

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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Proceeding on Motion of the Commission to
Investigate Whether a Penalty Should be Imposed on
Consolidated Edison Company of New York, Inc.
Concerning the Natural Gas Explosion on July 25, 2008,
at 147-25 Sanford Avenue, Queens.
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Case 11-G-0077

**RESPONSE OF CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. TO
ORDER TO SHOW CAUSE**

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Dated: April 29, 2011

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I. Introduction

On July 25, 2008, a natural gas explosion at an apartment house at 147-25 Sanford Avenue, Queens, New York seriously injured two occupants of apartment 2P, one of whom later died from those injuries. The building is located in Consolidated Edison Company of New York, Inc's ("Con Edison" or "the Company") gas service area, and Company personnel ("mechanics") working with a licensed plumber employed by the building owner had restored gas to the P gas riser soon before the explosion.¹ The Department of Public Service Staff ("Staff") conducted an investigation of the incident, and issued a report in April 2009 ("Staff Report").² The Staff Report found that Con Edison's mechanics restored gas service after finding deficiencies in the plumber's work and failed in several respects to follow company procedures, embodied in Company Specification G-11836, when working to restore gas service to gas risers in the building. The report concluded that if Con Edison had refused to restore gas service based on

¹ Con Edison workers holding the work title "Mechanic A" performed gas restoration work at the building on July 25, 2008.

² Report of Safety Section, Office of Electric, Gas & Water, titled "147-25 Sanford Avenue, Queens, Natural Gas Explosion, July 25, 2008, Consolidated Edison Company of New York, Inc.," dated April 2009 ("Staff Report").

the deficiencies in Liberty Plumbing's work, "one could speculate that the incident could have been avoided."³

On March 17, 2011, the Public Service Commission ("Commission") issued an Order directing Con Edison to show cause why the Commission should not commence an action against it for penalties prescribed in Section 25(2) and 25(3) of the Public Service Law ("PSL") for knowingly failing or neglecting to comply with its Specification G-11836-9, an operating procedure that the Company had filed with the Commission pursuant to the Commission's order, and to comply with 16 NYCRR §255.603(d), which requires that the Company conform to its operating procedures filed with the Commission.⁴

PSL §24 authorizes the Commission to commence a civil action against a public utility company to recover monetary penalty amounts specified in PSL §25. PSL §25(2) specifies a civil penalty not to exceed \$100,000 per violation per day if the utility company "knowingly fails or neglects to obey or comply with ... an order [of the Commission]." PSL §25(3) specifies a civil penalty not to exceed the greater of \$100,000 per violation per day or \$250,000 if the utility company "knowingly fails or neglects to obey or comply with ... an order or regulation ... adopted specifically for the protection of human safety ...if it is determined by the commission that such safety violation caused or constituted a contributing factor in bringing about a death."

³ Staff Report, pp. 19-20.

⁴ Case 11-G-0077, *Proceeding on Motion of the Commission to Investigate Whether a Penalty Should be Imposed on Consolidated Edison Company of New York, Inc. Concerning the Natural Gas Explosion on July 25, 2008, at 147-25 Sanford Avenue, Queens*, "Order to Show Cause Why a Penalty Should Not Be Imposed," issued March 17, 2011 ("Order"). Con Edison's time to respond to the Order was extended to April 29, 2011 by ruling of the Secretary issued April 12, 2011.

Con Edison appreciates the opportunity to provide information that the Commission may find relevant and to demonstrate that the Company's actions complied with Specification G-11836-9 and that none of the Company's actions caused or constituted a contributing factor to the injuries and death that resulted from the explosion.

Con Edison's intent in participating in this proceeding is to resolve this matter promptly in a manner that enhances the safety of the Company's gas customers and recognizes the Commission's obligation to ensure compliance with the Public Service Law and the Commission's orders and regulations. Con Edison recognizes that it is within the Commission's discretion to determine whether it wishes to initiate a court action to pursue a civil penalty. The Company believes that litigation and civil penalty remedies are neither useful nor necessary for addressing the important concerns and interests presented by this matter and that these objectives are not served by extended litigation over a monetary penalty. Instead, this proceeding should be resolved promptly in a manner that promotes the safety of the gas customers in the Company's service area and upholds the Commission's regulatory authority. Accordingly, without waiving its right to have the underlying issues of fact and law decided by a court, Con Edison provides the following response to the Commission's Order.

