification Requirements

The Safety Order requires utility executives to certify compliance with the safety standards on an annual basis. The Upstate Utilities contend that none of their executives could reasonably certify that all of its facilities, as well as all applicable municipal streetlights, had been tested. They ask that the language be clarified to require an executive to state that the stray voltage testing program was implemented and that the executive is not aware of facilities that were not tested, except those identified as missed

for sensible reasons. This certification would be based on an executive's knowledge, information, and belief.

Inspection of Fiberglass Handholes

The Upstate Utilities explain that fiberglass handholes and services boxes are underground structures where services for a few customers are connected to a distribution line. The structures are sealed, not routinely accessed, and not exposed to road salt, vibration, or other factors that typically lead to stray voltage conditions. Due to their fiberglass composition, they are non-conductive; therefore, even if the insulation on a distribution line, service, or connection deteriorates, contact between the exposed wire and the structure would not present a risk of shock to the public.

The Upstate Utilities also claim that routine access will likely cause damage to the boxes, and this would be inconsistent with the Safety Order because it does not require destructive testing. For these reasons, they seek to exclude such structures from interior examination as part of the inspection program. As to external inspections, they recommend that each utility specify its own protocols.

NYSEG and RG&E

In a separate petition, NYSEG and RG&E seek reconsideration of the Safety Order's discussion of cost recovery associated with the implementation of the safety standards. The companies seek approval to recover, as part of their next rate filings, incremental costs associated with complying with the Safety Order. They state that the broad scope of the Safety Order and potentially substantial costs and resource burdens to comply with it were not considered when they negotiated their rate plans. The companies argue that the Safety Order alters the balance in the rate plans and contend that it would be inappropriate to treat such costs through the general recovery provisions in the rate plans. They assert that their multi-year rate plans allow for the deferral of costs due to mandatory regulatory changes, such as those contained in the Safety Order, without consideration of the standard test for considering deferrals.

O&R

O&R questions the schedule established for stray voltage testing and inspections. The company states that the startup time and logistics with labor, program development, acquiring equipment, and training will significantly impede compliance in the first year. O&R estimates the startup time to be a minimum of six months, which leaves five months to perform the testing and inspections. In its opinion, there is insufficient time to comply with the Safety Order in 2005 due to the large volume of facilities that require testing and inspections. As a result, O&R proposes completion of half of the voltage testing by the end of 2005. It also proposes a reduction in the percentage of facilities to be inspected annually from the required 20% to 10% for the first year. The company would adhere to the original annual testing process and inspection schedule in subsequent years. This would include completing inspections on its entire system within five years.

O&R also argues that the performance mechanism is arbitrary and unwarranted. The company notes that a 150 basis point adjustment for non-compliance would likely be in excess of 10% of its yearly earnings. Additionally, requesting full compliance (i.e., testing all facilities) is unrealistic and a poor approach to satisfy our objectives. O&R remarks that the all-or-nothing approach may compel the company to diminish other important programs to avoid a rate adjustment. The company contends that the performance mechanism is illegal because it does not conform to PSL §25. O&R further contends that we must adhere to the judicial process rather than imposing punitive economic sanctions. The company notes that the statutory scheme in PSL §25 allows for full due process rights, in contrast to the automatic revenue adjustment in the Safety Order. Therefore, O&R requests that the performance mechanism be rejected.

For many of the same reasons propounded by the Upstate Utilities, O&R seeks to exclude fiberglass handholes from the inspections. O&R also raises a concern about potential damage to the handholes if opened repeatedly. O&R states that exposing the handholes for inspection could lead to future damage and may increase customer complaints because these facilities have become incorporated into the landscape. In

contrast to the Upstate Utilities, though, O&R seeks to exclude such structures from both internal and external inspections.

The Safety Order requires that utilities must immediately and continuously guard a facility when stray voltage is detected until it is made safe, irrespective of who owns the facility. In cases involving customer-owned equipment, utilities are required to contact a responsible person associated with the premises to inform them of the need to take corrective actions. O&R states that, unlike situations involving utility-owned facilities, the company does not have the authority to require others to guard and repair facilities. Therefore, O&R seeks clarification with respect to its responsibilities to protect a customer-owned facility in the event stray voltage is detected. The company points out that its obligation to make a situation safe may present a more hazardous situation, such as de-energizing a traffic signal. O&R proposes that, in cases where termination of service is not reasonable, it be allowed to use barrier protection and signage to fulfill its obligation to guard a facility. Also, the company recommends that the requirement only obligate it to make a good faith effort to contact a customer. O&R is concerned that, absent clarification, it could face additional liability exposure.

Finally, O&R proposes the institution of a program to immediately begin collecting and evaluating data related to stray voltage. Once sufficient data has been gathered and evaluated, it expects the safety standards to be modified to account for exposure differences between its systems and urban underground systems used in New York City. To expedite potential changes to the stray voltage testing requirements, the company recommends undertaking this effort concurrently with the mandated testing and inspection programs. O&R states that the program should include an independent review of available data, evaluations of the effectiveness of the standards, which would take into account various system designs, and generation of detailed technical reports. The company proposes that the New York State Energy Research and Development Authority (NYSERDA) coordinate the program and involve industry experts, in addition to utility representatives and Department of Public Service Staff (Staff).

SUMMARY OF WAIVER REQUESTS

The Safety Order required all utilities subject to our jurisdiction to file implementation plans within 45 days after the Order's issuance. Because we had not acted upon the Upstate Utilities' petition for rehearing before the deadline for filing the plans, Central Hudson, Niagara Mohawk, NYSEG and RG&E filed requests for waiver of the November 30, 2005 completion date for stray voltage testing.⁵ The waiver requests present the same arguments as those contained in the Upstate Utilities' petition for rehearing and further support their contention that the initial schedule in the Safety Order is unattainable. Each of the waiver requests seeks an extension until August 30, 2006 to complete stray voltage testing on all facilities. None of the implementation plans filed by these utilities indicate that an initial round of stray voltage testing would be completed by November 30, 2005.

Niagara Mohawk claims that it would not be feasible to complete testing over all of its service territory in the time frame outlined in the Safety Order. The company argues that stray voltage testing should be prioritized on a basis that reflects the relative risks associated with physical proximity of facilities to population densities. Therefore, Niagara Mohawk segregated its circuits based on the distance between customer meters. The company indicates that circuits with less than an average of 100 yards between customers would be considered generally accessible and tested for stray voltage first. It commits, however, to completing stray voltage testing in generally accessible areas by November 30, 2005. The remaining circuits, primarily located in sparsely-populated areas, would be considered "Remote" and tested once the company has completed stray voltage testing on its generally accessible circuits. In addition, the

⁵ O&R did not file a waiver request because its implementation plan indicated it would comply with the Safety Order's requirement of completing all stray voltage testing by November 30, 2005. The company indicated to Staff that it would initiate stray voltage testing in Rockland County and highly populated communities in Orange and Sullivan Counties.

company stated that access to facilities on these remote circuits would be difficult during winter months, defined as December through March, inclusive.

