

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 19, 2020

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman, concurring
James S. Alesi
Tracey A. Edwards
John B. Howard

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

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

ORDER INSTITUTING PROCEEDING AND TO SHOW CAUSE

(Issued and Effective November 19, 2020)

BY THE COMMISSION:

INTRODUCTION

During the summer of 2019, Consolidated Edison of
New York, Inc. (Con Edison or the Company) experienced two
sizable outage events eight days apart. The first occurred on
Saturday, July 13, 2019, at approximately 6:47 p.m. This four-
hour and fifty-minute outage caused approximately 73,000
customers to lose electric service on Manhattan's West Side from
5th Avenue to the Hudson River, and from 31st Street to 71st
Street. The second outage event occurred in the Flatbush,
Brooklyn part of the system on Saturday and Sunday, July 21-22,
2019, and resulted in the loss of electric service to
approximately 33,000 customers.

Smaller-scale outage incidents also occurred during the summer of 2019 in other parts of the Company's service territory, including Staten Island and Queens.¹ While the underlying causes and conditions of these customer outages were different, the Manhattan and Brooklyn outage events led the Department of Public Service (Department) to question the Company's performance during these events and the Company's efforts to communicate critical outage information to customers, first responders, and elected officials.

As a result, Department staff (Staff) began an investigation of the causes of and Company's performance during these outage events. Staff's investigation considered whether, in preparing for and responding to these outages, Con Edison complied with the Public Service Law (PSL), its Emergency Response Plan (ERP),² the Outage Notification Incentive Mechanism (ONIM) (a communications requirement imposed on the Company as part of a proposed 2002 merger), and Commission regulations and orders. Staff also evaluated whether the Company actions were prudent.³

¹ These incidents include approximately 11,750 customer outages in the Jamaica network of Queens on July 21, nearly 3,000 customer outages in the Fox Hills load area of Staten Island on July 16, and approximately 1,400 customer outages in the Livingston section of Staten Island on July 14, 2019.

² PSL § 66(21) requires these filings to be made on or before December 15 for the following calendar year. Also, Commission regulation 16 NYCRR Part 105 requires compliance with the effective ERP and requires annual ERP filings.

³ Case 18-E-0717, In the Matter of the December 15, 2018 Electric Emergency Plan Review, Order Approving Amended Electric Emergency Response Plans (issued July 11, 2019) (ERP Order).

The Department's detailed thirteen-month investigation into the outages, which included interviews, reviewing thousands of pages of technical and business documents, and stakeholder discussions, examined the communications used by Con Edison to inform customers, emergency management personnel, governmental officials, and the media of the Company's response and restoration efforts, as well as the Company's operational performance. Lastly, the Department investigation considered whether there are any lessons learned and best practices that should be implemented by the Company in the future.

This investigation resulted in a report (Department Report) that included, among other things, recommendations regarding the two outage events. For example, the Department Report included 13 recommendations related to the Manhattan outage event focused on the Company's inspection and testing of transformers and relays, the need to improve its system monitoring, and improvements in communications and technical drawings provided to its employees and contractors working on its electric system. With respect to the Brooklyn outage, the Department Report made 27 recommendations related to various switches used by the Company, the testing and maintenance of cables, the development of and improvement of operation and restoration plans for the Brooklyn four kilovolt (kV) grid during similar events, clear instructions on when the Company's personnel should call a "code yellow" or "code red" during outage events, and various recommendations to address the need for improvements to Con Edison's communications with customers, first responders, and various stakeholders, including the need to adhere to its ERP and ONIM.

The Department also engaged an independent technical panel of experts (Panel) to review the Manhattan and Brooklyn events that focused on the technical aspects of the outages.

The Panel's conclusions and analysis, included in the Department's Report, resulted in similar findings and 27 recommendations based on its review of the Manhattan outage related to the Company's cable testing and maintenance, relay timing and maintenance, transformer operation and maintenance, and recommendations on how the Company should implement its recommendations. As for the Brooklyn outage, the Panel made 21 recommendations regarding cable testing and maintenance, relay timing and maintenance, improvements and changes to breaker testing, transformer operation and maintenance, and mechanisms to implement the Panel's recommendations.

Con Edison also performed its own review into causes of the outages and its actions during the events. Con Edison also provided reports to the Department explaining why it undertook certain actions and included self-identified recommendations, which were reviewed as part of the Department's and Panel's investigations.

Of note, the Department Report also identified facts and credible evidence that, after review by Department counsel, were found to pose potential regulatory violations and questions concerning whether the Company's actions or omissions were prudent.

As discussed in more detail below, Con Edison is directed to show cause why the Commission should not commence a review of the prudence of its actions and/or omissions prior to, during, and after the Manhattan and Brooklyn outages, and pursue civil penalties pursuant to PSL § 25 and/or administrative penalties pursuant to PSL § 25-a and the Outage Notification Incentive Mechanism. Con Edison is also directed to show cause why it should not implement and incorporate the Department Report recommendations into its ERP, ONIM procedures, and its internal processes and procedures. The Commission's inquiry

here may be supplemented by examination of previously issued Commission orders related to prior outages in Con Edison's service territory. Specifically, should the Commission find that Con Edison's acts or omissions in this proceeding constitute repeated violations of the PSL, it would be authorized through a separate process to determine whether to revoke or modify Con Edison's Certificate of Public Convenience and Necessity (Certificate) as it relates to the Company's service area or any portion thereof.⁴

LEGAL AUTHORITY

PSL § 65(1) requires that utilities provide "service, as shall be safe and adequate and in all respects just and reasonable." PSL § 66(2) empowers the Commission to hold utilities to this obligation, by investing the Commission with both the authority to investigate utilities and their performance and the authority to order utilities to make reasonable improvements that are in the public interest. PSL § 66(21) requires each electric utility to file its ERP on or before December 15 of each year for Commission review and approval, and 16 NYCRR Part 105 specifies the content and information to be included in the utility's ERP.