II. Con Edison's Enhancements to Gas Restoration Procedures

Con Edison's commitment and focus has been and remains the protection of its customers' lives and property in the delivery and use of natural gas. Following the Sanford Avenue incident, Con Edison identified and implemented a number of

enhancements to its processes for gas service restoration to apartment buildings. These enhancements have been incorporated into Company Specification G-11836-10 which was filed with the Commission on September 16, 2008 (with an effective date of October 16, 2008), pursuant to the Commission's rules (16 NYCRR §255.603(b)). The enhancements consist of previously unspecified actions that Company workers must now perform when restoring gas to a gas riser in an apartment building. These process enhancements are summarized in Appendix 1 herein.

III. Response to Allegations of Procedure Violations

The Commission's Order (pp. 9-13) refers to instances of mechanic activity that, in the Order's language, "appear" to violate Con Edison's procedure for restoring gas to a gas riser stated in Specification G-11836-9. The Order requires Con Edison to explain why the Commission should not commence an action to impose penalties up to \$700,000 for such alleged violations under PSL §25(2). The Order also questions whether the alleged violations of the Company's procedure for restoring gas to a gas riser caused or constituted a contributing factor to the subsequent explosion and injuries and death. The Order requires Con Edison to explain why the Commission should not commence an action to impose a penalty up to \$250,000 for that alleged outcome under PSL §25(3). The Company's response demonstrates that the specified instances of mechanic activity did not violate the Company's gas restoration procedure and did not cause or constitute a contributing factor to the explosion and injuries and death.

A. Bleed of Pipes during Integrity Test

The Order proposes a penalty of up to \$100,000 each for Risers A, G, M, and P where the Con Edison mechanic did not perform the bleed of the riser or accompany

the plumber to perform the bleed. The Order erroneously asserts that each of these instances is a violation of Con Edison's procedure for restoring gas to a riser.

Procedures are not step-by-step instructions. Procedures provide guidelines for mechanics that are used in combination with a mechanic's knowledge, experience, and training to complete a task. Con Edison's procedure did not prohibit the licensed plumber from bleeding a riser without a Con Edison worker's participation or presence.

1. Consistency with Con Edison's Gas Restoration Procedure

Con Edison procedure for performing an integrity test of a gas riser, including bleeding (releasing pressure) a riser, is stated in section 4 of Con Edison's Specification G-11836-9. Section 4 is titled "Turn-On Procedure and Integrity Test." Subdivision 4.2 (A) states:

An integrity test shall be performed either by the meter dial test or using a manometer (U gauge).

Subdivision 4.2 (C) states:

The integrity test, as set forth in NFPA 54, shall be conducted under normal line pressure. The test medium may be either natural gas, an inert gas, or air.

Subdivision 4.2 (F) states:

Immediately after turning on the gas supply for the integrity test, the piping system shall be checked by observing a manometer or the gas meter test dial to ascertain that there is not leakage or openings in the downstream piping system.

Subsection 4.5 states the process for bleeding a riser as follows:

When testing with a U gauge, before removing the instrument or turning on the supply valve, go to the farthest accessible part supplied and relieve the pressure.

On July 25, 2008, Con Edison's mechanic, Vishnu Gopaulsammy, performed an integrity test of seven risers using a U-gauge manometer. As he testified in his

deposition in the personal injury litigation, during each test, he pressurized the riser with air, observed the U gauge of the manometer holding steady for several minutes indicating no leakage or openings, and requested that pressure be released from a remote site.⁵ He continued to observe the U gauge until the gauge registered a drop (moved from the previous position) indicating that the pressure had been released.

The Order suggests that Con Edison should be penalized for each instance in which a Con Edison worker did not perform or witness the performance of a riser bleed. Con Edison's procedure does not specify who is to perform the bleed. The performance of a riser bleed by a licensed plumber, at the request and on behalf of a Con Edison worker, unaccompanied by the Con Edison worker is not a violation of Con Edison's gas restoration procedure, and a penalty should not be imposed.