Like Niagara Mohawk, Central Hudson commits to complete a certain amount of stray voltage testing by November 30, 2005. The company developed a schedule based on a system-wide analysis of its existing inventory of facilities subject to testing requirements. Central Hudson indicates that it would begin its stray voltage testing on facilities served by underground network systems in its higher population density areas (*i.e.*, Poughkeepsie, Newburgh, and Kingston). The company estimates that stray voltage testing would be completed by November 30, 2005, on approximately 150,000 facility locations, including, but not limited to, its underground network systems. Central Hudson also cites access issues and personal safety concerns during the winter months.

NYSEG and RG&E state that they would ensure completion of stray voltage testing by November 30, 2005 in "all areas where the public is likely to contact equipment that could transmit stray voltage" (p. 3). They do not, however, specify the method proposed for identifying these locations. The companies have subsequently indicated to Staff that they would begin stray voltage testing in urbanized areas and urban clusters, as defined by the U.S. Census Bureau. Using Census data from 2000, NYSEG and RG&E identified areas within their territories meeting the population density criteria, such as Rochester, Binghamton, Ithaca, and Elmira. The companies are of the opinion that the public is highly unlikely to come into contact with the facilities scheduled for stray voltage testing after November 2005.

SUMMARY OF PUBLIC COMMENTS

In accordance with State Administrative Procedure Act §202(1), notice of the petitions for rehearing was published in the State Register on February 23, 2005. Notice of the waiver requests was published in the State Register on March 23, 2005. Comments were received from Roger M. Lane, the City of New York (City), the New York State Consumer Protection Board (CPB) and Assemblyman Ryan Scott Karben. We also received a comment from a concerned citizen via the Department's Web site.

Roger M. Lane

Mr. Lane states that he has entered into an agreement with Con Edison that requires the company to undertake an aggressive stray voltage program that may be more stringent than our requirements. He is concerned that modifications to the Safety Order based on the petitions for rehearing may affect his agreement with Con Edison.⁶

Based on his experience with Con Edison's ability to start a stray voltage program, Mr. Lane states that there is no reason, either financial or operational, for other utilities to delay the startup or extend the time period to complete their stray voltage programs and that granting any such delays could increase the risk of injuries to the public. Mr. Lane also argues that it is inappropriate to eliminate the performance mechanism. While he acknowledges Con Edison's good faith efforts, he is convinced that substantial rate adjustments are an appropriate means to ensure compliance.

The City of New York

The City's comments were limited to responding to the Upstate Utilities' request to place conditions on their annual testing certification. It interprets the utilities' request as seeking a blanket exemption from any potential liability or rate adjustment should their testing prove to be inadequate. The City asserts that the Upstate Utilities failed to establish any error of law or fact that warrants altering the approved certification requirement. It contends that it is reasonable to expect and require utilities to account for stray voltage testing of their electric facilities by having the president or officer with direct responsibility for the stray voltage testing certify that the testing has taken place. For these reasons, the City argues that the Upstate Utilities' request is without merit and should be rejected.

⁶ The agreement between Mr. Lane and Con Edison is a private matter between those parties. It was not approved by us, and therefore has no bearing on our determinations in this matter.

The City also notes that Con Edison did not file a petition for rehearing. Therefore, it continues, to the extent we grant rehearing of any aspect of the Safety Order, we should not modify the requirements imposed on Con Edison.

Consumer Protection Board

In the petitions for rehearing, the utilities claim they could not begin to plan and implement testing and inspections until the Safety Order was issued on January 5, 2005. CPB points out that, on July 30, 2004, the Staff Proposal recommended new testing and inspection requirements that would be applied uniformly to all electric utilities. The Staff Proposal also described in detail testing and inspection requirements. CPB states that the Safety Order issued on January 5, 2005 did not differ in any material way from the Staff Proposal. Therefore, CPB asserts that more could have been done by the utilities to prepare for the upcoming Safety Order. CPB states, however, that thoroughness and accuracy are at least equally important as speed in ensuring that the safety standards achieve the fundamental objective of protecting the public. CPB recommends that we consider the merit of each utility's plans on an individual basis and require that the utilities catch up with the annual testing schedule as soon as possible. CPB also proposes that the testing and inspection efforts start with the facilities known to have the highest probability of potentially dangerous conditions.

CPB disagrees with the utilities' proposed testing plans, arguing that all the people of New York State are entitled to receive safe utility service whether they live in densely or lightly populated areas. Therefore, the safety standards should be applied uniformly until sufficient data exists to justify modification. CPB urges that the inspection and testing requirements should not be weakened based on untested assumptions as to the safety risks, which may or may not exist in a given geographic region. CPB recommends that we consider proposals to modify inspection and testing requirements for particular regions or facilities only when sufficient information is available to demonstrate that the changes maintain safety and are cost effective.

While the utilities contend that the performance mechanism is unlawful, CPB affirms that, under PSL §66, we have power over the ratemaking policies of electric

utilities. CPB contends that our decision was rational and that the performance mechanism is indeed a valid exercise of our authority. CPB also submits that utilities are free to request a hearing, should a rate adjustment be imposed.

Although CPB agrees that, in general, the performance mechanism is proper, it is concerned that the mechanism's application could produce unfair results in some cases. CPB indicates inconsistencies between Appendix A and the body of the Safety Order in regard to the application of the rate adjustments as an absolute or potential consequence for failure to meet a performance target. CPB prefers the language used in the body of the Safety Order, recommending that we should maintain flexibility, rather than employing an all-or-nothing approach. By doing so, we can consider circumstances, where appropriate, that may not require a full 75 basis point rate adjustment.

CPB argues that the utilities' position on cost recovery lacks merit and that the utilities should be required to satisfy the three part test prior to receiving any cost recovery for complying with the Safety Order. CPB asserts that the necessity of the Safety Order demonstrates that utilities were not fully satisfying their obligation to provide safe and adequate service. CPB, however, states that "it does not imply that adequate levels of safety were unachievable under existing rate regimes, or that the cost of complying with the safety standards adopted by the Commission is inherently incremental to existing rates" (p. 10). Therefore, CPB believes that it is appropriate to place the burden of proof on the utilities to show through filings that existing rates do not account for costs to comply with the Safety Order.

CPB recommends that we maintain and clarify the certification requirement. CPB states that it is appropriate to require certification of the utilities' testing and inspection programs by a utility official. CPB concedes, though, that placing officials in a position of certifying to a level of knowledge that they could not be expected to achieve would not be useful. Therefore, CPB proposes that officials should certify that due diligence has been exercised to comply with the Safety Order and assure the accuracy of the information contained in the certificate.

Finally, CPB acknowledges that the issue of inspecting fiberglass handholes is a technical one and should be resolved based on an examination of available information. CPB is not opposed to exempting fiberglass handholes from the Safety Standard requirements provided that, in the event of a failure, the handholes would not pose a stray voltage shock hazard and the inspection process itself does not generate unnecessary costs and/or reduce the safety of the enclosures.

Assemblyman Ryan Scott Karben

Assemblyman Karben agrees that we should modify the Safety Order to recognize the differences in population and equipment throughout the State. He opposes, however, the dramatic extension of the stray voltage testing schedule sought by the utilities. He states that comprehensive and regular inspections of our electrical infrastructure are essential and urges us to work with the utilities to establish a practical schedule for a vigorous testing program. Assemblyman Karben contends that, although some changes may be warranted, we should not compromise the effectiveness of the safety standards by allowing an indefinite time for testing or eliminating the rate adjustments for noncompliance.