PSL §§ 25-a(3) and (5) authorize the Commission to commence an administrative penalty proceeding against a combination gas and electric corporation to determine whether it violated the PSL or an order or regulation adopted pursuant to the PSL. The Commission may assess a civil penalty in an amount not to exceed the greater of \$500,000 or "four one-hundredths of one percent of the annual intrastate gross operating revenue of the corporation, not including taxes paid to and revenues collected on behalf of government entities, whichever is

⁴ See PSL § 68(2).

greater," with respect to a finding of a violation of "an order or regulation . . . designed to protect the overall reliability and continuity of electric service, including but not limited to the restoration of electric service following a major outage event or emergency."⁵

The Commission is also authorized to commence a case in New York State Supreme Court against a public utility company to assess a civil penalty of \$500,000 for each separate and distinct offense pertaining to a showing that such company "knowingly" failed or neglected to obey or comply with a provision of the PSL or an order or regulation adopted under the PSL "designed to protect the overall reliability and continuity of electric service."⁶

Finally, the Commission is authorized, pursuant to PSL § 68(2), to commence a proceeding to revoke the Certificate of a combined electric and gas corporation, "based on findings of repeated violations" of the PSL or the rules or regulations adopted thereto "that demonstrate a failure of such corporation to continue to provide safe and adequate service." Whenever the Commission has reason to believe that a combined electric and gas corporation's Certificate may be subject to revocation or modification, it is required to "notify such corporation of the facts and nature of each act or failure to act allegedly warranting such revocation or modification, and the statute, regulation or order allegedly violated."⁷ The Commission is otherwise authorized to "consider the following factors" in determining whether revocation or modification of the Certificate is appropriate:

⁵ PSL § 25-a(5).

⁶ PSL §§ 24, 25(4).

⁷ PSL § 68(2).

(a) the factors identified in subdivision one of this section for issuance of a certificate of public convenience and necessity;

(b) whether another person, firm or corporation is qualified, available, and prepared to provide alternative service that is adequate to serve the public convenience and necessity, and that the transition to such alternative person, firm or corporation is in the public interest; and

(c) upon any other standards and procedures deemed necessary by the commission to ensure continuity of safe and adequate service, and due process.⁸

Outage Notification Incentive Mechanism

In addition to the obligations under its ERP, Con Edison is also bound by specific criteria that measure its customer notification performance during outage events through its ONIM.⁹ The ONIM is a component of Con Edison's customer service quality incentive mechanism and was established by the Commission in a 2002 order.¹⁰ The ONIM identifies specific actions that Con Edison must perform using a variety of communication vehicles. Thereafter, in Con Edison's 2004 rate case, the Commission increased the financial consequences (negative revenue adjustments) for not complying with ONIM requirements.¹¹ In 2020, the Commission again increased the level of negative revenue adjustment for each activity

⁸ Id.

⁹ Case 00-M-0095, Joint Petition of Consolidated Edison, Inc. and Northeast Utilities - Approval of a Certificate of Merger, Order Approving Outage Notification Incentive Mechanism (issued April 23, 2002) (ONIM Order).

¹⁰ Case 00-M-0095, supra, Opinion and Order No. 00-14 (issued November 30, 2000).

¹¹ Case 04-E-0572, Con Edison - Rates, Order Adopting Three-Year Electric Rate Plan (issued March 24, 2005).

prescribed in the ONIM Order.¹² Performance that fails to meet the applicable threshold performance standard will result in a negative revenue adjustment of \$300,000, twice the level previously set.

Activities listed in the ONIM include: contacting the New York City Office of Emergency Management and the Department; sending out a telephone system broadcast message on the general Con Edison customer assistance line; contacting all affected life support equipment customers; contacting city and local government officials who serve in the affected areas; contacting affected critical facilities (e.g., hospitals and nursing homes); notifying the media; and dispatching a mobile command center vehicle to the affected area. Particular ONIM activities may or may not apply depending on whether the outages occur in locations supplied by a single area substation or are more widespread in nature.

The ONIM also establishes time periods when the communications should be completed, which varies based on the extent of the event. In addition to the timeliness of performance, Con Edison's compliance is measured on the content of the information conveyed. Finally, the ONIM requires that Con Edison submit to the Department a review of how it performed under the ONIM following triggering events.

Prudence Standard

Prudence, an essential component of utility regulation, is determined by judging whether the utility acted reasonably under the circumstances at the time, "considering that the company had to solve its problems prospectively rather

¹² Case 19-E-0065, Con Edison - Rates, Order Adopting Terms of a Joint Proposal and Establishing Electric and Gas Rate Plans (issued January 16, 2020), Joint Proposal, Appendix 18, at p. 5.

than in reliance on hindsight."¹³ The Commission has stated that, "...in effect, our responsibility is to determine how reasonable people would have performed the task that confronted the company."¹⁴

In general, the Commission's power to investigate the propriety of costs incurred by a utility derives from its duty to set just and reasonable utility rates.¹⁵ That duty may require the Commission to determine which utility costs should be shouldered by the utility's shareholders rather than its ratepaying customers.¹⁶ It would be neither just nor reasonable for a utility's customers to bear the cost of inefficient management or poor planning.

BACKGROUND

The Commission has significant authority to ensure utilities meet their regulatory obligation to provide electric, natural gas, and/or telecommunications services in a safe, adequate and reliable manner.¹⁷ That oversight responsibility encompasses the utilities' emergency response actions during outage events. To ensure that electric utility companies are fully prepared for emergency outages and prompt restoration of service, PSL § 66(21)(a) and 16 NYCRR Part 105 (Part 105) require each major electric utility to submit a comprehensive

¹³ Case 27123, Con Edison - Proceeding to Investigate 1976 Outage of Indian Point No. 2, Opinion No. 79-1, at 6 (issued January 16, 1979).

