

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 7, 2007

COMMISSIONERS PRESENT:

Patricia L. Acampora, Chairwoman
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

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

CASE 06-E-1158 - In the Matter of Staff's Investigation of Consolidated Edison Company of New York, Inc.'s Performance During and Following the July and September Electric Utility Outages Order Concerning Provisions of Reimbursement Tariff Issued.

ORDER CONCERNING TARIFF PROVISIONS GOVERNING
REIMBURSEMENT FOR FOOD SPOILAGE

(Issued and Effective November 23, 2007)

BY THE COMMISSION:

INTRODUCTION

On March 30, 2007, Consolidated Edison Company of New York, Inc. (Con Edison or the Company) filed a tariff amendment, to modify the provisions of its existing tariff by increasing the maximum reimbursements made to residential and commercial customers for certain losses resulting from extended power outages and to include medicines spoiled due to lack of refrigeration in losses eligible for reimbursement (Revised

Reimbursement Tariff)).¹ These reimbursement levels were previously modified more than seven years ago through a tariff filing in June, 2000.²

The Revised Reimbursement Tariff was allowed to take effect July 1, 2007 by operation of law pursuant to Public Service Law §66(12)(b), subject to further review. The Commission issued a Notice Requesting Comments on the Reimbursement Tariff (Notice) on July 10, 2007. It invited interested parties to submit comments on the reasonableness of the revised reimbursement levels, the need, if any, to expand the types of items eligible for reimbursement, the methods used to verify outage related losses, the need for periodic automatic adjustment to the reimbursement levels and the financial effect of any changes on the level of revenues recovered from ratepayers and on the Company's financial condition, and any other issues that the parties may raise in relation to the tariff.

BACKGROUND

In 1973, the Commission initially authorized Con Edison to make reimbursements for certain losses suffered as a

¹ The Company's submission of revisions to its reimbursement tariff, implements one of the recommendations in the staff reports on service restoration after the July 2006 outages in the Long Island City network and after the July and September 2006 outages in Westchester County, Department of Public Service Staff Report on its Investigation of the July 2006 Equipment Failures and Power Outages in Con Edison's Long Island City Network in Queens County, New York, (February 2007) (Long Island City Network Report), pp. 60-61, July and September 2006 Severe Storms, A Report on Con Edison's Performance, New York State Department of Public Service (February 2007)(Westchester Report), page 53.

² Case 99-E-0930, Consolidated Edison Company of New York, Inc.—Distribution System Failures, Order Concerning Tariff Provisions Granting Reimbursement for Food Spoilage (issued March 1, 2001) and Order Approving Tariff Amendments (issued June 22, 2000).

result of power failures attributable to malfunctions in the Company's local distribution system.³

In 2000 and 2001 the Commission approved revisions to the 1973 tariff.⁴ The revisions included an increase in the payment amounts for residential customers from \$100 to \$350 based on the application of the gross domestic product deflator (GDP deflator) over the time span since the reimbursement levels were first established in 1973. These revisions also established a two-tier reimbursement approach for residential customers. The two tier approach provided for reimbursement of claims up to \$150 with an itemized list and claims up to \$350 per incident with an itemized list and proof of loss. These revisions also increased the compensation for non-residential users for losses due to spoilage of perishable merchandise due to lack of refrigeration from \$2,000 to \$7,000. Finally, the total amount of reimbursements per incident was increased from \$1 million to \$10 million.

The Staff Reports on the outages in Con Edison's Long Island City and Westchester County service areas recommended that, if appropriate, the Company make modifications to the reimbursement tariff prior to summer 2007 and in all of the Company's subsequent rate cases.⁵ In response to the Staff

³ Case 3729, Consolidated Edison Company of New York, Inc., 73-20, Opinion and Order Directing the Filing of Tariff Provisions by Consolidated Edison Company of New York, Inc. to Provide Compensation For Losses Due to Distribution System Interruptions (July 10, 1973) and Order Granting in Part and Denying In Part Petition for Reconsideration (August 22, 1973).