Other Comments

A concerned citizen completed a consumer comment form on the Department's Web site regarding this matter. The individual said it was "outrageous" that utilities are requesting extensions and removal of the performance mechanism on a matter of the "utmost importance" to public safety. The commenter expressed concern for the overall public safety throughout the State and accused the utilities of not doing their part. Therefore, the individual recommends that we ensure that the public safety is not jeopardized when we consider the utilities' requests.

DISCUSSION

Electric utilities operating in New York State have the responsibility under PSL §65(1) to furnish safe and adequate service. The utilities are also responsible for managing their electric systems in compliance with PSL §65(1) and must satisfy their obligation to operate and maintain their infrastructure in a safe manner. The Safety Order

clarifies that the utilities must address this responsibility by conducting stray voltage testing and inspections in an efficient manner to mitigate danger to public health, welfare, and safety. Compliance with the stray voltage testing and inspection programs resides entirely within the utilities' control, and their senior management must commit sufficient resources to perform adequate programs and take the necessary actions to ensure a safe and reliable electric system.

Initial Schedule for Stray Voltage Testing

We recognize that the development and implementation of a stray voltage testing program is an enormous undertaking, requiring commitment of a substantial workforce.⁷ Since stray voltage testing programs are new requirements, limited resources may be available for conducting these tests.⁸ Staff reports that there is also considerable competition among utilities for the services of contractors capable of carrying out the stray voltage test programs. Consequently, we acknowledge the need for time to establish a sufficient quantity of trained personnel to perform stray voltage testing.

Also, the Safety Order requires that voltage testing devices be capable of measuring between 8 and 600 volts. At the time the Safety Order was issued, only two test devices were certified as meeting this requirement. Each device relied on a sensitivity adjustment to meet the low end of the voltage range. Recently, a new testing device capable of meeting these measurements without relying on a sensitivity adjustor has become available. Although the new device was recently put on the market, the

⁷ For example, when Con Edison performed its initial stray voltage testing, it employed over 1,000 contractor employees and company personnel.

⁸ The training necessary to perform stray voltage testing is not formidable, but adequate and proper training is necessary to assure performance of testing in a safe and competent manner.

manufacturer has been unable to satisfy the resulting demand for it by utilities and contractors.⁹

The utilities also allege that the development of data management systems to properly document the stray voltage testing and inspection activities will take longer and is more involved than anticipated. Staff reports that, in the case of Con Edison, development of data management systems lagged initial stray voltage testing activities. As a result, recordkeeping in the later stages of stray voltage testing was significantly improved, in comparison to the early testing phases.

The utilities further contend that the task of identifying the facilities to be tested is formidable and takes time. We acknowledge that identification of the municipal facilities to be tested involves a considerable effort and is a consideration in developing a reasonable time for completion of the initial round of stray voltage testing. Some utilities note that they intend to contact municipalities within their service territories in an effort to obtain information concerning the location of streetlights; the ability of the municipalities to commit the necessary resources to obtain the information may have an impact on time required for the initial testing. Although it is reasonable to use other sources for identifying publicly accessible facilities, the identification of all such facilities is the utilities' responsibility, and the utilities, not the municipalities, will be held accountable for testing those facilities.

Based on the information before us, it appears that some utilities may not be placing sufficient emphasis on locating these facilities within their service territories and are primarily relying on other parties to provide them with such information. While we encourage cooperative practices, the responsibility for identifying all publicly accessible facilities for testing should not be delegated to the municipalities.

⁹ We do not recommend or promote any particular manufacturer's products, and the utilities are each responsible for choosing appropriate devices for stray voltage testing. Nevertheless, we understand that many utilities are interested in purchasing this new product and the challenges caused by its lack of availability.

Separately, the arguments presented by the utilities are insufficient to justify modifying the schedule. However, based on the totality of the arguments presented and because the circumstances described by the utilities may affect the achievement of the overall goal of our Safety Order, reconsideration of the schedule is warranted.

Since January 2005, the utilities have made significant strides in implementing changes to their operating practices to comply with the Safety Order. As CPB notes, however, since July 2004, the utilities have been aware of the possibility that we would impose safety standards and of the general composition of the standards. More initiative or basic ground work to prepare for the new standards would have facilitated a quicker and more efficient implementation of the stray voltage testing programs. A thorough, well thought-out testing program, however, will provide maximum public benefit.

The Safety Order noted that the utilities would need to commit some period of time in the first year to fulfill startup requirements. Staff's investigation indicates that this process is taking longer than originally anticipated. If the utilities rush implementation of their stray voltage testing programs to meet the November 30 deadline, it may result in inaccuracies and oversights and compromise the overall goal of the safety standards. Additionally, to comply with the November 30 deadline, the utilities may, inappropriately, divert a significant portion of their resources from other important capital projects and maintenance activities to perform stray voltage tests.¹⁰ A properly planned and implemented stray voltage testing program, performed in conjunction with scheduled capital and maintenance work, is in the best interest of the public. For all of the above reasons, modifications to the initial schedule for stray voltage testing are warranted. We, therefore, grant the petitions for rehearing in part.

¹⁰ The utilities are advised that we will not countenance any excuse that other work was delayed due to compliance with the Safety Order. The utilities are obligated to timely and properly perform all work necessary to provide safe and adequate service to their customers.

Schedule Adjustment Criteria

O&R proposes completion of 50% of the stray voltage testing by November 30, 2005. The Upstate Utilities propose that the modification of the schedule be based upon accessibility of areas in their service territories and testing of Remotely Accessible Areas after November 30, 2005. Each utility specified different approaches to define such areas within its implementation plan. While the Upstate Utilities argue that population densities support their position that urban areas are more hazardous and should be assigned first priority in the initial stray voltage testing program, they have not offered any data to support this position.¹¹ Since insufficient information is available to support an evaluation of risk in urban versus rural areas and assign priorities, we concur with CPB that it is inappropriate to differentiate on the basis of this distinction in establishing a stray voltage schedule.

As indicated in the Safety Order and in reports received by the Department over the past year or so, numerous instances of stray voltage are associated with streetlights. Staff's monitoring of stray voltage testing by Con Edison and Niagara Mohawk indicates that the incidence of stray voltage associated with streetlights is much higher than on other types of electric facilities. This information, coupled with the accessibility of streetlights, provides a basis for differentiation of these facilities. Accordingly, we require completion of stray voltage testing of streetlights by November 30, 2005.

¹¹ Niagara Mohawk submitted a report on the incidence of stray voltage by geographic distribution with its waiver request. Although the stated conclusion in the report is that there is greater risk to the public in high population density areas, the data presented therein shows no difference in the incidence between urban and rural settings.