¹⁴ Id. The standard is not actual knowledge, but one of reasonableness under the circumstances. New York Telephone Co. v. PSC, 190 A.D.2d 217 (3rd Dept. 1993); Long Island Lighting Co. v. PSC, 134 A.D.2d 135 (3rd Dept. 1993).

¹⁵ PSL §§ 66(12), 72.

¹⁶ Rochester Gas & Elec. Corp. v. PSC, 51 N.Y.2d 823, 825 (1980), appeal dismissed, 450 U.S. 961 (1981).

¹⁷ PSL §§ 65(1), 91(1).

ERP to the Commission for its review and approval. The ERPs detail procedures and define roles, responsibilities, and required training to reduce confusion and promote a common understanding of the restoration process.

Under Part 105, each utility is also required to perform restoration efforts in compliance with its ERP and is expected to update its plan after a major event to capture all lessons learned and incorporate all best practices. Utilities are further required to file self-assessment reports of their restoration efforts if they experience an outage with a restoration period exceeding three days.¹⁸ In addition to its ERP, Con Edison is subject to additional requirements in the ONIM, as discussed above.

Manhattan Outage

The Manhattan outage, which began Saturday, July 13, 2019, at 6:47 p.m., affected Manhattan's West Side from 5th Avenue to the Hudson River and from 31st Street to 71st Street. Thereafter, additional related outages within this area occurred at 7:09 p.m., 7:18 p.m., and at 9:17 p.m. In total, 72,669 customers lost electric service.¹⁹ Restoration of customer electric service commenced at 9:58 p.m. and was fully completed by 11:37 p.m. No injuries were reported as a result of this event.²⁰ The cascading sequence of events began with an electrical fault in a distribution cable, following which three N87 relays, located at Con Edison's West 65th Street area distribution substation, mis-operated due to omitted neutral wire connections. The mis-operation of those relays, in turn, caused the disconnection of various transformers and associated

¹⁸ 16 NYCRR § 105.4(c).

¹⁹ Department Report at pp. 5-6.

²⁰ Id. at p. 6.

feeders from area distribution substations directly serving the customer demands of several Manhattan distribution networks. This led to the loss of electric service to the Plaza, Lincoln Square, and Rockefeller Center networks.

Thereafter, Con Edison reduced voltage and then manually disconnected additional components, which had become overloaded, to protect the components and the overall system. This led to the loss of service to the Hudson and Columbus Circle networks at 7:09 p.m. and 7:18 p.m. Later, an overheating transformer at the West 42nd Street substation automatically disconnected, resulting in the loss of service to the Pennsylvania network at 9:17 p.m. Collectively, these automatic and manual disconnections led to the loss of power to various service area distribution substations and six networks in midtown Manhattan. The outage impacted commercial activities, residential buildings, transportation systems, and traffic control. Lights were out in many of New York City's popular nighttime destinations and public venues such as Madison Square Garden, Broadway theatres, Carnegie Hall, and restaurants. The subway system experienced widespread delays and limited service, as the Metropolitan Transportation Authority had to close various stations in Manhattan.²¹

Based on the system design and fact that the weather was normal during the event,²² DPS Staff determined that the transformer de-energizations or overloads that resulted in customer service interruptions would not have occurred had Con Edison acted prudently when a mis-wired 87N Relay was discovered some seven years prior to the outage event. More specifically,

²¹ Id. at p. 7.

²² The temperature was 83°F with calm winds and clear skies, consistent with the forecast. Department Report at p. 7, n. 12.

during Con Edison's system upgrade process for retrofits of relays initiated in 2008, inconsistencies arose between Company and vendor wiring drawings. This led to the omitted ground wiring between sensors and relays, which Department Staff determined was the root cause of the July 2019 relay mis-operations.²³

The Company failed to identify the omitted relay wiring in the vendor drawings it approved in 2008; failed to investigate and determine whether other 87N Relays were installed without a ground wire in 2013; and failed to detect the omitted wiring in commission testing during installation. This represents three separate missed opportunities to detect the missing wiring and points to a significant flaw in work practice review and quality control, which if done correctly, would have avoided the Manhattan outage incident altogether.²⁴

Brooklyn Outage

On Saturday July 20, 2019, the Flatbush system in Brooklyn experienced its first 27kV feeder failure (Feeder 4B17) at 8:19 p.m., which automatically disconnected, establishing a first contingency condition. This failure was due to an electrical fault associated with a failed splice. The loss of the feeder also meant that its associated unit substation was unable to supply the 4kV grid. Additionally, the failed feeder is one of two feeders that supplies the Cropsey Loop and, due to its loss, the Cropsey Loop was fed by one feeder, rather than the two that serve the loop. No customer outages were experienced, and according to Con Edison, its operators immediately began working to restore the feeder, which can

²³ Department Report at pp. 7-8.

²⁴ Id. at pp. 7-8.

typically take between ten and twenty hours from disconnection to restoration.²⁵

At 2:19 p.m. on Sunday, July 21, an internal failure of a breaker at the East 71st Street unit substation removed the 4kV bus from service and automated protective schemes disconnected the unit substation. The supply feeder to this substation remained in service, thereby allowing it to continue to supply the underground network. Since the Company was still in the process of restoring feeder 4B17, and the breaker failure prevented the supply of electricity to the 4kV grid, the 4kV grid was elevated to a second contingency. The Flatbush underground network remained in a first contingency.²⁶

Con Edison began experiencing additional feeder outages on the same day. At 3:59 p.m., a feeder automatically disconnected due to a fault at another splice. The loss of this feeder caused the Flatbush underground network to be in a second contingency and the 4kV grid in a third contingency. With the underground network now at a second contingency, and in accordance with the Company's procedures, the Control Center operators ordered a 5% voltage reduction at the Bensonhurst No. 2 Area substation at 4:07 p.m. to alleviate stress on the feeders.²⁷

At 4:48 p.m. later that day, another feeder automatically disconnected. At the time, Con Edison was unaware of the cause of the fault and proceeded to perform the tasks associated with a faulted cable; namely to locate the failure. After the event, however, the Company found that the feeder disconnected due to the operation of an electromechanical

²⁵ Id. at p. 26.

