

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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

RULING ON PROCEDURE AND SCHEDULE

(Issued September 27, 2006)

ELEANOR STEIN, Administrative Law Judge:

A Procedural Conference was held on September 15, 2006, to discuss, on the record, procedures and schedule for the development of the record in this case. In attendance were Department of Public Service Staff (Staff); Consolidated Edison of New York, Inc. (Con Edison); the New York State Assembly majority<sup>1</sup>; the Attorney General; Consumer Protection Board (CPB); New York City Economic Development; City of New York; and Public Utility Law Project (PULP) (via telephone).<sup>2</sup>

Parties, including the Attorney General, the Assembly majority, and the City of New York, expressed their strong interest in participating actively in this case given a meaningful opportunity to do so, either in addition to or as a substitute for their own investigations into recent outages. The procedure adopted here reflects and incorporates the party participation to date.

The Procedural Conference

Issues discussed at the Procedural Conference were:

(1) Scope of this proceeding - including the relationship of this proceeding to the audit proceeding and the petition filed

---

<sup>1</sup> Assembly member parties were represented by Assembly majority counsel, and include members of the Assembly majority who petitioned on September 13, 2006 for the Commission to institute a further proceeding pursuant to Public Service Law §§66(12)(k) and 66(5).

<sup>2</sup> Western Queens Power for the People was not able to send a representative, but had spoken with Staff members and PULP.

September 13, 2006 seeking the institution of a prudence proceeding; (2) Party participation in the Staff investigation; (3) Public involvement and participation; (4) Schedule; and (5) Confidentiality.

As to scope, parties questioned Staff as to the breadth of its investigation, Staff responded that the investigation encompassed the full scope of the 13 points listed by the Commission in its Order Instituting Proceeding and Directing Staff Investigation,<sup>3</sup> which go beyond the immediate events of July and August 2006, and beyond the scope of the Con Edison review of its preparation and system restoration performance filed on September 25, 2006.<sup>4</sup>

The substantive discussion concerned how to involve parties in the Staff investigation while at the same time not hampering Staff's progress, on a schedule allowing Staff to present a report to the Commission in December 2006. On the table are three mechanisms (in addition to the ongoing discovery) to allow other parties access to Staff's information and thinking, and to the underlying data from Con Edison: (1) Con Edison proposes a "technical conference" at which Con Edison would present to parties its Part 105 Compliance Filing and its

---

<sup>3</sup> Case 06-E-0684, *Investigation of the Electric Power Outages in Consolidated Edison's Long Island City Electric Network*, Order Instituting Proceeding and Directing Staff Investigation (Instituting Order), issued July 26, 2006, pp. 3-4.

<sup>4</sup> Such review is required by Commission regulation, 16 NYCRR §105.4(c), which provides that "[w]ithin 60 days following completion of service restoration in an emergency where the restoration period exceeds three days, each electric corporation shall submit to the Secretary of the Public Service Commission a review of all aspects of its preparation and system restoration performance." This review, titled "Power Outages in Northwest Queens July 2006" (Part 105 Compliance Filing) was filed on September 25, 2006. Con Edison withdrew a September 18, 2006 extension request by letter to the Secretary dated September 22, 2006. Con Edison also informed the Secretary, as it has since informed the parties to this proceeding, that it will file what it termed "the more comprehensive report on the event" by October 12, 2006.

further comprehensive report, due October 12, 2006 and make available for discussion subject matter experts familiar with its contents; (2) a technical conference more along the lines of such previous PSC conferences, where Staff and possibly other parties, conducts questioning and discussion with Con Ed experts, including questions contributed by the other parties, and an expert-to-expert discussion goes on the record, open to all parties and not limited to the Con Edison report; and (3) Staff briefings or presentations to parties other than Con Edison concerning how the Staff investigation is developing.

Parties discussed the options available to ensure their input in the Staff investigation. Parties were prepared to comment on a draft Staff report prior to its submission to the commission, but expressed concern about their access to sufficient information, as the Staff investigation proceeded, to comment effectively on what they expected to be a lengthy, detailed, and technical draft Staff report. Parties were asked to comment, by September 20, 2006, on their preferences or concerns regarding these choices, singly or in combination, or to propose other processes that might better accomplish the objective of affording parties a full opportunity to obtain and review information concerning the 13 issues listed in the Instituting Order.