Electric facilities served by underground utility systems are also often located in high pedestrian traffic areas. It is therefore reasonable for utilities to conduct testing of these publicly accessible facilities by November 30, 2005 as well.¹²

Based upon the implementation plans filed, we expect the utilities to complete stray voltage testing on roughly half of their systems this year. While we will not formally impose this level as a requirement, we strongly encourage the utilities to exceed this level by the end of 2005 and to complete their first cycle of stray voltage testing as soon as practical. Given the circumstances presented, the proposed date of August 30, 2006 for completing the first round of testing for all of the utilities' publicly accessible facilities appears to be reasonable and is approved. This time extension shall also apply to municipal and lightly regulated electric corporations; it will not apply to Con Edison because it already has an established annual stray voltage testing program.¹³

Inspections Schedule

Unlike stray voltage testing, utilities routinely inspect their facilities to ensure proper operating conditions. While the Safety Order imposes new regulations on the inspection process, they are not burdensome. Additionally, by giving the utilities more time to complete the initial round of stray voltage testing and relaxing the requirements for inspecting fiberglass handholes, as discussed later in this Order, there is no reason why each utility could not meet the inspection target. Therefore, the inspection program need not be modified, and O&R's request is denied.

¹² This does not necessarily include all subdivisions using underground residential distribution (URD) facilities. Each utility shall determine the appropriate schedule for testing URD facilities based on its assessment of the exposure of such facilities to the public and other pertinent considerations. URD facilities assessed as having high priority should be tested by November 30, 2005.

¹³ Although we are extending the schedule for the first round of stray voltage testing, the January 15 reporting requirements specified in the Safety Order are not similarly affected.

Inspection of Fiberglass Handholes

The Safety Order excepted only those facilities that are ordinarily encased in sealed compartments from the inspection requirement. The Upstate Utilities seek to exclude the requirement to open fiberglass handholes and leave it up to each utility as to how to include them in their respective inspection programs. O&R, however, seeks to exclude fiberglass handholes from the inspection requirements entirely.

Utilities have used fiberglass handholes for decades in residential developments where the electrical service is supplied underground. There are numerous pad-mount transformers located throughout these subdivisions to step down the voltage to residential usage levels. Customers are either served directly from the transformer or via a fiberglass handhole located adjacent or near to the transformer.¹⁴ A typical fiberglass handhole serves two or three customers. The handholes are open-bottom structures with fiberglass covers that lie on top of or fit tightly into recessed openings in the base and are secured with bolts.¹⁵ The handholes are initially installed at grade level for easy access to the service connections; in many cases, though, handholes are buried or hidden by growth over the years of plantings or other landscaping. The electrical connections within the handholes are rubber covered and the actual cable connections are bolted together and heat shrunk for insulated and waterproof connections. None of the utilities inspect these facilities on a regular basis; they are opened when a customer outage or other problem occurs.

Staff analyzed electrical service outage data pertaining to the use of the fiberglass handholes in residential locations. Of these nearly 13,000 fiberglass handhole locations, six outages occurred inside handholes in 2003 and 16 outages occurred inside

¹⁴ The transformers and handholes are generally located within ten feet of the roadway and on or near the property lines of the customers served.

¹⁵ The Upstate Utilities claim that the inspections have the potential to damage the "seals" of the fiberglass handholes by having them opened and closed repeatedly. This claim lacks merit because fiberglass handholes do not make use of a gasket or other measure as a seal between the enclosure and its cover.

handholes in 2004.¹⁶ Additionally, Staff conducted field inspections on fiberglass handholes with various installation time frames. The inspections did not reveal any problems with the cables or connection points.

Based on this information, requiring the utilities to open and inspect the interior of fiberglass handholes would not significantly improve reliability and is not necessary to ensure protection of the public from stray voltage. It is unnecessary for the utilities to allocate the extra time and cost required for the inspection of the fiberglass handholes throughout each of their service territories. Further, as the utilities explain, the structures are non-conductive and are not generally exposed to road salt and vibration. These circumstances support a finding that fiberglass handholes present little risk of shock and do not pose safety concerns or stray voltage hazards.¹⁷ Therefore, fiberglass handholes are excluded from the interior inspection requirements.

The utilities should, however, make reasonable efforts to examine fiberglass handholes when conducting inspections on other facilities located in the same general areas (e.g., pad-mount transformers). We expect the utilities to be observant of damage to the structures (e.g., cracked or broken covers) or other deficiencies that compromise the integrity of the handholes and may cause or lead to a safety or reliability problem. The utilities are not required to maintain separate records for each handhole location unless problems are identified; inspection records based on the pad-mount transformer location are sufficient. This exception to the safety standards does not apply to any handhole and/or similar underground structure that is made of electrically conductive material.

¹⁶ The majority of outages at these locations relate to failed or damaged cable buried in the ground. They are not accessible for inspection; and, thus, they were excluded from the study.

¹⁷ Staff also found that inspections or routine access of these handholes would not cause damage to the handholes as the petitioners claimed.

Certification Requirements

The Safety Order requires the president of each utility or the officer that directly oversees the utility's stray voltage testing program to submit a written statement certifying the testing of all publicly accessible facilities and streetlights; a similar requirement is imposed with respect to the inspection program. The utilities contend that the term "all" as part of the certification requirements places unrealistic obligations on their executive to have personal knowledge of the testing and inspection status on each and every facility. Additionally, the utilities raise concerns with respect to inadvertently omitting tests on some non-utility owned or operated streetlights.

The certifications are designed to ensure accountability within each utility for the stray voltage testing and the inspection programs. We expect each utility to allocate and commit the resources necessary to properly and fully design, implement, and carry out the testing and inspection programs. We also expect each utility to make a good faith effort to identify, test and inspect, as appropriate, all facilities in its service territory. An appropriate quality assurance program must also be in place to confirm that each utility is in compliance with the safety standards.

While the City is correct that the utilities did not satisfy the requirements for rehearing of this issue under 16 NYCRR §3.7(b), it is appropriate to clarify the certification requirements in order to avoid confusion or problems in the future. We agree with CPB's notion of what is expected of the utilities' officers as part of the certification process. Utility presidents and other executives need to exercise due diligence and proper oversight to ensure the accuracy and effectiveness of the programs throughout the year. They must also take ownership of the responsibilities for complying with the safety standards. The written certifications are intended to reflect these goals and obligations. Accordingly, we clarify that the certification requirement shall be based on each utility president's or other officer's knowledge of the program and the manner in which it is performed.

Cost Recovery

Many of the utilities' arguments center on the idea that our Safety Order establishes cost recovery rules for implementing safety standards that supercede the cost recovery procedures established in individual utility rate plans. The source of this concern appears to be the statement that we will apply our traditional three-prong approach to evaluating deferral requests and our requirement that utilities demonstrate that their costs related to implementing the enhanced safety standards satisfy that approach.¹⁸ This general area of concern, however, is based on a narrow reading of our Safety Order that is not consistent with our intent.

The Safety Order recognizes that there were a number of contextual considerations affecting the determination of a reasonable cost recovery level for implementing the safety standards. These include the extent to which utilities already perform some of these activities, the three elements of the approach we traditionally use to evaluate deferral requests, and various provisions of each utility's rate plan. As a result, we directed that each utility seeking cost recovery make a filing that addresses these considerations and contains a specific cost recovery proposal. We emphasized the need to consider the traditional criteria for evaluating deferrals. Our recognition of potential overlaps between rate plan provisions and the traditional criteria formed the basis for providing utilities the opportunity to develop and file their own rate recovery proposals. Thus, there is no basis for the utilities' concerns.