²⁶ Id. at p. 26-27.

²⁷ Id. at p. 27.

Westinghouse Type CM phase balance relay, and despite no corresponding fault on the feeder. Con Edison stated that its review of Supervisory Control and Data Acquisition (SCADA) data for the two feeders showed an imbalance in their phase currents at the time of disconnection, indicating that the relay operated per design in tripping due to this measurement.²⁸ The loss of service to this feeder resulted in an outage to all 3,600 customers served by the Cropsey Loop.²⁹ The loss of service to this feeder also elevated the Flatbush network to a third contingency and the 4kV grid to a fourth contingency. Seven minutes later, at 4:55 p.m., Con Edison raised the ordered voltage reduction at the Bensonhurst No. 2 substation to 8%, as required by the Company's procedures.

At 5:46 p.m., another feeder disconnected from service due to a faulted splice. As a result, the Flatbush network was elevated to a fourth contingency and the 4kV grid to a fifth contingency. In response to the loss of the feeder at 5:46 p.m., Con Edison operators began to seek options to provide relief beyond the voltage reduction. Operators initially chose to de-energize the supply to three of the four 27-to-4kV stepdown transformers.³⁰ At 7:06 p.m., yet another feeder opened automatically due to a faulted splice. The loss of this feeder elevated the underground network and 4kV grid to a fifth and sixth contingency, respectively. Within the next two minutes, breakers associated with 4kV feeders 3006 and 3042 tripped at their respective unit substations due to overcurrent conditions. It was at this point that Con Edison's operators began to discuss with personnel from the Company's Engineering and System

²⁸ Id. at p. 27.

²⁹ Id. at p. 28.

³⁰ Id.

Operations departments how to proceed with de-energizing the 4kV grid.³¹

Five minutes later, at 7:11 p.m., another feeder, 4B11, disconnected. Following the outage event, the Company determined that loss of this feeder was due to the operation of a Westinghouse Type CM electromechanical relay. System monitoring equipment again showed that there was no fault activity during the time of relay operation. The loss of the 4B11 feeder put the underground network into a sixth contingency and the 4kV grid into a seventh contingency. Due to the loss of the six feeders and the seven unit substations, 4kV grid distribution equipment began to experience overloads.³²

At 7:13 p.m., Con Edison was able to return feeder 4B17 to service, upgrading the Flatbush network and 4kV grid back to a fifth and sixth contingency, respectively. Con Edison still needed to energize the associated substation in order to relieve overloading on the grid and Company operators concluded that they would not be able to do so in time to prevent further cable failures.

At 7:21 p.m., the regional Vice President of Brooklyn/Queens Operations, after conferring with the operators, made the decision to de-energize the 4kV grid in order to prevent a complete shutdown of the Flatbush network, which would have resulted in the loss of service to 132,000 customers and potentially serious damage to system components. Regional operators at the Brooklyn/Queens Control Center requested that operators at the Energy Control Center perform the de-energization. Con Edison was unable to begin de-energizing the

³¹ Id. at p. 29.

³² Id. p 29.

4kV grid until 7:32 p.m. This action interrupted service to nearly 30,000 customers.³³

The Department Report concludes that the Brooklyn Outage was caused due to: improper 27kV and 13.8 kV feeder cable testing and maintenance; improper relay timing and coordination; poor situational awareness; improper transformer operations and maintenance; lack of specific procedures for de-energizing and restoring 4kV grids; and other related issues.³⁴

Communications

Timely and accurate communications are vital to potentially affected customers, first responders, and elected officials, all of whom rely on this information for planning purposes during outage events. Customers, government officials, first responders, and others needing outage related information expect accurate and current information to be provided to them through a variety of outlets. The Department showed that Con Edison's communications during the Manhattan and Brooklyn outage events, however, were inadequate in that they failed to provide timely, accurate, and detailed information about outages, public health and safety, and restoration estimates.

The Department Report alleges that Con Edison chose to limit the release of beneficial information; particularly with respect to details on what actions the Company took to shed load during the Brooklyn event and the basis for such actions, and specific restoration estimates that would have been useful to customers, government officials, first responders, and the public.³⁵ The Company also failed to have robust and proactive

³³ Id.

³⁴ Id. at pp. 34-72.

³⁵ Id. at pp. 77-83, 88-91.

interaction with government officials.³⁶ Notably, the Commission cited Con Edison for similar alleged violations in the context of the Riley and Quinn storms of 2008.³⁷

The Department Report found that both outage events met the ONIM targets requiring Con Edison to file letters regarding the Manhattan and Brooklyn events with the Department on September 11, 2019, and September 23, 2019, respectively. In those letters, Con Edison stated that it satisfied the requirements of the ONIM for both outages, as well as providing a description of actions it had taken to comply.

ALLEGED VIOLATIONS

I. Con Edison ERP Sections 5.2 (Communications with Municipal and Elected Officials) and 6.6.1 (Guiding Principles), Brooklyn Outage, Two Violations

As noted above, the importance of timely, accurate, and effective utility communications with customers, customer groups, elected and government officials, emergency management offices, and the media cannot be overstated, particularly when a utility is confronted with a significant outage event. Reliable and trustworthy communications are critical to informing the public before, during and after an outage event while ensuring the successful restoration of power. It is also imperative that communications are established with customers and key stakeholders as soon as possible, and that the information provided contains clear and precise details that will enable proper preparation and planning.

³⁶ Id. at pp. 66-68.

³⁷ Case 19-M-0285, In the Matter of Utility Preparation and Response to Power Outages During the March 2018 Winter and Spring Storms, 2018 Winter and Spring Storms Investigation, at pp. 112, 114, 120, 127, 135, 139.