2. Absence of Knowing Failure or Neglect

Section 25(2) of the Public Service Law provides that a public utility company that "knowingly fails or neglects to obey or comply with ... an order" of the Commission is subject to a monetary penalty. Subsection 4.5 requires that a riser be bled to conclude an integrity test. Risers A, G, M, and P were bled in complete compliance with this requirement, and each riser passed the integrity test by continuously holding pressure until the riser was bled. The Con Edison's mechanic at the building could not have "knowingly" failed or neglected to bleed the risers when he requested the plumber to do so and verified compliance with his request. Subsection 4.5 does not specify that Con Edison personnel must bleed a riser or be present and actually witness when a riser is bled.

⁵ Con Edison provided a complete copy of Mr. Gopaulsammy's deposition to Staff in response to a data request issued by Staff in this proceeding.

During his deposition in the personal injury law suit, Con Edison's mechanic Gopaulsammy testified that, as he understood it, Con Edison's procedure permitted the plumber to bleed the riser at his request and on his behalf without a Con Edison worker's participation or presence (Gopaulsammy deposition May 26, 2010, pp. 82-83). In working with the plumber to bleed the risers, Con Edison's mechanic was aware that subsection 4.5 states that the bleed should be conducted in the farthest accessible part supplied. Indeed preparing for the integrity testing of the risers at the building, the mechanic specifically told the plumbers that to perform a riser bleed "you are supposed to go above the apartment, the highest apartment and to the lowest apartment." (Gopaulsammy deposition, May 7, 2010, pp. 317-18)

Con Edison's procedure did not specify that a Con Edison worker must personally perform a riser bleed, and Con Edison's mechanic understood that the procedure permitted a plumber to perform the bleed on Con Edison's behalf without Con Edison's presence. In permitting the plumber to bleed the risers without Con Edison's presence, the mechanic acted reasonably and did not knowingly fail or neglect to follow the procedure.

B. Plumber's Integrity Test Affidavit

The Order proposes a penalty of up to \$300,000 (up to \$100,000 per riser) for Con Edison's failure to receive the Plumber's Integrity Test Affidavit for risers G, M, and P and proceeding to restore service on the basis of the plumber's verbal representations that the Integrity Test Affidavit requirements were completed despite the mechanic's twice finding missing appliance valves that contradicted the veracity of the plumber's verbal representations. Although the plumber did file a Gas Turn-On

Affidavit for risers G, M, and P, with Con Edison by fax at 9:18 AM on July 25, 2008, the Order is correct that Con Edison did not obtain the Plumber's Integrity Test Affidavit for risers G, M, and P. Nonetheless, the Order recognizes both that acting on the basis of verbal representations would not be a violation if on-site conditions were acceptable and, if an unacceptable condition were found, restoring gas after requiring the Plumber's adherence to the affidavit requirements would not be a violation.

In this case, Con Edison's mechanic discovered missing appliance valves in two apartments – one on the M riser and the other on the P riser. The mechanic directed the plumber to install the valves before gas would be restored to the risers.

The Order incorrectly asserts that refusal to restore service to the M and P risers was required upon discovering a missing appliances valve on these risers. Con Edison's gas restoration procedure did not specify the action a mechanic should take if he finds that an appliance valve is not installed. The mechanic exercised reasonable judgment in requiring the plumber's adherence to the affidavit requirements by telling the plumber to install valves before gas would be restored and did not violate Con Edison's procedure in performing the integrity tests, determining that the risers were gas tight, and restoring gas to the risers.

1. Adherence to Integrity Test Affidavit Requirements

Although filing an Integrity Test Affidavit is no guarantee that affidavit conditions have been adhered to, there is no question that it is reasonable for a mechanic to rely on the representations made by a licensed plumber in such affidavit that the gas riser is ready for service.⁶ Nevertheless, one of the mechanic's responsibilities before restoring

⁶ The "Gas Turn-On Affidavit" that Con Edison received from the plumber at 9:18 AM on July 25, 2008 stated that gas risers G, M, and P were "ready for gas to be turned on."

gas service is to inspect for and, if appropriate, require correction of conditions that are inconsistent with Con Edison's gas restoration procedure. A mechanic's inspection would be no different even if an Integrity Affidavit were not filed, i.e., the filing of the affidavit is a matter that is not known to the mechanic in the field.

Con Edison's procedure requires that the mechanic establish the tightness of the riser before restoring gas to the riser. Con Edison's procedure for the mechanic's inspection and performance of an integrity test before restoring gas service is stated in Section 11 of Specification G-11836-9. Section 11 is titled "Restoration of Gas Inside Buildings." Subsection 11.3 states:

Prior to restoring the gas service, an integrity test will be performed by Con Edison to establish the tightness of the customer's gas piping in accordance with Section 4.0 of this Standard.

Subdivision 11.4(C) requires that Con Edison's mechanic verify that the appliance valve is shut-off in at least one apartment on the riser to be integrity tested.

Subsection 11.4(C) states:

[The building owner will provide] [e]ntry to a minimum of 10% of apartments affected by the shut-off and at least one apartment on each affected riser. The Company will verify that all appliance valves, in the apartments that are entered before the integrity test is performed, are shut-off

Section 11 does not specify the action that a mechanic should take if he finds that an appliance valve is not installed. Section 11 does not require refusal to restore gas, without opportunity to correct, if the mechanic finds that an appliance valve is not installed. The mechanic exercised reasonable judgment in directing the plumber to install appliance valves.

In his deposition, Con Edison's mechanic testified that he has found missing appliance valves during inspections on other restoration jobs and he typically gives the plumber an opportunity to install a missing valve but will refuse to restore gas if the plumber does not. ("If you're dealing with a licensed plumber, they have to put one in. If not, you don't do the job, you don't turn on. ... If it's just a valve missing and they have it there, they will replace it. Yeah, I'll give them time to replace it." Gopaulsammy Deposition, May 7, 2010, p. 264)

The Order erroneously asserts that the mechanic should have refused to restore gas to the three risers immediately upon discovering the missing appliances valves on the G and P risers, rather than allow the plumber an opportunity to correct the deficiency, and that Con Edison should be penalized for restoring gas to each riser. The mechanic exercised reasonable judgment in directing the plumber to install appliance valves and did not violate Con Edison's procedure in performing the integrity tests and restoring gas to the risers.

a) Apartment 3M – Riser M

The mechanic found an installed appliance valve in Apartment 3M on riser M (see Gopaulsammy deposition, April 9, 2010, pp. 133). No non-compliant condition was found on riser M, and, therefore, no basis was presented for demanding adherence to the affidavit conditions, much less refusing to restore gas to that riser. There is no basis for imposing a penalty for restoring service to riser M.

b) Apartment L3 – Riser G

A refusal to restore gas to riser G was not required because adherence to affidavit conditions was readily obtainable by installing an appliance valve. The mechanic observed in the kitchen of apartment L3 that an appliance valve was not

installed. The mechanic told the plumber to install a valve. The plumber installed an appliance valve, and the mechanic proceeded to perform an integrity test that found that the G riser held pressure continuously until the riser was bled (see Gopaulsammy deposition, April 9, 2010, pp. 129-130). Thus, the mechanic's action attained the plumber's adherence to the affidavit's requirement for valve installation in apartment 3M in advance of restoring gas service to the G riser. There is no basis for imposing a penalty for restoring service to riser G.

c) Apartment 6P – Riser P

The mechanic observed in the kitchen of apartment 6P (riser P) that an appliance valve was not installed. An appliance valve was lying on the kitchen counter top. The mechanic proceeded to perform an integrity test that found that the P riser held pressure continuously until the riser was bled. Following the test, the mechanic told the plumber's assistant to install the appliance valve and to replace a pipe, needed for installing the valve, that the mechanic damaged in setting up for the integrity test. When leaving the apartment, the mechanic encountered the plumber's assistant returning with a replacement for the damaged pipe, and he confirmed with the plumber's assistant that the plumber's assistant was going to replace the damaged pipe and install the valve. (Gopaulsammy deposition, April 9, 2010, pp. 160-164, May 19, 2010, 526-528) The post-incident investigation found that a gas-tight, threaded cap, rather than a valve, was installed in apartment 6P.