Moreover, in the Safety Order, we emphasized that cost recovery would be provided only if a utility can demonstrate that it is incurring costs that are incremental to those incurred in the provision of its existing programs and procedures. We believe this particular demonstration is a key element of any utility cost recovery request. As a result, it is imperative that each utility seeking cost recovery clearly show that the costs

¹⁸ The three-prong test for according an item deferral accounting treatment includes: (1) the item must be incremental to current rates; (2) the amount must be material to the utility's earnings; and (3) the utility cannot be over earning.

associated with compliance with the safety standards are incremental and are not the product of the use or reallocation of existing resources already reflected in rates.¹⁹

Performance Mechanism

The Upstate Utilities and O&R contend that we erred as a matter of law in adopting a performance mechanism that includes a revenue adjustment applicable upon failure to meet the annual testing and inspection requirements. They assert that the performance mechanism is akin to the imposition of penalties and that we do not have statutory authority to impose penalties for noncompliance with our orders. Alternatively, they argue that the revenue adjustment amounts established in the performance mechanism are arbitrary and punitive. The utilities' arguments for these positions are the same as those presented in their earlier comments on the Staff Proposal; they were addressed in the Safety Order and that response need not be repeated. The performance mechanism is an appropriate device to ensure compliance with the safety standards. While the majority of the utilities' allegations lack merit, we recognize that some clarifications are warranted and that, due to changes in the safety standards discussed in other sections of this Order, the performance mechanism must be modified.

Adoption of the Performance Mechanism Is Within Our Statutory Authority

The utilities assert that the performance mechanism is the same as a penalty under PSL §25, and that a penalty cannot be imposed via a Commission order. The provisions of PSL §25 do not apply here because the performance mechanism is not the same as a penalty. Rather, it is an adjustment to the rate of return to reflect inadequate service.

All of the investor-owned electric utilities are operating their businesses pursuant to multi-year, performance-based rate plans. While the specific details of the

¹⁹ The utilities' claim that we were required to hold a hearing on the cost recovery issue prior to issuing the Safety Order is erroneous. The provisions of PSL §66 did not require a formal hearing prior to considering this matter. Inasmuch as we did not change the provisions of any utility's rate plan, as discussed above, we need not and will not discuss the other legal issues the utilities raised regarding this issue.

rate plans vary, they generally contain provisions that: (1) set levels for earnings sharing that are higher than the earnings levels upon which revenue requirements were established; (2) provide for deferrals of certain incremental costs and expenses; and (3) permit the utilities' shareholders to increase earnings over the term of the rate plans through various actions and activities that increase revenues and/or decrease costs. For example, many utilities have reduced the sizes of their workforces from the levels upon which rates were established. We have approved or adopted these rate plans because they ensure that the utilities' customers receive just and reasonable rates and safe and adequate service as required by PSL §65(1) while encouraging improvements in efficiency and productivity.

If the balance between a utility's customers and shareholders is altered, such that customers' benefits are diminished, the utility's rate plan may no longer comport with the requirements of PSL §65(1). Under those circumstances, we have an obligation to either step in and restore the balance or take such other steps that are necessary to ensure that customers' rights are reestablished. That exercise of our responsibility is fully consistent with our statutory ratemaking authority under PSL Article 4. If, by comparison, we find that a utility has violated a specific provision of the Public Service Law, our regulations, or one of our orders, we have a choice of remedies. We could exercise our ratemaking authority to address the violation. In doing so, there is no penalty; rather, there is a redistribution of revenues/earnings between customers and shareholders. In addition, PSL Article 1 provides for penalties to be levied by the courts pursuant to that Article.

Given this background, the utilities are incorrect in their contentions that we are precluded from reconsidering or modifying rate plans once they are adopted.²⁰ They are also erroneous in their contentions that, absent the utilities' consent, we may not adopt adjustment mechanisms within the context of performance-based rate plans. As noted above, each rate plan contains a variety of mechanisms that balance the rights and interests of customers and shareholders, some of which allow the utilities to increase their earnings, while others reduce their earnings in the event that certain thresholds or targets are not achieved. Combined, these mechanisms establish basic parameters that help define, in operative terms, the utilities' service to their customers; consequently, the mechanisms do not constitute penalties for failure to comply with a specific statute, regulation, or order. Similarly, the performance mechanism serves to establish the acceptable parameters of the utilities' provision of safe service to their customers.

The performance mechanism is not intended to, and does not, penalize the utilities for violating the Safety Order.²¹ Rather, in accordance with our ratemaking authority under PSL Article 4, the mechanism prospectively provides that utilities failing to provide safe service to their customers are not permitted as high a rate of return. Utilities may fulfill their obligations to provide safe and adequate service and retain the opportunity to stabilize, and perhaps increase, their earnings, or they may face financial consequences resulting from failure to comply with the safety standards. As we noted in the Safety Order, the responsibility for operating and maintaining a safe electric system rests entirely with the utility and its management.

²⁰ To the extent the Upstate Utilities suggest that their rate plans are equivalent to contracts and that they have contractual rights in their rate plans, the suggestion lacks merit. Rate plans are not contracts; rate setting is a legislative act, not an action governed by contract law. We have continuing authority over utility rates and may, in accordance with the provisions of the Public Service Law, revise any utility rate plan during its term as necessary or appropriate.

²¹ As a separate matter, if we find that a utility violates the requirements of the Safety Order, we may decide to commence penalty and/or enforcement actions against that utility pursuant to PSL §§25 and 26.

The utilities' contentions that they have or may be denied due process as a result of the adoption of this performance mechanism is without merit. The utilities have been accorded adequate notice and a reasonable opportunity to be heard during the course of this proceeding. The Public Service Law and constitutional due process requirements do not mandate that the utilities automatically be given a formal trial-type evidentiary hearing before adoption, implementation, or application of the performance mechanism.

The Safety Order and the performance mechanism do not suggest that any utility has acted or may act in a criminal manner, subject to criminal penalties. The Safety Order establishes minimum testing and inspection standards to improve the safety of the electric system and provide additional assurance to the public. The performance mechanism serves to provide proper incentives to the utilities to avoid failing to achieve these minimum standards. Of course, each utility is obligated to take other actions necessary to effectively carry out its responsibility to operate and maintain its facilities.

For the foregoing reasons, the Upstate Utilities' reliance on NYS Assn. of Nurse Anesthetists v. Novello, 189 Misc.2d 564 (Sup. Ct. Albany Co. 2001) is misplaced. We have not attempted to supplant the jurisdiction of the courts and there is no separation of powers issue. Further, because the performance mechanism was adopted in accordance with our authority and obligations under PSL Article 4, the Safety Order is not an ultra vires decision. The Upstate Utilities' reliance on People v. Whitridge, 144 A.D. 486 (1st Dept. 1911) is also unavailing. The facts and issues in that proceeding are separate and distinct from those at issue in this matter, and, as discussed herein and in the Safety Order, the performance mechanism is not intended to punish any utility. O&R's reliance on Miller v. NYS Dept. of Taxation and Finance, 263 A.D.2d 604 (3d Dept. 1999) is inapposite. That case dealt with a management/labor dispute and the demotion of an agency employee. The facts, circumstances, and applicable law in that case are separate and distinct from those applicable here and are not controlling.