These policy imperatives are memorialized as requirements in Section 5.2 of Con Edison's 2019 ERP, which establishes the Company's Communication Officer as the point person with "overall responsibility for communicating emergency recovery information to all relevant federal, state, and local elected officials (or key points of contact)." The key points of contact, in turn, "include but are not limited to: New York City's Office of the Mayor; Community Board District Managers; and Westchester County Municipal and Elected Officials."³⁸

To facilitate these important communications, "each region's respective Corporate Affairs department (a.k.a., 'Government, Regional, and Community Affairs')" is required to "review and update its respective contact lists on a semi-annual basis (April and October)," so as "to ensure that the contact information that the region has is current for the region's elected, municipal, county, and state officials and local departments (e.g., police, fire, highway, and public works), and inclusive of those with whom the region normally interacts during emergencies."³⁹

The Department's investigation revealed, on information and belief, that Con Edison failed to both *update and use* a regional contact list during the Brooklyn outage in apparent violations of the government communications provision of its ERP (Sections 5.2, cited above) and related guiding principles (Section 6.6.1).⁴⁰

³⁸ Con Edison's 2019 ERP, § 5.2.

³⁹ Id.

⁴⁰ See Staff Report, p. 79. Section 6.6.1 of Con Edison's ERP requires that an estimate time of restoration (ETR) be provided for each outage and that Con Edison "[c]onvey timely and reliable information pertaining to customer outages and estimated restoration times to our customers and elected officials."

Con Edison expressly relayed to the Department during the investigation that a comprehensive contact list of external organizations by region and elected officials does not exist.⁴¹ As such, during the Brooklyn outage, Con Edison instead relied almost exclusively on the New York City Office of Emergency Management as the Company's regional outreach.⁴² The Department determined, on information and belief, that Con Edison did not contact all applicable elected officials as required under ERP §§ 5.2 and 6.6.1.⁴³

Based on the foregoing, the Department submits that Con Edison is in apparent violation of its ERP as follows:

- Con Edison's failure to have a current region-specific government contact list violates Section 5.2 of its 2019 ERP.
- The failure to have an updated contact list resulted in Con Edison failing to make required outbound phone calls to all applicable government and elected officials during the Brooklyn outage constitutes a violation of Section 6.6.1 of the ERP.

II. Con Edison ERP Section 5.3.1 (Press Releases),
Brooklyn Outage, One Violation

Con Edison, like other utilities, uses press releases and press briefings as the backbone of its communications during outage events. The information contained in press releases feeds general communications activities including interactive voice response (IVR) scripts and social media posts.

⁴¹ See Staff Report, p. 90.

⁴² Id.

⁴³ In response to the Department's document inquiries on this issue, Con Edison provided the Department with a non-regional specific, internal government contact list. In response, Con Edison provided a list of persons called who during the Brooklyn outage but not an updated list of regional contacts it is required to contact.

Accordingly, Con Edison's 2019 ERP § 5.3.1 states, in relevant part, that "[p]ress releases issued to all media provide information on the company's *outage procedures and the restoration process, provide information on how the company prioritizes restoration, and emphasize the steps customers should take during a service outage.*"⁴⁴ (Emphasis added). Con Edison's press releases and related press briefings are required upon the triggering of its ONIM.⁴⁵ ERP § 5.3.1 goes on to state that press releases must also include whenever possible ETRs, the number of outages by municipality and the most current and relevant additional information. In short, each Con Edison press release must include certain information to meet its ERP requirements. As detailed below, the Department believes that Con Edison failed to meet these requirements during the Brooklyn outage.

The Brooklyn outage triggered the ONIM and, as such, Con Edison's press release requirements under ERP Section 5.3.1.⁴⁶ The Brooklyn outage and its precursors occurred in phases over a days-long heat event giving Con Edison adequate time to issue timely and relevant press release. Con Edison called a demand response event on July 18, 2019, mobilizing the Corporate Emergency Response Center, called a second demand response event on July 19, 2019, and then a third on July 20, 2019. However, despite the awareness of these phases and the

⁴⁴ See also ERP Attachment 3 (Corporate Affairs' Crisis Communication Plan), 3.5(a).

⁴⁵ See ERP Section 5.3.1; see also ERP Attachment 3 (Corporate Affairs' Crisis Communication Plan), Section 3.3.

⁴⁶ See ONIM Order, Attachment, p. 2. Importantly, while the triggering of the ONIM thus triggers Con Edison's ERP press release and briefing requirements, the ERP press release and briefing requirements are separate and apart from the media communication requirements in the ONIM, and as such can form the basis of a separate violation.

possibility of an outage, the Department determined that Con Edison issued no press releases to update the public, government officials, and other key stakeholders that they should prepare for potential outages due to the stress on the system.

While the record shows that Con Edison issued a press release on July 21, 2019, at 5:15 p.m., just two hours before the Brooklyn outage, the press release included only a request for customers in southeast Brooklyn to conserve energy and noted an eight percent voltage reduction to maintain system reliability and protect equipment. The press release made no mention of a potential outage. Con Edison's next press release, issued at 8:30 p.m., also failed to meet the content requirements of the ERP by failed to fully explain the reason behind the outage.

Con Edison should be well acquainted with the importance of providing timely and relevant information through its publicly-accessible communications – even if the message is an uncomfortable one. Indeed, the Department made clear in the context of its reports on Tropical Storms Irene, Lee, the 2018 Winter and Spring Storms, and Superstorm Sandy, that communication through press releases regarding potential outages is an important component of protecting the public health and safety of the Company's customers. Based on the foregoing, the Department submits that Con Edison is in apparent violation of ERP § 5.3.1 by failing to hold any press briefings during the Brooklyn outage.

III. Con Edison ERP Section 5.3.1 (Press Briefings),
Brooklyn Outage, One Violation

Press conferences are an efficient measure to disseminate utility information during an outage. Accordingly, per its 2019 ERP, Con Edison's press briefings are required upon

the triggering of its ONIM.⁴⁷ Press briefings can be held in person or via telephone call and must include specific information such as "*the cause of the outage, geographic area affected, estimated number of customers impacted and estimated times of restoration, if known.*"⁴⁸ (Emphasis added).