#### Proposals for Party Participation

Procedural proposals were received from Staff, the City of New York, and Con Edison.<sup>5</sup> As to the issue of parties' opportunity to comment on a draft of Staff's report, Staff proposes to provide parties its draft Report and Recommendations on or about December 1, 2006. Staff suggests parties be given two weeks to comment, and that it will endeavor to complete its final Report and Recommendations by December 29, 2006, to be submitted subsequently at a Commission session. New York City, in contrast, argues that it has retained eight experts to

---

<sup>5</sup> The Assembly majority reserves its rights without making specific proposals.

conduct its own extensive discovery as to the causes of the LIC outage and to recommend remedial steps, opposes a process that would limit it and other parties to a two or three-week period to review and comment upon a draft Staff Report, preferring to file formal comments on the Report prior to any Commission decision, in order to assure a complete evidentiary record. In any event, the City urges that the Commission not take action before a formal comment process.

As to the establishment of a process for parties to participate actively in the information-gathering phases of this proceeding, parties make several proposals. Staff proposes that, if a technical conference is held, it consist of a one-day, on-the-record, session opening with a presentation by Con Edison of its Part 105 Compliance Filing and its expected October 12 comprehensive analysis, followed by question and answer on these reports and then general question and answer regarding the Long Island City outages and related issues. Staff offers to arrange and conduct briefings with active parties, with the exception of Con Edison. Con Edison proposes, as it did at the Procedural Conference, a panel of its subject matter experts to present on the report, and to answer questions; it agrees to do so on the record, with the reservation that if the conference includes more informal exchange between Con Edison's experts and those of the other parties, it prefers to do so off the record. The City of New York supports an interactive technical conference to address the Con Edison Part 105 Compliance Filing and comprehensive report and, in addition, separate briefings by Staff with parties as to other issues.

Ruling on Party Participation and Schedule

A set of procedures and a working schedule is adopted that ends with the presentation by Staff to the Commission of its final report and recommendations. The objective of these procedures and schedule is to ensure party participation and information without prejudicing the ability of the Staff team to complete its investigation and make recommendations.

1. Staff will make available to all parties, except Con Edison, informal, off-the-record briefings on its investigation to date, using a format and under a schedule to be developed by the participants. Because these briefings are not open to all parties, I will not attend them.
2. Pursuant to Commission Rules of Procedure 5.3(a) and (c), I request that parties copy me electronically on all information requests and responses, but not on related correspondence, if any.<sup>6</sup>
3. Con Edison will file with the Secretary to the Commission what it terms its "comprehensive report" no later than October 12, 2006.
4. An on-the-record technical conference addressing those reports will be convened on Thursday, October 26, 2006, at 9:00 A.M., to be continued as necessary on Friday, October 27, at 9:00 A.M. at the New York City offices of the Commission, for the questioning of Con Edison subject matter experts and for discussion among experts. As to the question of the specific format of the Technical Conference, including whether or not parties will be required to funnel their questions through Staff Counsel, judgment is reserved until later in the process. In addition, judgment is reserved as to whether or not additional technical conferences or other procedures to augment the evidentiary record will be appropriate.
5. An additional round of Public Statement Hearings will be scheduled, to be held on Tuesday October 24, 2006 (one in the afternoon and one in the evening) and on Wednesday October 25, 2006 (same). In conjunction with the public statement hearing, Consumer Services Staff will conduct a brief public forum to update ratepayers, the community, and others on the status of the reconstruction and the investigation. Staff is

---

<sup>6</sup> 16 NYCRR §§5.3(a), (c).

working with one party, Western Queens Power for the People, to identify appropriate sites and translation needs.

6. Staff will file with me and serve upon all parties its draft report on December 1, 2006. At that time I will establish a comment period for parties to respond to the draft report.
7. An accompanying ruling incorporates and adopts the protective agreement reached by parties with the additional proviso that paragraph 7 is modified to require Con Edison, should it refuse to give a party other than Staff access to confidential materials, to assert it is "not authorized by law" to disclose such information to a requesting party.

(SIGNED)

ELEANOR STEIN