The Amount at Issue is Not Arbitrary

In their comments on the Staff Proposal, the utilities argued that the amount of revenue adjustment was arbitrary and unreasonable. We rejected those arguments in the Safety Order, explaining that the amounts were set at levels in excess of the estimated costs of compliance, thereby averting the possibility that a utility may determine that it is more economic to pay the adjustment than comply with the safety standards.²²

As to the concerns about the standard of “full compliance” with the testing and inspection requirements, we recognize that perfection is likely unachievable. It is not our intent to impose a revenue adjustment for an insignificant omission. The utilities are directed to conduct stray voltage testing and inspection programs designed to test all and inspect approximately 20% of their facilities annually. Although the utilities are required to fully implement the programs, waivers are available in extraordinary circumstances.

The revenue adjustment would apply if a utility failed to design or implement either or both of the testing and inspection programs properly. For example, if a utility designed its program to test only 80% of its poles on an annual basis, the revenue adjustment would apply. If a utility’s inspection program is designed to inspect 20% of its facilities each year and the utility chooses to withhold full or partial funding for or dedicate an insufficient level of resources to the program, the revenue adjustment would apply. If we determine, based on Staff’s audit of a utility’s records and after appropriate procedures, that the utility has improperly certified compliance, the revenue adjustment will apply.

The utilities argue that the performance mechanism may cause them to defer other operation and maintenance activities. As we discussed in the Safety Order, the utilities are required by PSL §65(1) to operate and maintain their electric systems safely and adequately. The Safety Order provides consideration of requests for recovery of incremental expenses associated with implementing the safety standards. Thus, the utilities are required to obtain sufficient resources to carry out general operation and

²² Safety Order, pp. 39-41.

maintenance activities and to comply with the safety standards. For example, if the utilities determine that they need to hire additional employees or contractors to accomplish all activities, there are no prohibitions to their doing so. Accordingly, we reject as unfounded and meritless the utilities' contentions that they will have to drain resources from other programs to ensure compliance here.

The modifications to the testing schedule for 2005 impact the performance mechanism because the revenue adjustments are proportional to the costs required to comply with the requirements. Therefore, the revenue adjustment applicable to stray voltage testing for the first year is reduced by 50%, or 37.5 basis points. This modification applies to all utilities except Con Edison because the stray voltage schedule change did not apply to that company. The revenue adjustment will remain unchanged from that outlined in the Safety Order for subsequent years.

Customer-Owned Facilities

The Safety Order requires that, in instances where stray voltage is detected, utilities notify the customer and immediately and continuously guard the facility until it is made safe, irrespective of who owns the facility causing the stray voltage. O&R's claims were considered before we issued the Safety Order, and we find no reason to reconsider our decision on this aspect of the Order.

There are a multitude of scenarios involved with customer-owned equipment, and the actions necessary to protect the public from exposure to stray voltage emanating from such equipment will vary and are best determined on a case-by-case basis. Accordingly, it is not appropriate to prescribe what those actions should be, or conversely, what they need not include, or to specify how a utility should contact the customer about the unsafe condition. Each utility is required to exercise its reasonable judgment, based upon its experience and responsibility to guard against dangerous conditions that may affect the public safety, to take the actions necessary to protect the public, and to minimize the safety risk.

Other Matters

Notification Requirements

The Safety Order requires the utilities to notify Staff of various events involving their systems, including outages and accidents. The Order also specifies the manner in which such notifications are to be made. In implementing these requirements, Staff reports that the expansive use of personal digital assistants and other devices make possible electronic notifications that may be more effective and useful than telephone calls. For example, electronic notifications result in the creation of records of the information provided and can be more easily and quickly disseminated to appropriate personnel.

Providing Staff some flexibility in and facilitating the communication of information related to the events enumerated in Appendix B of the Safety Order is appropriate. Therefore, we authorize the Director of the Office of Electricity and Environment to prescribe the specific manner of providing notice to the Department, except where the manner of notification is specified in 16 NYCRR §125.4, and correspondingly modify the Event Notification Requirements. In all other aspects, the requirements remain the same. The modified version of the requirements is attached hereto as Appendix B.

Technical Evaluation Program

O&R proposes a technical evaluation program to collect and evaluate data related to the stray voltage testing, with NYSERDA managing the study. All of the utilities filing petitions for rehearing commented on the need for future stray voltage testing to be based on the results of the programs.

It is our intent to continuously monitor and evaluate the effectiveness and design of the safety standards. While the utilities may submit independent analyses for our review and potential use in determining if future modifications to the testing and

inspection programs are warranted, we do not find it necessary to establish a formal technical evaluation program, separate from Staff's monitoring and evaluation efforts.²³

Applicability of Modifications

The City stated that, because Con Edison did not file a petition for rehearing, any modifications to the safety standards adopted in this Order should not apply to Con Edison. We reject this proposal. To the extent that we are modifying the basic provisions of the safety standards, and unless otherwise stated, the modified standards apply to all utilities.

CONCLUSION

The Safety Order adopted safety standards that were a major step in improving the safety of the public and enhancing electric utility reliability. The modifications discussed in the body of this Order and reflected in Appendix A are made to ensure stray voltage testing is conducted in a responsible manner. All comments submitted were considered, and our decisions balance the interest and needs of the utilities, ratepayers, and the public.

The Commission orders:

1. The petitions for rehearing of Central Hudson Gas & Electric Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Rochester Gas and Electric Corporation, and Orange and Rockland Utilities, Inc. are granted in part, to the extent discussed in the body of this Order, and are otherwise denied.
2. The petitions for waiver are moot based on modifications to the safety standards discussed in the body of this Order.

²³ The utilities should not interpret this discussion as authorization to commission, and seek recovery for, extensive or expensive analyses of the safety standards.

3. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

ELECTRIC SAFETY STANDARDS

SECTION 1: DEFINITIONS

- (a) Utilities – The term "utilities" includes all investor-owned and municipal electric corporations subject to the Commission's jurisdiction that own or operate transmission or distribution facilities, whether fully or lightly regulated. For publicly accessible facilities, the term also applies to lightly regulated electric companies subject to our jurisdiction, including those that own or operate electric generating facilities within the State, as appropriate.
- (b) Electric facilities – The term “electric facilities” means and refers to all electric plant, as that term is defined in Public Service Law §2(12), that is used to modulate, transmit, and/or distribute electricity, or is related to its modulation, transmission, and/or distribution. The term “overhead facilities” generally includes the electric facilities that are part of a utility’s overhead distribution system (e.g., the system that serves rural areas and includes towers, poles, and aerial cable and conductors). The term “underground facilities” generally includes the electric facilities that are part of a utility’s underground distribution system (e.g., the system that serves urban areas and includes manholes, service boxes, and underground cable and conductors).
- (c) Stray Voltage –The term “stray voltage” means voltage conditions on electric facilities that should not ordinarily exist. These conditions may be due to one or more factors, including, but not limited to, damaged cables, deteriorated, frayed or missing insulation, improper maintenance, or improper installation.
- (d) Streetlights – The term “streetlights” means and includes utility- and municipal-owned streetlights located on, along, or adjacent to public thoroughfares and areas and traffic signal poles and devices; it does not include privately-owned light fixtures, such as those located in private parking lots.
- (e) Stray Voltage Testing – The process of checking an electric facility for stray voltage using a hand-held device capable of reliably detecting and audibly and/or visually signaling voltage in the range of 8 to 600 volts.
- (f) Inspection – A careful and critical examination of an electric facility by a qualified individual to determine the condition of the facility and the potential for it to cause or lead to safety hazards or adverse effects on reliability.