In the context of the Department's investigation of the Brooklyn outage, Con Edison acknowledged that it did not hold or participate in any press conferences during the two-day outage. Con Edison informed Staff that, in its view, the threshold requirements in its ERP to hold a press conference had not been triggered. However, Con Edison's perspective on this issue appears to be grounded in a misunderstanding of the interaction between the ERP and the ONIM.

To be clear, ERP § 5.3.1 states that "[p]ress releases and briefings will be managed in accordance with Sections 2.3 through 2.5 of the Corporate Instruction." Those sections of the Corporate Instruction (also known as the Corporate Affairs' Crisis Communication Plan) provide that an initial press briefing will be held via phone or in person once the ONIM is triggered.⁴⁹ By Con Edison's own submittal, the over 40,000 outages across its network that occurred during the Brooklyn event triggered the ONIM. Upon the ONIM being triggered, the ERP references Table A in the Corporate Instruction to determine when a press briefing is required. Table A expressly requires the Company to issue a press release *and undertake press briefings* upon the occurrence of 40,000 customer outages. The Department submits that Con Edison's failure to undertake any

⁴⁷ See ERP Section 5.3.1; see also ERP Attachment 3 (Corporate Affairs' Crisis Communication Plan), Section 3.3.

⁴⁸ ERP Section 5.3.1; Communications Plan Sections 3.4 (a), (b).

⁴⁹ See ERP Section 5.3.1 referencing the Corporate Affairs' Crisis Communication Plan.

press briefings over the two-day Brooklyn outage constitutes an apparent violation of ERP § 5.3.1.

IV. Con Edison ERP Section 5.5.2 (Blast Emails), Manhattan and Brooklyn Outages, Two Violations

A standard way for utilities to communicate outage information is through emails to pre-subscribed customers, called "blast emails." These types of blast emails act as an important and effective tool for providing customers with relevant information before, during and after an outage. Con Edison's 2019 ERP § 5.5.2 states that its blast emails must "contain narrative text with event-related and utility contact information (e.g., app, web, and phone) in the body of the email, an embedded link to the company's website, as well as a clear call-to-action to report outages."

The Department determined, however, that Con Edison failed to use this ERP-required communication tool prior to or during either the Manhattan or Brooklyn outages. Con Edison has been counseled by the Department in the past on the need to utilize blast emails during outages, as is required in its ERP. The Department submits that Con Edison's failure to provide blast emails to its customers during both the Manhattan and Brooklyn outages constitutes two distinct, apparent violations of ERP § 5.5.2.

V. Con Edison's ERP §§ 6.6.1 (Guiding Principles) and 6.6.2 (Estimated Time of Restoration), Brooklyn Outages, Two Violations

Customers depend on ETRs to make health and safety decisions for themselves and their families, particularly when there is no warning of a service interruption. Municipalities rely on ETRs to plan properly for the care and safety of their residents and protection of property, and government officials

look to utilities for accurate restoration times to inform their constituents and to take their own actions. Further, to be useful, ETRs must contain enough detail to set realistic expectations for customers, government officials and other key stakeholders.

Accordingly, Con Edison's 2019 ERP § 6.6.2 states that ETRs will be established and communicated in accordance with the Commission's ETR Protocol, which mandate ETR content and timing.⁵⁰ Con Edison reviews all ETRs regularly during daily conference calls held during outages to ensure they represent accurate restoration times.⁵¹ Con Edison is required to refine its ETRs as more detailed and relevant event information becomes available.⁵² Updated ETRs are also conveyed in communications via customer service representatives, IVRs, text messages, and the company's website.⁵³

The Department determined that throughout the Brooklyn outage, however, Con Edison failed to communicate detailed ETRs, instead relying on general statements in its communications with customers and the public. While Con Edison was fully aware of the events around the Brooklyn outage, the Department's Report identified that ETRs on Con Edison's website banners recited only a vague range of restoration times (e.g., "Service restored through tonight," "Service restored tonight into tomorrow"). Con Edison's restoration progressed over the two-day outage, and as additional information became available, Con Edison failed to issue updated and specific ETRs in accordance with ERP §§ 6.6.1

⁵⁰ See also ERP Section 6.6.1 (Con Edison's ERP Guiding Principles require that timely ETRs be provided for each outage).

⁵¹ Id.

⁵² See ERP § 6.6.2.

⁵³ See ERP § 6.6.2.

and 6.6.2, instead continually pushing out vague ETRs without specific restoration information. As an example, the Department understands that Con Edison used generators throughout the outage to restore certain areas until problems were permanently corrected; however, Con Edison failed to identify these areas restored by generators in its ETRs. Based on the foregoing, the Department submits that Con Edison's failure to provide specific, timely, accurate and updated ETRs constitutes two apparent violations: (i) ERP § 6.6.1, and (ii) ERP § 6.6.2.

VI. ONIM Order, Brooklyn Outage, Four Violations

In addition to and apart from Con Edison's communication requirements in its 2019 ERP, the PSC's 2002 ONIM Order measures Con Edison's timing and accuracy of communication activities during defined electric service outages.⁵⁴ The ONIM is a component of Con Edison's customer service quality incentive mechanism that was established by the Commission in a proceeding addressing Con Edison's proposed merger with Northeast Utilities. These ONIM communication activity requirements, as noted above, include: contacting the New York City and Westchester County Offices of Emergency Management and the Department; sending out a telephone system broadcast message on the general Con Edison customer assistance line; contacting all affected life support equipment customers; contacting City and local government officials who serve in the affected areas; contacting affected critical facilities (e.g., hospitals and nursing homes); notifying the media; and dispatching a mobile command center vehicle to the affected area.⁵⁵ Finally, the ONIM requires that Con Edison submit a review of how it performed under the ONIM following triggering events and establishes

⁵⁴ Case 00-M-0095, supra, Attachment A.