⁴ Case 99-E-0930, Consolidated Edison Company of New York, Inc.—Distribution System Failures, Order Concerning Tariff Provisions Granting Reimbursement for Food Spoilage (issued March 1, 2001) and Order Approving Tariff Amendments (issued June 22, 2000).

⁵ Long Island City Report, pp. 60-61, Westchester Report, p. 53.

Reports and party comments, Con Edison filed a March 2007 tariff amendment, with an effective date of July 1, 2007. The proposed tariff amendment continued the two-tier reimbursement mechanism for residential customers, increased from \$150 to \$200 the maximum reimbursement level to residential customers for losses with an itemized list and increased from \$350 to \$450 the maximum reimbursement level for perishable losses with an itemized list and proof of loss. It also included perishable medicines among the items for which reimbursement could be sought. The reimbursement for non-residential users for losses due to spoilage of perishable merchandise was increased from \$7,000 to \$9,000. The per incident limit on reimbursements was increased from \$10 million to \$15 million.

A Notice of Proposed Rulemaking on Con Edison's revised reimbursement tariff was published in the State Register on April 18, 2007, in accordance with the State Administrative Procedure Act (SAPA) Section 202(1). By letter dated May 31, 2007, Assemblyman Richard Brodsky filed comments on the proposed tariff changes within the SAPA comment period which expired on June 2, 2007.

The comments made in response to the Staff Reports and within the SAPA comment period addressing the reimbursement tariff were discussed in the Commission's July 10 Notice. In response to the Notice, the New York State Assembly (Assembly), the Consumer Protection Board (CPB), the Attorney General (AG), New York City (City), Western Queens Power for the People (WQPPF), Assemblywoman Amy Paulin, Public Utility Law Project of New York, Inc. (PULP) and Con Edison filed initial or reply comments addressing the tariff.

The Notice requests comments on the following questions:

1. Are the new compensation levels in the reimbursement tariff reasonable?

2. Should the tariff expand the types of losses eligible for reimbursement?
3. What methods should be used to verify outage-related claims?
4. Is there a need and rationale for establishing a mechanism to make periodic automatic adjustments to the tariff?
5. What is the proper balance between the interests of consumers in obtaining reimbursement and avoiding undue increases in rates?
6. Other issues.

PARTY COMMENTS

1. Are the new compensation levels in the reimbursement tariff reasonable?

A number of commenters, including the AG, WQFPF, the Assembly, Assemblywoman Paulin, and the CPB advocate an increase in the dollar amounts of the authorized reimbursements. The AG states that although the inclusion of spoiled medicine as well as spoiled food in the reimbursement tariff is a beneficial addition, the cost of medicine spoilage could easily absorb the entire increase leaving little or no actual increase in food spoilage reimbursement levels. Thus, the AG states these levels should be set much higher or that separate reimbursement levels could be established for food and medicine spoilage. WQFPF believes that food and medicine should not be considered as the same perishable goods expense, but rather requests that a tariff be established by which Con Edison will reimburse customers for any and all losses of prescription drugs and medical expenses incurred as a result of its failure to provide services. The Assembly states that reimbursement of losses to perishable medicines should be considered as a separate category so that customers will not be required to choose between food reimbursement and medicine reimbursement. Assemblywoman Paulin also requests that food and medicine be considered for reimbursement as two separate categories.

The AG asserts that the reimbursement levels for business customers are inadequate, and suggests that the Commission examine the actual experiences of businesses faced with losses during the 2006 Long Island City network and Westchester outages to determine a reasonable reimbursement level to apply to outages. WQPFP states that an essential step in fairly determining a reasonable tariff would be a study of actual economic losses incurred during the July 2006 Long Island City network outage should be used to set the maximum reimbursement levels. WQPFP requests that such a study be conducted immediately to determine a reasonable compensation in the tariff. In addition, the Assembly and Assemblywoman Paulin request that the Commission conduct a study of the actual losses suffered by residential and non residential customers in the affected areas to assist in determining the sufficiency of Con Edison's reimbursement tariff compensation amounts.