SECTION 2: NATIONAL ELECTRIC SAFETY CODE COMPLIANCE

- (a) The installation, construction, maintenance, and operation of electric facilities shall comply with the latest version of the National Electric Safety Code (NESC), except where a utility’s practices, procedures, and protocols are more stringent.
- (b) Utilities are not required to retrofit their existing facilities to comply with the latest version of the NESC, unless the latest version of the NESC requires a retrofit.

- (c) To the extent that projects currently being constructed do not comply with the NESC or a utility's more stringent standards, exemption from compliance will be considered on a case-by-case basis.
- (d) If a utility believes that it cannot satisfy any provision of the NESC for a valid technical reason, it may petition the Commission for an exemption from compliance with that provision.

SECTION 3: STRAY VOLTAGE TESTING

- (a) Stray voltage testing shall be conducted on all electric facilities that are capable of conducting electricity and are publicly accessible. Testing is not required on customer meters and customer-owned facilities, except municipal-owned streetlights.
- (b) Stray voltage testing shall be conducted on all streetlights.
- (c) For underground electric facilities that are publicly accessible, including, but not limited to, manholes, service boxes, and transformer vaults, stray voltage testing shall be conducted on the exposed surfaces of the facilities. Handholes that are constructed of fiberglass or other non-conductive materials need not be tested.
- (d) Stray voltage testing of streetlights shall be conducted when the light is activated (i.e., at night).
- (e) Stray voltage testing shall be conducted on an annual basis.
- (f) If a streetlight to which a utility provides service is owned by another entity, and that entity conducts stray voltage testing meeting these safety standards, the utility may substitute that testing program for its own, provided the utility can certify the other entity's results.
- (g) All equipment used for stray voltage testing must be certified by an independent test laboratory as being able to reliably detect voltages of 8 to 600 volts.
- (h) Any facility for which the testing device indicates the presence of voltage shall be guarded by the utility immediately and continuously until the utility has eliminated the stray voltage and made the area safe. The utility must take corrective action irrespective of whether the stray voltage is determined to be caused by its own or a customer-owned facility.
- (i) In each instance where stray voltage is determined to be caused by a utility-owned facility, best efforts shall be used to effect a permanent repair of the facility as soon as possible, but not later than 45 days after discovery of the stray voltage condition. A temporary repair to the facility may remain in place for more than 45 days only in extraordinary circumstances, and in such event the utility shall periodically perform site visits to monitor the condition of the temporary repair. All exceptions must be identified and justified as part of the reporting requirements under Section 9.

- (j) In instances where stray voltage is determined to be caused by customer-owned equipment, the area must be immediately made safe. The utility shall immediately notify the customer or a responsible person associated with the premises or the customer-owned facility of the unsafe condition and the need for the customer to arrange for a permanent repair to the customer's equipment.

SECTION 4: INSPECTIONS

- (a) Inspections shall include, at a minimum, visual examination of towers, poles, guy wires, risers, overhead cables and conductors, transformers, breakers, switches, and other aboveground equipment and facilities, and of the interior of manholes, service boxes, vaults, and other underground structures. Where debris or water is found in an underground structure, it must be removed before commencing the inspection so that all of the facilities in the structure, and the structure itself, may be fully inspected. Fiberglass handholes used in underground residential distribution systems are exempt from the interior inspection requirement.
- (b) Inspection of equipment should be performed in a manner that allows the inspector to examine its components, except those that are ordinarily encased in sealed compartments. Utilities need not perform destructive testing as part of this inspection program, except as otherwise required by their more intensive inspection procedures.
- (c) When a visual inspection indicates the need for a more intensive examination, the utilities shall perform infrared testing and/or other inspection procedures.
- (d) When an inspection reveals a hazardous condition or other problem, whether related to stray voltage or otherwise, the utility must make all repairs necessary to eliminate the condition.
- (e) All electric facilities shall be inspected at least once every five years. Certain facilities may warrant shorter inspection cycles.
- (f) Each utility shall develop and implement a formal inspection program that complies with these safety standards.
- (g) Inspections conducted during routine maintenance and other work not directly related to the inspection program may count as an inspection visit, provided that the inspection is performed using the same safety and reliability criteria and to the same extent as would otherwise be required under these standards. Inspections occurring during these field visits must be properly documented and certified.
- (h) This inspection requirement is intended to complement, not supplant, the inspections any utility already performs; to the extent a utility's inspection program is broader or more intensive than the program described herein, the utility should continue to follow its own program.

- (i) The testing and inspection programs may be combined, where practical and feasible, provided the synergy satisfies all the requirements contained within these safety standards.

SECTION 5: QUALITY ASSURANCE

Each utility shall develop a quality assurance program to ensure timely and proper compliance with these safety standards.

SECTION 6: RECORDKEEPING

- (a) Each utility shall develop procedures and protocols to track the stray voltage testing dates and results for each electric facility.
- (b) Each utility shall develop procedures and protocols to track the inspection dates and results for each electric facility.
- (c) These records shall be kept in a manner that is readily accessible and searchable, continuously updated, and subject to review and audit by Staff and the Commission.

SECTION 7: CERTIFICATION

- (a) Written certification of the completion and results of every stray voltage test and inspection undertaken and that all unsafe conditions identified have been remediated shall be made by an appropriate utility employee.
- (b) The President or officer of each utility with direct responsibility for overseeing stray voltage testing shall provide an annual certification to the Commission that the utility has exercised due diligence in carrying out a plan designed to meet the stray voltage testing requirements, including quality assurance, and, to the best of the officer's knowledge, the utility has tested all of its publicly accessible electric facilities and streetlights, except those identified in the January 15 report.
- (c) The President or officer of each utility with direct responsibility for overseeing facility inspections shall provide an annual certification to the Commission that the utility has exercised due diligence in carrying out a plan designed to meet the inspection requirements, including quality assurance, and, to the best of the officer's knowledge, the utility has inspected the requisite number of electric facilities. Additionally, at the end of five-year inspection cycle, the officer shall certify that the utility has exercised due diligence in carrying out a plan designed to meet the inspection requirements, including quality assurance, and, to the best of the officer's knowledge, the utility has inspected all of its electric facilities during the previous five year period, except those identified in the January 15 report.

- (d) Each utility shall maintain its written certifications and other documentary proof of its testing and inspections at its corporate office located within the State of New York. These documents shall be available to the public for review upon request and without conditions.

SECTION 8: NOTIFICATION REQUIREMENTS

Each utility shall comply with the Event Notification Requirements attached hereto.

SECTION 9: REPORTING REQUIREMENTS

- (a) Each utility shall file a report, within 45 days of the date these safety standards take effect, that provides: (i) the details of its voltage testing program; (ii) the details of its inspection program; (iii) the safety criteria it will apply as part of each program; (iv) an inspection schedule that demonstrates how the utility will comply with the requirement to inspect all of its electric facilities at least once every five years; (v) the details of its quality assurance program; (vi) its plans to train its employees and contractors to perform the testing and inspections; and (vii) a description of any research and development activities the utility is conducting or plans to conduct related to stray voltage and safety issues.
- (b) Each utility shall file a comprehensive report by January 15 each year that:
 - 1. details the results of stray voltage tests and inspections conducted over the 12-month period ending November 30 of the prior calendar year;
 - 2. addresses the performance mechanism specified in Section 10;
 - 3. contains the certifications described in Section 7;
 - 4. discusses the analyses undertaken on the causes of stray voltage within the utility's electric system, the conclusions drawn there from, the preventative and remedial measures identified, and the utility's plans to implement those measures; and
 - 5. includes all other information that is pertinent to the issues addressed by the safety standards.