⁵⁵ See ONIM Order, p. 2.

financial consequences for not complying with the requirements, which were increased in a recent rate case proceeding.⁵⁶

As for communication timing, the ONIM Order provides as follows:

Con Edison has one hour to complete the notification activities for an outage affecting at least 20,000 customers and lasting for at least three hours. It has two hours to complete notification activities for an outage affecting at least 40,000 customers and lasting for at least two hours. If the outage affects 70,000 customers and lasts for at least one hour, Con Edison would have three hours to complete the notification activities. At the time of notification, Con Edison is required to provide specific information as part of the communication activity. The specific information provided varies among the activities. It may include, if available, the cause of the outage, geographic area affected, estimated number of customers affected, and estimated time of restoration.⁵⁷

An additional two hours is added to the completion deadline if the outage occurs after traditional business hours.⁵⁸

⁵⁶ Case 16-E-0060, et al., Con Edison - Rates, Order Approving Electric and Gas Rate Plan, Attachment A, Joint Proposal, Appendix 17 (issued January 25, 2017).

⁵⁷ ONIM Order, p. 2.

⁵⁸ See ONIM Order, Attachment p. 4. The two-hour adder is not applicable where the outage would likely have occurred based on the Company's past experience. An outage is deemed likely to have occurred where the conditions that led to the outage have historically resulted in outages affecting service to at least 20,000 customers in the past including from, for example, hurricanes, tropical storms, and severe *heat waves* and excluding predicted summer thunderstorms. See ONIM Order, Attachment p. 4. Con Edison's September 23, 2019 ONIM letter noted: "On Sunday July 21, 2019, several days into a summer heat wave, the electric system that serves the Flatbush network in Southeast Brooklyn experienced a series of events that pushed the system into an emergency condition." As such, the two-hour adder to the ONIM communication deadline does not apply to the Brooklyn outage on the grounds that the outage was likely to have occurred based on the Company's past experience.

Con Edison filed ONIM response letters with the Department on September 23, 2019, for the Brooklyn outage. In its letter, Con Edison described the actions it had taken to purportedly comply with the communication timing requirements of the ONIM Order and stated that it had met the requirements of the ONIM for the outage event. Despite Con Edison's contentions in its letter, the Department's investigation revealed that Con Edison failed to satisfy certain elements of the ONIM Order during the Brooklyn outage.⁵⁹

Con Edison's September 23, 2019, ONIM letter acknowledges that "[t]he trigger [time] for 40,000 customers out of service simultaneously for more than two hours was 21:38 hours." Thus, per the ONIM timing table, Con Edison was required to meet all ONIM communication requirements within two hours of the ONIM time trigger or by 23:38 p.m. on July 21, 2019. While Con Edison's September 23, 2019, ONIM letter explains a variety of the Company's communications efforts, it presented no evidence that either the ONIM timing or content requirements were met with respect to municipal communications (ONIM Attachment, Section IV(1)) or media notifications (ONIM Attachment, Section IV(6)). Accordingly, the Department submits that Con Edison's failure to comply with the timing and content requirements with respect to both municipal and media notifications constitutes four distinct ONIM violations.

⁵⁹ The Department's investigation determined that Con Edison attempted, but failed, to replicate the requirements in the ONIM in its procedure EOP 5023, Communication Guidelines in the Event of an Electric Emergency. That Con Edison followed EOP 5023 in its storm responses does not excuse Con Edison from meeting the stand-alone requirements of the ONIM Order.

VII. Prudence of Con Edison's Actions and Omissions Related to the Manhattan and Brooklyn Outages

Manhattan

While the cascading series of events that eventually led to the mid-town Manhattan outage initially began with an electrical fault in a distribution cable, the outage was directly the result of omitted ground (or neutral) wires for 87N relays located at Con Edison's West 65th Street area distribution substation. As described in the Department Report, the omitted ground wires caused the 87N relays to mis-operate, resulting in the three transformers at the West 49th Street Substation going out of service.⁶⁰ The loss of these three major transformers resulted in overload conditions for two other major transformers (one at the West 49th Street Substation and another at the West 42nd Street Area Substation).

The Department Report also observes that Con Edison had multiple reasonable opportunities based on what it knew or should have known to discover and correct the mis-wired 87N relays.⁶¹ Company engineering drawings reflected the correct wiring sequence that included a neutral connection for the components. However, corresponding vendor drawings, which had been approved by Con Edison in 2008, reflected an incorrect wiring schematic that omitted the neutral connection.⁶² In 2013, in the process of retrofitting the 87N relay for a fourth transformer in the West 65th Street area distribution substation, a crew of technicians discovered and corrected the discrepancy between engineering drawings but only as related to the fourth transformer. No effort was made by the work crew or

⁶⁰ Department Report at p. 8.

⁶¹ *Id.* at pp. 8-9.

⁶² Con Edison Manhattan Report, Redacted, pp. 38-39.

the Company, however, to check if the three other 87N relays in the 65th Street substation were also missing ground wires.⁶³ Additionally, the Company failed to act in 2013 when the discrepancy between the technical drawings was noticed by the work crew.

In its Report, Department Staff presents specific bases and inferences that call into question the prudence of Con Edison's decision making, actions, and expenses regarding the installation, management, and maintenance of the 87N components, and the retrofit project, protection of related systems and equipment, and the losses and costs associated with the July 13, 2019, midtown Manhattan service outage.

Brooklyn

With respect to the Brooklyn outage, the Report presents specific bases and inferences that could call into question the prudence of Con Edison's decision making, actions, and expenses regarding: 27kV and 13.8 kV feeder cable testing and maintenance; relay timing and coordination; situational awareness, transformer operations and maintenance; the absence of specific procedures for de-energizing and restoring 4kV grids, including providing public communication and outreach; and the losses and costs associated with the July 21-23, 2019 Brooklyn outage.