PULP does not directly comment on the level of reimbursement, but states that a more appropriate adjustment factor than the Gross Domestic Product Deflator (GDP) would be the Consumer Price Index (CPI). PULP notes that the \$100 reimbursement level in 1973, adjusted by the CPI, would be \$493. and compares this amount with the \$450 level established by Con Edison utilizing the GDP. The Assembly states that the increased compensation levels offered by Con Edison are insufficient to compensate residential and non-residential customers for the losses they suffer when a system outage occurs. The Assembly also requests that the Commission examine substituting the increase in the CPI for GDP deflator as a more accurate index for adjusting compensation and ensuring that the reimbursement amounts are sufficient to accurately reflect the impact of inflation. The City supports the compensation levels established by the Company in the revised Reimbursement Tariff for residential and non residential customers and points out

that they are the same as those included in the City report on the Long Island City Network outages.

2. Should the tariff expand the types of losses eligible for reimbursement?

The Assembly answers this question in the affirmative, commending Con Edison for the addition of perishable medicines to the compensation criteria and stating that other categories of items should be included as well. The Assembly states that the Company should be held liable for losses suffered for damaged or inoperative appliances and home-based business machines due to low-voltage conditions during or in the aftermath of an outage, and be required to provide compensation. In addition, the Assembly supports recovery by indirect customers of Con Edison for losses suffered during outages in the same manner as direct account customers, thereby entitling residents of apartment buildings and other dwelling places that do not have their own electric meters to seek reimbursement.

The AG points to the nature of the service territory as containing many apartment buildings with one master meter per building in which the tenant pays the landlord for electricity as part of their rent. The AG points out that power failures affect such households in the same way as they affect households with a direct Con Edison account, and the residents in master-metered buildings should be eligible for the same reimbursement as the direct account customers. The AG also states that the Commission should expand the eligibility for reimbursable losses to include damage to appliances and equipment resulting from low-voltage conditions. In support, the AG states that people today rely very heavily on computers and other electronic equipment. The AG states that the Commission should establish procedures for reimbursement for such losses and for how proof of such losses should be established.

The City also asserts that Con Edison's reimbursement tariff should be expanded to provide compensation for verifiable damages to appliance motors, electronic equipment, and other voltage sensitive property that is owned by residential customers and damaged as a result of distribution system failures. As part of its proposal for residential customers, the City suggests that Con Edison's Reimbursement Tariff be further revised, to provide compensation for electric voltage sensitive machines using tiered compensation with and without a receipt, with reimbursement levels of both minimum and maximum reimbursement amounts. The City also asserts that the Commission should require Con Edison to revise its definition of a service outage to define a threshold voltage level where customers are unable to utilize most electric devices and service is the equivalent of experiencing a power outage. The CPB expresses support for this recommendation. Finally, the City also suggests reimbursement eligibility of both direct-metered customers and customers receiving service on master-metered accounts.

PULP expresses the concern that indirect customers should receive the same treatment as direct customers under the provisions of the tariff. The CPB expresses the view that the tariff should be modified to provide compensation to customers for verifiable damage to electrical equipment.

WQPFP requests that the tariff be expanded to include non perishable goods; losses such as computers, refrigeration, compressors, and other electrical equipment as well as documented personal injury losses such as medical expenses and loss-of-wages. WQPFP also requests that the tariff provide reimbursement for hourly and per diem employees and contractors who cannot work because of power losses.

3. What methods should be used to verify outage-related claims?

The Assembly states that residential customers should not have to provide itemized receipts to verify their losses. In support of this, the Assembly cites a difference in the sophistication of residential customers and the motivation for recordkeeping by the residential customer versus the business customer, stating that an average household customer is not as likely to keep itemized receipts for perishables as a business would be. The Assembly goes on to state that business customers potentially would not require such presumption, with the exception of small and unsophisticated businesses, for which such a presumption would be appropriate.

The City states that the burden to verify customer outage-related claims should be borne by the Company. According to the City, the customer should submit a reimbursement form to the Company outlining the service address, account number, approximate date and time of the power outage, and the damage the customer sustained along with any other pertinent information that the Company needs to assess the claim. The City asserts that based on that information, the Company should verify, presumably through the customer service address, whether there was a power outage at the date and time specified by the customer.

WQFPF asserts that residential customers seeking reimbursement for losses of perishable goods should not be required to provide itemized proof-of-purchase and to request such proof would be unreasonable. Assemblywoman Paulin also requests that residential customers not be required to provide itemized proof-of-purchase. She states that instead, an equitable and reasonable method for establishing monetary loss should be instituted such as, for example, reimbursement based on the number of persons in the household.

The AG's office suggests that reimbursement be based on a sliding scale according to the length of the outage.

4. Is there a need and rationale for establishing a mechanism to make periodic automatic adjustments to the tariff?

In response to this question, the Assembly states that the current tariff compensation limits are based on a study undertaken by Con Edison almost ten years ago. Since then, the reliance of businesses and households upon electric power and the number and fragility of residential and businesses electrically-powered appliances and machines has increased significantly. The Assembly states that the compensation limits should be automatically adjusted for inflation at least semiannually. However, the Assembly believes it is necessary to conduct a new study to determine what losses are actually suffered by average households during outage events in order to set the compensation limits to the appropriate amounts, and based on the findings, determine an appropriate compensation adjustment mechanism.

The City points out that the initial customer reimbursement levels remained unchanged for twenty-seven years following their institution in 1973. In response to the Long Island City network outages, the City recommended that the Company's reimbursement tariff be revised on a periodic basis to reflect the cost of inflation in the reimbursement tariff. In its comments to this Notice, the City recommends that the Company's reimbursement tariff be increased for the cost of inflation each time the Company files an electric rate case or every five years; whichever occurs first. The CPB states that the reimbursement levels should increase automatically to account for inflation.

WQFPF requests that the reimbursement amount in the tariff be tied to a cost-of-living indicator for New York City and that it be increased annually. Assemblywoman Paulin requests that once a sufficient reimbursement rate is established, a mechanism be implemented to make automatic economic adjustments to the tariff, as necessitated by the steadily increasing cost of food and services.

5. What is the proper balance between the interest of consumers in obtaining reimbursement and avoiding undue increases in rates?

The Assembly takes issue with this question and states that it establishes a false dichotomy because it presumes that Con Edison has acted, and will act prudently and reasonably in its expenditures on its system and in its planning for, management of, and restoration after blackouts. The Assembly states that such a presumption has not been proven, but is one of the several major issues being examined in one or more other proceedings before the Commission.

The City cites a number of safeguards which ensure that the Company's reimbursement tariff does not result in an undue increase in rates, including the Company's proposal for a total per incident cap of \$15 million, the fact that the tariff applies only to power outages lasting more than twelve hours in any twenty-four hour period, and by capping the recovery each customer is able to collect per incident. The City states that with these safeguards, and as amended consistent with the City's initial comments as discussed herein, the current tariff appears to strike an appropriate balance between the interests of customers in obtaining reimbursement and avoiding undue increases in rates.

Assemblywoman Paulin states that Con Edison's contention that, "The courts are available to resolve questions

of damages in accord with the gross-negligence standard for recovery of damages related to loss of utility service..." would result in a much greater expense to Con Edison and ultimately the consumer.

6. Other issues

In addition to the questions cited above, a number of the parties have provided comments on additional issues related to the reimbursement tariff. One of the issues that a number of the parties have addressed is that additional reimbursement for longer outages should be considered. The City states that providing the same level of reimbursement for power outages lasting twelve hours or twelve days is arbitrary, because in most situations, the amount of damage and loss suffered by consumers will increase over time as the power outage continues. The City states that the Commission should establish a sliding scale reimbursement in addition to other categories of reimbursement that would depend upon the length of the outage. This mechanism, the City asserts, would recognize the discomfort, inconvenience and suffering that results from an extended outage.

WQFPF and Assemblywoman Paulin request that the tariff be made more flexible so as to allow for differences in the nature of outage impacts, for example, to be adjusted for outages of long duration and outages where the power goes on and off repeatedly. Specifically, WQFPF requests that the tariff provide for additional reimbursement for each day that an outage continues and that Con Edison provide a family per diem reimbursement for lodging and food expenses. In addition, WQFPF requests that customers that sustained damages during the July 2006 Long Island City network outage be retroactively reimbursed for actual losses including, but not limited to: perishable goods, non-perishable goods, medical expenses and lost wages.

CON EDISON COMMENTS

In its comments, Con Edison generally opposes any expansion of the Reimbursement Tariff. Con Edison begins by noting that it is the only utility in New York State with a provision in its tariff holding it strictly liable for its customers' food and perishable merchandise spoilage in connection with outages in its electric distribution system. Therefore, the Company states that the tariff should continue to be narrowly focused on reimbursements for losses that are readily measurable and verifiable, that are not practical to protect with commercial insurance, and that can be assumed with a degree of certainty to have resulted from the service interruption. It specifies food and perishables as the only losses that satisfy these requirements. Con Edison states further that expanding the application of the reimbursement tariff to include other consequential losses would unduly burden other customers with higher rates and require the Company to act in the capacity of an insurance company.

With its comments, Con Edison submits an affidavit of Eugene T. Meehan, NERA Economic Consulting. Mr. Meehan was commissioned by the Company to review the existing reimbursement tariff, address the five questions posed by the Commission in its Notice, and analyze an appropriate balance between the interests of consumers in obtaining reimbursement for losses sustained during service interruptions and avoiding undue increases in rates that would result from such reimbursement. In his report, Mr. Meehan characterizes Con Edison's March 30, 2007 tariff filing, which became effective July 7, 2007, as fair to customers and reaching the proper balance for customer compensation and ratepayer risk. In addition, the maintenance of the current compensation levels in the Reimbursement Tariff does not expand the role of the utility to be insurer and, at the same time, provides customers with protection against losses

of essentials that could pose a financial hardship to some customers. Mr. Meehan also states that expansion of the existing tariff could have direct consequences on future rates. An increase in the amounts of coverage would create additional costs ultimately borne by all Con Edison customers, and to expand the tariff to include compensation for additional types of losses would, in effect, make the reimbursement an insurance product.

Con Edison asserts that tariff compensation for damages that are not certain to have resulted from a service outage and which are not reasonably verifiable and readily quantifiable will result in needlessly high administrative costs and create customer dissatisfaction. For example, it states that proof-of-loss evaluation would be extremely complicated and contentious with respect to motors, electronics and appliances. The Company reiterates that spoilage losses can be anticipated to result from an extended service outage and are relatively straightforward, while damages such as equipment loss and economic loss are neither anticipated nor readily quantifiable and are thus unsuitable for tariff reimbursement.

Con Edison supports its contention that tariff reimbursement should not provide compensation for damages that are not readily quantifiable. The Company cites, as an example, that if a tariff were to provide compensation for equipment damage, evaluation of that damage would be quite difficult and customers would have an unrealistic expectation of the potential for recovery. The Company states there is no basis for expanding the types of losses eligible for reimbursement under the tariff to include equipment damage and provided three studies that address suggestions that low voltage causes damages to electric motors and appliances.

Further, Con Edison states that it knows of no credible scientific evidence contradicting the findings in these

studies which demonstrates that properly protected motors and electronic equipment are not damaged by low voltage. Con Edison asserts that since 1971, a National Electric Code and Underwriters Laboratory requirement mandates that motors be protected by cut-off devices triggered by excessive temperature and excessive current which can result from excessive low voltage and that a New York City electrical code requirement requires all motors be installed with devices to protect against overloads. The Company concludes that given the scientific studies demonstrating that low voltage does not damage motors or electronic equipment, the code requirements that motors be protected, and the widespread availability of electronic protection devices, there is no reason to expand the tariff reimbursement to cover damage to motors, appliances or electronics.

In its reply to comments proposing that the Reimbursement Tariff define a power outage to include a low voltage condition, Con Edison states that it does not measure voltage on the secondary lines that supply individual customer premises. In response to recommendations made by Staff in the LIC network outage investigation, the Company agreed to manually measure voltages in customer services during system emergencies and to notify customers of low voltage conditions whenever the measured voltage is below 85 volts. In light of this commitment, the Company has characterized such customers as eligible for reimbursement of perishable losses if they otherwise meet the requirements of the Reimbursement Tariff.

The Company asks that the Commission guard against establishing a new tariff with compensation standards that encourage claimants to seek compensation for reasons other than actual losses, such as inconvenience or annoyance at the loss of service. It finds the new compensation levels in the amended reimbursement tariff to be reasonable and not in need of

adjustment for at least three years. In justification of these increased levels, Con Edison states that the proposed increases filed on March 30, 2007 which were allowed to take effect on July 1, 2007 were the amounts recommended by the City of New York in its report on the July 2006 Long Island City network power outage. Con Edison reiterates the reasonableness of these levels based upon the purpose of the tariff provisions which it characterizes as compensation to Con Edison customers for actual losses. The Company supports the current reimbursement tariff criteria to evaluate residential spoilage claims up to \$200 with an itemized list and up to \$450 with verification and up to \$9,000 for commercial claims for spoilage of perishable merchandise with verification, and states that it has been and will continue to be flexible in considering acceptable verification. Con Edison states that although the Reimbursement Tariff did not explicitly include medicine as a reimbursable item, it has paid those claims in the past and no increase for medicine is necessary. The Company also states that expansion of the tariff to include indirect customers is not necessary because it has always honored claims of residents of master-metered buildings who are not direct customers of Con Edison.⁶ The Company states that changes to the current compensation structure, including any changes to compensation levels and types of damages covered, will complicate the processing of claims, increase costs, and delay payments to those claimants with the most need for rapid payment to mitigate hardship. The Company asserts that since the compensation levels are greater than the gross domestic product deflator (GDP deflator) increase, the current compensation levels will remain reasonable

⁶ The terms of the tariff provide for reimbursement of residential customers served directly under Service Classification Nos. 1 and 7, and those served indirectly under Service Classification Nos. 8, 12, and 13.

for at least several years, and the continued reasonableness of these compensation amounts should be evaluated in five years.

In further support of its position, Con Edison cites long-standing New York State public policy as enunciated by the courts and the Public Service Commission limiting utility liability for electric-service interruption. The Company characterizes this policy as designed to protect both utilities and customers from excessive liability in order to provide safe and reliable electric service at reasonable rates. The Company states that tariff compensation based on strict liability for damages related to service interruption erodes this policy. The Company cites Mr. Meehan's affidavit as noting that the limitation on liability is particularly warranted because utilities cannot design their systems to meet 100% of service needs all of the time. Con Edison cites several judicial and administrative decisions in support of its position. Con Edison concludes by stating that it is the most reliable utility in New York State and in the United States. It states that, accordingly, there is no rational basis for the Commission to expand Con Edison's tariff reimbursement when other utilities in New York State are not subject to the same liability.

Con Edison cites the Commission's rationale when it imposed the tariff provision on Con Edison in 1973 as justifying the disparate treatment of Con Edison by the fact that the rates paid by Con Edison's customers reflected the higher cost of maintaining an underground network distribution system. The Company finds this rationale questionable today. It states that Con Edison's customers, particularly residential customers, do not, on average, pay substantially higher bills than non-network system customers on other utility systems in New York. The Company states that in light of Con Edison's standing in terms of cost to its network customers and the reliability of its network system, as compared with other New York utilities, the

Commission's expansion of Con Edison's reimbursement tariff beyond liability for food spoilage or loss of perishable merchandise resulting from an outage would be arbitrary, unreasonable and irrational, bearing no substantial relationship to the Commission's stated objective of protecting bill-paying customers based on their expectation of reliable service and violating Con Edison's right to equal protection under the law. The Company concludes that, for all of the foregoing reasons, the currently effective tariff revisions regarding spoilage compensation should be made permanent without further expansion.