SECTION 10: PERFORMANCE MECHANISM

- (a) The annual performance target for stray voltage testing shall be 100% of all electric facilities and streetlights that must be tested. Facilities that are inaccessible and which pose no risk to public health and safety will not be considered in the determination of whether the target has been achieved.
- (b) Failure to achieve the annual performance target for stray voltage testing shall result in a rate adjustment of 75 basis points.

- (c) For the first year of stray voltage testing, the performance target shall be 100% of all streetlights and electric facilities served by underground utility systems. Failure to achieve this performance target shall result in a rate adjustment of 37.5 basis points.
- (d) The annual performance target for inspections shall be based on the percentage of the average number of electric facilities that must be inspected each year in order to comply with the five-year inspection cycle. That is, the target is based on the one-fifth of the total number of the utility's electric facilities. The specific targets will be as follows:
- | | | |
|-----------------------------------|------|-----------------------------------|
| First year inspection goal | 85% | of annual target |
| Second year inspection goal | 90% | of annual target |
| Annual inspection goal thereafter | 95% | of annual target |
| Fifth year inspection goal | 100% | of all facilities to be inspected |
- (e) Failure to achieve the annual performance target for inspections shall result in a rate adjustment of 75 basis points.

EVENT NOTIFICATION REQUIREMENTS**ALL NOTIFICATIONS SHALL BE MADE WITHIN ONE HOUR OF AN
INCIDENT OR EVENT UNLESS OTHERWISE SPECIFIED****I. System Control - Reports of Impending Emergencies, Emergencies, and Load
Curtailment**

A. Requests for curtailed electric use, voltage reductions, and load shedding initiated to maintain the adequacy of the electric system and significant bulk supply outages or accidents of consequence are to be reported to the Office of Electricity and Environment. The specific items to be brought to the Office's attention are as follows:

1. Any decision to issue a request for customer reduction in use of electricity. The Office of Electricity and Environment is to be notified at the time of decision to issue any such request.
2. Any action to maintain the adequacy of the bulk electric system by reducing firm customer loads by voltage reductions, manual switching, operation of automatic load shedding devices, or any other means. The Office of Electricity and Environment is to be notified at the time of decision to take such action.
3. Any bulk supply outage that has, or could have, a significant impact on the utility's electric system or the state-wide system.

B. The following information is to be included in the reports:

1. For Items I.A.1. and I.A.2., the utility shall provide the approximate area(s) affected, the time(s) of the action, the time(s) and/or an estimate of the time(s) of restoration of normal service (or cancellation of a customer request), an estimate of the amount of load reduction expected or load interrupted, and the number of customers affected if load is interrupted.

2. For Item I.A.3., the utility shall provide a description of the incident and events leading to its occurrence, the time of occurrence, the system(s) affected, and an evaluation of the effect on the system(s).

II. Loss of Electric Service

- A. Written reports of electric service interruptions of five minutes or more are required by 16 NYCRR Part 97. Such reports are to be prepared in accordance with the regulations and submitted to the Office of Electricity and Environment.
- B. Additionally, notice is to be made for each of the following events:
 1. Loss of electric service to 5,000 customers or more lasting 30 minutes or more.
 2. Any loss of a distribution system network.
- C. Notice of these events occurring after business hours shall be made no later than 8:30 a.m. of the next business day, unless they receive significant media attention, in which case notice shall be provided within one hour.
- D. The following information should be provided in the notice:
 1. The approximate territory affected.
 2. The date and time of the incident causing the interruption.
 3. The expected duration of the interruption.
 4. If restored at the time of the call, the date and time of restoration.
 5. The number of customers affected and amount of load involved.
 6. A listing of any critical services affected.
 7. A description of the incident and its cause.
 8. Any follow-up actions planned.

III. Reports of Personal Injury Accidents

- A. Written and telephone notification of electric system personal injury accidents and deaths are required by 16 NYCRR Part 125. This requirement applies to all electric system accidents that result in injury or death to a non-employee and/or inpatient hospitalization or death to an employee or contractor employed by the utility, including accidents that occur at generating plants.
- B. All written and telephone reports are to be made in accordance with the regulations and the following requirements and submitted to the Office of Electricity and Environment.
 - 1. Reports for accidents, except those involving a fatality or major media attention, occurring after business hours shall be made no later than 8:30 a.m. of the next business day.
 - 2. Written reports shall be made using the Department's standard form and may be submitted via e-mail or fax.
 - 3. Telephone reports should include the following information:
 - a. The location of the accident.
 - b. The date and time of the accident.
 - c. Whether or not the injured party is a utility employee or contractor.
 - d. A description of the injuries sustained and the status of the injured party.
 - e. A description of the accident and its cause.
 - f. The time the utility received notification of the incident.
 - g. The time the first utility personnel arrived at the scene.
 - h. The time qualified utility personnel arrived at the scene (i.e., personnel capable of addressing any safety hazard).
 - i. Whether response operations were affected until utility personnel arrived.

IV. Report of Shock Incidents and Motor Vehicle Accidents

- A. All electric shock incidents that do not involve personal injuries shall also be reported.
- B. Electric shock incidents involving animals shall be reported.
- C. Motor vehicle accidents involving utility facilities and/or utilities vehicles in which there is a personal injury shall be reported.
- D. All reports of these incidents are to be submitted to the Office of Electricity and Environment. The Director of the Office of Electricity and Environment shall prescribe the manner in which the reports are to be provided.
- E. Reports for incidents occurring after business hours shall be made no later than 8:30 a.m. of the next business day.
- F. The reports should include the following information:
 - 1. The location of the incident.
 - 2. The date and time of the incident.
 - 3. Whether or not the party who was shocked or injured, as appropriate, is a utility employee or contractor.
 - 4. A description of the condition of the affected party, and, as appropriate, of the injuries sustained.
 - 5. A description of the incident and its cause.
 - 6. The time the utility received notification of the incident.
 - 7. The time the first utility personnel arrived at the scene.
 - 8. The time qualified utility personnel arrived at the scene (i.e., personnel capable of addressing any safety hazard).
 - 9. Whether response operations were affected until utility personnel arrived.

V. Unusual Events**A. Major Events**

Immediate notification is to be made for major events associated with a utility's electric system that will likely result in considerable media attention. Examples of major events include, but are not limited to, load shedding, catastrophic storm emergencies, boiler explosions, or nuclear radiation releases.

Immediate notification is also to be made whenever a utility's corporate emergency command center (e.g., storm center) becomes operational.

B. Media Attention

Incidents involving utility facilities that are likely to receive attention from the news media are to be reported immediately. Examples of such events include, but are not limited to, fires, manhole explosions, equipment damage of \$1 million or more, and nuclear plant incidents.

VI. Manner of Notification

Except where otherwise noted above, the Director of the Office of Electricity and Environment shall prescribe the manner in which notice to Staff is to be provided.