The mechanic's integrity test of riser P demonstrated that there were no leaks or open valves on the P riser, including in apartment 2P. The plumber's installation of a gas-tight, threaded cap in apartment 6P prevented the escape of gas into the apartment

when gas was restored to the P riser and in no way contributed to the explosion that later occurred.

That the plumber installed a gas-tight threaded cap in apartment 6P rather than a valve, does not detract from the reasonableness of mechanic's decision to seek adherence to affidavit conditions rather than refuse to restore service to the P riser. The mechanic's decision to seek adherence to affidavit conditions did not violate Specification G-11836-9. As such, a penalty is not warranted for the restoration of service to riser P.

2. Absence of Knowing Failure or Neglect

Section 25(2) of the Public Service Law provides that a public utility company that "knowingly fails or neglects to obey or comply with ... an order" of the Commission is subject to a monetary penalty. The Order proposes a penalty of up to \$300,000 (up to \$100,000 per riser) for Con Edison's failure to receive the Plumber's Integrity Test Affidavit for risers G, M, and P and proceeding to restore service on the basis of the plumber's verbal representations that the affidavit requirements were completed despite the mechanic's later finding missing appliance valves in two apartments that contradicted the veracity of the plumber's verbal representations.

Staff's Report provides no basis for concluding that any of Con Edison's employees knew that the Company had not received an Integrity Test Affidavit. Rather, Staff's Report (p. 6) relies on the fact that Con Edison provided an alternative affidavit form, called a "Gas Turn-On Affidavit," to the plumber for use in requesting a gas turn-on for the building's risers. In accepting a completed Gas Turn-On Affidavit from the plumber for risers G, M, and P, there is no indication that Con Edison's personnel knowingly failed or neglected to obtain an Integrity Test Affidavit.

The Staff Report discussed Con Edison's use of the Gas Turn-On Affidavit for four successive phases of gas line or riser restoration in the building – first, for the boiler line on July 1, 2008 (p. 28), second for riser B on July 23, 2008 (pp. 6-7, 29), third, for risers A, F, N, and laundry room on July 25, 2008 (pp. 8-9, 28-29), and fourth, for risers G, M, and P on July 25, 2008 (pp. 8-10, 28-29). During each phase of gas restoration discussed in the Staff Report, it is apparent that the Con Edison personnel responsible for obtaining affidavits from the plumber acted either without awareness that they should have required an Integrity Test Affidavit in addition to a Gas Turn-On Affidavit or with the belief that an additional Integrity Test Affidavit was not necessary. The Con Edison personnel did not act knowing that an Integrity Test Affidavit was required. Thus, while Con Edison's gas restoration procedure required an Integrity Test Affidavit before the restoration of gas to risers G, M, and P, the failure or neglect to adhere to that requirement was certainly without the "knowing" required by the statute.

C. **Enhanced Penalty under Public Service Law Section 25(3)**

The Order proposes a penalty of up to \$250,000 pursuant to PSL 25(3) on the ground that Con Edison's restoration of gas to riser P in violation of Specification G-11836-9 caused or constituted a contributing factor in bringing about a death or personal injury. The Order states that the missing gas valves observed in apartments L3 and 6P "violated section 11.4(E), which requires a "shut off valve for each appliance' prior to restoring gas service."⁷ The Order states that the missing gas valves observed in apartments L3 and 6P also "would not allow for an Integrity Test affidavit to be accepted by Con Edison under G-11836-9, and put Con Edison on notice that the

⁷ Order, p. 12

“allegedly filed ”Gas Turn-On” affidavits were inaccurate and unreliable.”⁸ The Order suggests that the appropriate response in these circumstances should have been to refuse to perform an integrity test or restore gas to riser P in which case the explosion could not have occurred.⁹

A penalty under PSL 25(3) is not warranted. As demonstrated above, with regard to the mechanic’s response to the missing valves, Specification G-11836-9 did not require that he refuse to restore gas, nor did the mechanic “knowingly” violate Specification G-11836-9 when he directed the plumber to install gas valves. Similarly, with regard to Con Edison’s failure to obtain an Integrity Test Affidavit, Con Edison’s personnel obtained an alternative affidavit and did not “knowingly” fail or neglect to obtain an Integrity Test Affidavit.

1. **Mechanic’s Response to Missing Appliance Valves**

A penalty pursuant to PSC 25(3) is not warranted for the mechanic’s decisions leading to the restoration of gas to riser P. Section 11 of Specification G-11836-9 does not state that a mechanic must take any specific action if he finds that an appliance valve is not installed. The procedure does not require refusal to perform the integrity test and restore service. The mechanic was working with a licensed plumber and exercised reasonable judgment based on the conditions known at the time in directing that the appliance valves be installed by the plumber before the restoration of gas to the risers. The mechanic’s exercise of judgment may be critiqued and criticized in retrospective consideration of the explosion that occurred, but his actions were not

⁸ Order, p. 12. The Order’s characterization of the filing as “allegedly filed” is not supported by the Staff Report. The Staff Report (pp. 28-29, Attachment B) confirms that the plumber filed a Gas Turn-On Affidavit for risers G, M, and P with Con Edison by fax at 9:18 AM on July 25, 2008.

⁹ Order, p. 13.

violations of Con Edison's gas restoration procedure which did not require any specific action including refusal to restore gas service to riser P.

PSL 25(3) sanctions a "knowing" failure or neglect to comply with a Commission mandate, in this case, the requirement to conform to Specification G-11836-9. Con Edison's mechanic took no action that "knowingly" violated Specification G-11836-9. Con Edison's mechanic could not have "knowingly" failed or neglected to follow Con Edison's procedure when the procedure does not direct specific actions under the circumstances.

Before working in apartment L3 (G riser), the mechanic had found conforming conditions (appliance valves in place) for four other risers – apartment L5 (riser F), apartment 5N (riser N), apartment 5A (riser A), and laundry room (laundry riser). In apartment L3 (G riser), at the mechanic's direction, the plumber installed an appliance valve that was in place at the time that gas service was restored to riser G. Thus, with the valve in place before restoration of gas service, there was no violation, much less a "knowing" violation, of section 11.4(E), which requires a "shut off valve for each appliance' prior to restoring gas service."¹⁰

After working in apartment L3 (G riser), the mechanic found conforming conditions (appliance valve in place) in the next apartment – 3M (M riser). In last apartment – 6P, after finding no valve, the plumber told the plumber's assistant that the gas appliance valve had to be installed before gas service could be restored to the riser. Further, before leaving apartment 6P, when he encountered the plumber's assistant returning with a pipe needed to install the valve, the mechanic confirmed with the plumber's assistant that the latter was going to install the valve as well. The gas-tight,

¹⁰ Order, p. 12.

threaded cap that was installed was fully effective in preventing gas from escaping into apartment 6P and in no way contributed to the explosion that later occurred in apartment 2P. Clearly the mechanic did not “knowingly” restore gas to riser P in a condition where gas might escape.

2. Restoration without Integrity Test Affidavit

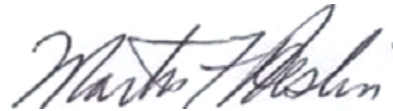
Nor does Con Edison’s failure to obtain an Integrity Test Affidavit warrant a penalty under PSL 25(3). As discussed previously, while Con Edison’s gas restoration procedure required an Integrity Test Affidavit before the restoration of gas to risers G, M, and P, the statutory requirement that the failure or neglect to comply with the procedure be “knowing” is not present. The Con Edison personnel responsible for obtaining affidavits required the plumber to supply a Gas Turn-On Affidavit but acted either without awareness that they should have required an Integrity Test Affidavit or with the belief that an Integrity Test Affidavit was not necessary. In either case, they did not “knowingly” act in violation of the procedure.

IV. Conclusion

The Company's response demonstrates that the specific instances of mechanic activity did not violate the Company's gas restoration procedure and did not cause or constitute a contributing factor to the explosion, injuries and death. Therefore, there is no basis for the Commission to initiate a court action to pursue a civil penalty against the Company.

Dated: New York, New York
April 29, 2011

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Martin F. Heslin".

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