DISCUSSION AND CONCLUSION

The Commission initially adopted the Con Edison reimbursement tariff more than 30 years ago. At that time, it concluded that such a tariff was appropriate for Con Edison because

... the rates paid by customers in Con Edison's service territory reflect, in part, the costs associated with maintaining an expensive network distribution system of supposedly high reliability. Since the rates paid by Con Edison's customers include the higher costs associated with this system, we believe it reasonable to provide these customers with additional protection in the event the system fails.⁷

The factors cited by the Commission in 1973 to explain why a reimbursement tariff was uniquely appropriate for Con Edison at that time are still true today. Accordingly, we conclude that the reimbursement tariff, as updated in accordance with this Order, continues to strike the appropriate balance between the consumer's interest in obtaining reimbursement for spoilage of perishable goods when there is a power outage and the consumers'

⁷ Case 3729, supra, July 10, 1973 Opinion and Order at 3.

parallel but equally significant interest in avoiding undue pressures for increased rates.

In establishing the reasonableness of the reimbursement level limits adopted in 1973 for losses incurred by residential customers, the Commission took judicial notice of the trends in food prices and concluded that the maximum reimbursements which it specified in the tariff were reasonable. The subsequent increases in 2000 in the limits for residential reimbursement levels were developed by applying to the original reimbursement level the Gross Domestic Product Deflator. We see no reason now to challenge the initial determination of reimbursement limits or the methodology for updating these limits used by the Commission in 2000. Consistent with these precedents, the increase in the limits for losses incurred by residential customers, which we consider here was developed by Con Edison by applying the Gross Domestic Product Deflator to the reimbursement maximums set forth in the 2000 tariff. We are not persuaded that a different method would better adjust reimbursement levels to take account of inflation.

The inclusion by Con Edison of perishable medications within the increased reimbursement levels, which is approved in this Order, creates an additional complication. As pointed out in party comments, the inclusion of perishable medication in the latest maximum reimbursement increase has the effect of reducing the increase for losses for perishable food. While Con Edison was correct in concluding that perishable medicines should be included among the items recognized in the tariff for which reimbursement is appropriate, the increased maximum reimbursement level of \$450 will apply only to losses of

perishable food.⁸ There will be no maximum reimbursement level established for loss of perishable medication. Due to its essential nature, residential customers who suffer a loss of perishable medication should be able to fully replace the spoiled medication.

In the Company's proposal, the cap on total reimbursements for each outage incident is increased from \$10 million to \$15 million. The overall per incident cap has been included in the Con Edison reimbursement tariff since its inception. It serves an important function in limiting the total exposure to reimbursement claims and should be continued. It is recognized that the reimbursements for perishable medicines outside the \$450 per customer limit for other perishables may increase somewhat the potential for total claims to approach this per incident cap, and it is also understood that Con Edison has, as an informal matter, provided some reimbursement for medicines under the existing tariff.

The tariff's two tier reimbursement structure for claims by residential customers was instituted in 2000 and we see no need to modify this structure at this time. Under the existing two tier structure, however, the amounts of maximum reimbursement have increased. Thus the limit for reimbursement to residential customers based on an itemized list has been increased from \$150 to \$200. With submission of an itemized

⁸ Unlike the losses from perishable food, we expect that only a relatively small proportion of the affected customers will seek reimbursement for the loss of medicines. While the number of customers seeking reimbursement for a loss from perishable medicines will be low, the variability in the amount of such claims may be great. Some customers may be able to purchase replacement medicines through insurance or other plans under which the cost is minimal, while others may be forced to pay the full price for the replacement. Accordingly, it does not appear possible to prescribe a one-size-fits-all limit on the amount of reimbursement that may be sought for a perishable medicine reimbursement.

list and proof of loss, the maximum reimbursement has been increased from \$350 to \$450. A number of comments suggest that it is unrealistic to expect residential customers to retain receipts for food and that the requirement for submission of proof of losses above \$200 and up to \$450 should be eliminated. Although we recognize that residential consumers may not retain their receipts for food, we note that proof of loss could be provided, for example, through itemized receipts, cash register receipts, credit card receipts, canceled checks, clean identified price labels or bar codes for merchandise, photographs of discarded goods or, in appropriate circumstances, an interview with the claimant. With this flexibility in mind, we conclude that the proof of loss requirement for residential customers is reasonable.

A number of parties have suggested that a study be conducted to determine the actual extent of losses incurred by customers. Parties, however, do not describe how, other than due to the impacts of inflation, losses for food would be different today for consumers than they would have been in 1973 or 2000, when the reimbursement levels were set or last adjusted. Accordingly and in view of the opportunity for a revised level of reimbursement provided through this Order, we are not persuaded that a study is warranted.

Many parties comment that a mechanism for adjusting the reimbursement levels to keep pace with inflation should be established. Parties point to the increasing cost of food and to the length of time that elapses between adjustments to the reimbursement levels in the tariff. We have considered those comments and find that there is the need for periodic adjustment to the tariff reimbursement levels. We direct the Company to

update its tariff every five years or in each rate proceeding,⁹ whichever occurs first after the previous tariff adjustment, to ensure that the reimbursement levels keep pace with changes in value of the perishable items eligible for reimbursement over time. Finally, some parties suggest that the revised reimbursement tariff should be expanded to provide reimbursement for lost wages. Such claims, however, would create substantial, new administrative burdens to quantify and reliably verify this new type of loss and to associate the loss with a particular outage event. In light of these problems, we conclude that the tariff should not be extended in this way.

A number of parties suggested in their comments that reimbursement levels should be increased in correlation with the length of an outage. Customers who are subjected to a prolonged outage have undoubtedly experienced greater inconvenience and, in some ways, greater hardship than those subjected to a twelve hour outage. Nevertheless, the loss in perishable food or medicine for each type of customer should be similar. For this reason, we see no basis to alter the maximum reimbursement level based on the length of the outage. Indeed, extended outages are likely to occur not because of pre-outage circumstances or events that would trigger the allowance of claims under the reimbursement tariff, but because of the Company's inability to address promptly the effects of an outage that has already occurred. A utility's inability to repair a compromised distribution system in a timely way and thus to avoid an unnecessarily prolonged outage, is a great concern for the Commission. It is not, however, our intention to modify the existing reimbursement tariff so as to address this problem.

⁹ Con Edison will not be required to file such tariff amendment in its current rate proceeding, Case 07-E-0723, Proceeding on Motion of the Commission as to the Rates Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service.

Several other issues also require comment. We will not require the company to provide for the recovery of damages related to harm to equipment motors. The Commission previously determined that tracing the causes of motor failure and estimating the value of motor damage are very difficult tasks and declined to make determinations on these matters in the reimbursement tariff cases.¹⁰ Based on the parties' comments, we are not persuaded that the Commission's earlier determination should be revisited. Parties have not provided adequate substantiation to persuade us that the tariff should be expanded to provide for reimbursement for other equipment such as refrigerators or computers. While we recognize that low voltage is a hardship to customers, implementing a low voltage threshold for damage to equipment could significantly broaden losses covered by the tariff. Such a measure would be extremely difficult to implement due to the inability to accurately verify and quantify damage attributable to low voltage.

It is also asserted that Con Edison should define a threshold voltage level below which the service would be considered an outage and customers could be compensated under the tariff. The tariff terms apply to "power failures" or "losses of power" and thus do not exclude unduly low voltage conditions. Accordingly we agree with Con Edison that such customers will be eligible for reimbursement of perishable losses due to low voltage conditions if the requirements of the Reimbursement Tariff are otherwise met.

Other suggestions for revision of the tariff have been reviewed and not found to have merit. The purpose of this tariff has been and continues to be the efficient reimbursement of customers for losses of certain perishable items in the event

¹⁰ Case 99-E-0930, supra, Order Concerning Tariff Provisions Governing Reimbursement for Food Spoilage (issued March 1, 2001).

Con Edison's distribution system fails to provide the high level of reliability for which it was designed. As modified by this Order, the tariff will continue to serve that important purpose.

The Commission orders:

1. Consolidated Edison Company of New York, Inc. is directed to file tariff provisions to its electric tariff, to be effective on not less than one day's notice on December 1, 2007, in accord with the discussion herein.

2. Consolidated Edison Company of New York, Inc. is directed to file, in each subsequent rate filing or every five years, whichever occurs first after the previous tariff adjustment, revised tariff provisions in accord with the discussion herein.

3. This proceeding is continued.

By the Commission

(SIGNED)

JACLYN A. BRILLING
Secretary