DISCUSSION AND CONCLUSION

Recommendations and Areas of Improvement

The Department's review of and the Department Report on Con Edison's performance during the 2019 Manhattan and Brooklyn Outages identified many opportunities for improvement that should be resolved by implementing and complying with the

⁶³ Department Report at p. 9.

recommendations discussed in the Report and this Order. Con Edison's self-assessment reports, along with the Department Report and Panel Report, identify recommendations that will enable the Company to operate and maintain its electric system to ensure reliability and prevent customer outages, and to communicate and respond more effectively during and after an emergency outage event. The Commission directs Con Edison to consider the implementation of all recommendations, which shall be implemented unless satisfactory reasons are provided by the Company suggesting a different course.

The Company shall address the implementation of each specific recommendation contained in the Department Report (including the Panel's recommendations), and whether the Commission should mandate, reject, or modify, in whole, or in part, such recommendations. Con Edison's response shall include a discussion of which recommendation(s) it opposes (if any), the reasons for such opposition, and an indication of any alternatives it proposes to address the root cause of all recommendations to which it is objecting. The Company must demonstrate how any alternative it proposes would more effectively address the underlying findings, produce more benefits or less risk, or would be more technically feasible. If the Company opposes the implementation of any recommendations without proposing any alternatives, the Company shall provide a justification as to why alternatives were not available or feasible. If a recommendation has already been initiated, or Con Edison agrees that it should be implemented, it should so state along with an appropriate compliance timeline.

To ensure the timely implementation of the recommendations, Con Edison is directed to respond within 30 days of the date of the issuance of this Order. The Company is encouraged to consult with Staff during the development of its response.

Alleged Violations and Prudence

Concerning the Department's identification of violations of the PSL § 66, 16 NYCRR Part 105, Con Edison's ERP, the ERP Order, and the ONIM, Con Edison is ordered to show cause within 30 days of the issuance of this Order why the Commission should not seek Court-imposed or administrative penalties for the Company's failure to comply with the requirements of its own procedures contained in its ERP and ONIM as related to the violations of the ERP, the ERP Order, 16 NYCRR Part 105, the ONIM, and the ONIM Order alleged by the Department herein.

Further, through this Order and the referenced Staff Report, the Commission hereby provides Con Edison with notice under PSL § 25-a of the dates and descriptions of the facts and nature of each act or failure to act for which a penalty is proposed, a list of each statute, regulation or order that the Commission alleges has been violated and the amount of each penalty that the commission proposes to assess. Con Edison is hereby given notice that, unless otherwise provided, the Commission proposes for each established violation a financial penalty of up to four one-hundredths of one percent of the

annual intrastate gross operating revenue of Con Edison.⁶⁴ After Con Edison's has submitted its response to this Order, the Commission directs the Department to hold a hearing to demonstrate why any proposed penalty or penalties under PSL § 25-a should be assessed against Con Edison.

At this juncture, the Commission makes no determination concerning whether Con Edison's actions related to the Manhattan and Brooklyn outages were prudent. Going forward, Con Edison shall show cause why the Commission should not initiate a prudence proceeding and respond to Staff's contentions contained in the Report and as summarized above, after which we may direct a focused proceeding, overseen by an Administrative Law Judge, concerning prudence related issues concerning the two outages.

The Department shall otherwise designate appropriate trial staff to investigate the alleged violations and imprudence allegations and pursue any potential penalties under PSL §§ 25 and/or 25-a, if necessary. Once designated, the Company may consult with trial staff during the development of its response.

Revocation or Modification of Con Edison's Certificate

The Commission hereby provides notice to Con Edison that, should the Commission confirm some or all of the apparent violations of this or other Orders, and should such confirmed violations be classified as findings of repeated violations of the PSL or rules or regulations adopted thereto that demonstrate

⁶⁴ This order satisfies the notification requirements of PSL § 25-a. The penalties the Commission proposes to assess under this Order for Con Edison under PSL § 25-a, aside from any penalties or remedies under PSL § 25, the ONIM, for a lack of prudence or revocation/modification of certificate, are for eight violations with potential penalties of circa \$24,800,000, or \$3,100,000 per each violation based on Con Edison's annual intrastate gross operating revenue.

a failure of Con Edison to continue to provide safe and adequate service, the Commission would be authorized to commence a proceeding under PSL § 68(2) to revoke or modify Con Edison's certificate as it relates to its service territory or any portion thereof. Prior to the commencement of such a proceeding when the Commission has reason to believe that Con Edison's Certificate may be subject to revocation or modification, the Commission would notify Con Edison of the facts and nature of each act or failure to act allegedly warranting such revocation or modification, and the statute, regulation, or order allegedly violated, and otherwise consider the factors identified in PSL § 68.

The Commission orders:

1. A proceeding is instituted and Consolidated Edison Company of New York, Inc. is ordered to show cause, within 30 days of the date of this Order, why the Public Service Commission should not commence an action, and/or a civil penalty action and/or an administrative penalty action, pursuant to Public Service Law §§ 25 and 25-a, for violations of the Commission's Order Approving Electric Emergency Response Plans on an Interim Basis in Case 17-E-0758 or 16 NYCRR Part 105, and the Outage Notification Incentive Mechanism and to examine the prudence of the Company's actions and/or omissions discussed in the body of this Order to Show Cause.

2. For each and every recommendation contained in the Department of Public Service Report not fully accepted, Consolidated Edison Company of New York, Inc. shall provide within 30 days of the issuance of this Order justification for its proposed alternatives and demonstrate how such alternatives more effectively address the root cause of the underlying recommendations, produce more benefits or less risk, or are more technically feasible. Specific implementation steps;

implementation schedule with start and end dates; and significant interim milestones, if applicable, should be provided.

3. For each and every recommendation accepted, Consolidated Edison Company of New York, Inc. shall provide within 30 days of the issuance date of this Order its specific implementation steps; implementation schedule with start and end dates; provide its priority relative to other recommendations; significant interim milestones (if applicable); and deliverable(s) which demonstrate the recommendation was implemented.

4. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

5. These proceedings are continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary