

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**Proceeding on Motion of the Commission to Consider
Utility Emergency Performance Metrics**

Case 13-E-0140

COMMENTS OF THE CITY OF NEW YORK

Dated: September 19, 2013

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PRELIMINARY STATEMENT

On April 24, 2013, the New York State Public Service Commission (“Commission”) issued for public comment a draft “Scorecard” to measure electric utilities’ performance in storm situations, and on six specific questions regarding the Scorecard.¹ Pursuant to the April Notice, the City of New York (“City”) filed Comments recommending that the Scorecard should: (a) be applied to all utilities and utility businesses rather than only to the provision of electric service; (b) be implemented and applied to service outages that persist for at least 24 hours; (c) be modified to reflect two new category measures and different weightings be assigned to certain measures.² The only other party to comment on the Scorecard was a coalition of investor-owned utilities (the “Joint Utilities”).³

On August 19, 2013, the Commission solicited comments on a modified version of the Scorecard (the “Revised Scorecard”).⁴ According to the August Notice, the Scorecard had been “refined and consolidated” in response to “the comments received, additional discussions and further consideration of this issue.”⁵ The Revised Scorecard states that it reflects certain modifications responsive to a “major concern of the Joint Utilities,” but it does not indicate that any changes were made to address the recommendations advanced in the City’s June Comments. It does not appear from reviewing the Revised Scorecard that such changes were incorporated

¹ Case 13-E-0140, Consideration of Utility Emergency Performance Metrics, Notice Soliciting Comments (issued April 24, 2013) (“April Notice”).

² Case 13-E-0140, supra, Comments of the City of New York (dated June 10, 2013) (“June Comments”).

³ Case 13-E-0140, supra, Joint Comments of the New York State Utilities (dated June 10, 2013).

⁴ Case 13-E-0140, supra, Notice Soliciting Comments (August 19, 2013) (“August Notice”).

⁵ Id. at 1.

therein. No explanation or discussion regarding the changes that were made – or not made – is presented in either the August Notice or the Revised Scorecard.

Pursuant to the August Notice, the City hereby submits the following Comments on the Revised Scorecard. The City’s Comments will not repeat all recommendations advanced in its June Comments, which are incorporated herein by reference.⁶

COMMENTS

POINT I

THE SCORECARD SHOULD BE APPLIED BROADLY TO PROMOTE STATE POLICY GOALS

Recent extreme weather events such as Hurricane Sandy made it “clear that New York State’s electric utilities need to improve their preparation and response to future storms and emergencies.”⁷ To that end, Governor Cuomo proposed the Scorecard as a means of holding utilities accountable for service restorations after a “significant outage using a quantitative assessment of” utility performance.⁸ Governor Cuomo explained that the development and implementation of this evaluative tool was intended to “enact reforms that will overhaul and

⁶ The City affirms all recommendations advanced in its June Comments, but has refrained from repeating all such recommendations herein for the sake of brevity. For instance, the City previously recommended that the Communication category be modified to treat critical care facilities in a similar manner as life support equipment customers. (June Comments at 10-12.) The recommendations selected for discussion herein illustrate how the City’s proposals, if adopted, would (i) contribute to the development of a relevant evaluative tool, as envisioned by Governor Cuomo, and (ii) help the Commission to realize the opportunity for meaningful improvement in utility responses to service outages that is presented by the Scorecard.

⁷ Press Release (dated August 15, 2013) (“August PR”).

⁸ Press Release (dated April 18, 2013) (“April PR”).

improve New York State’s emergency preparedness and response capabilities, as well as improve the strength and resilience of the state’s infrastructure to better withstand major weather incidents.”⁹ The Scorecard is intended to further the State’s desire to engage in “more aggressive review and evaluation of utilities following Superstorm Sandy.”¹⁰

The Scorecard, therefore, is an opportunity to identify areas of utility preparation and operational response that need improvement, and to drive such enhancements. This opportunity will be lost if the Scorecard is not designed to evaluate all critical elements of utility preparation for and operational response to significant service outages. Scorecard effectiveness also would be undermined if the scoring system does not adequately reflect the importance of each metric that is evaluated.

The City recommended Scorecard modifications in its June Comments that would strengthen the effectiveness of that evaluative tool, but those recommendations were not reflected in the Revised Scorecard. The City’s recommendations are consistent with the Governor’s purpose in his direction that the Commission develop the Scorecard. The City respectfully urges the Commission to adopt those recommendations as set forth in the City’s June Comments, and as further discussed herein. The following discussion briefly highlights the City’s key recommendations, with one notable modification.

⁹ Id.

¹⁰ August PR.

A. The Scorecard Should Be Applied To A Broader Scope Of Service Outages

The April Notice proposed that the Scorecard would be applied to any event during which restoration takes more than three days.¹¹ The City noted that no basis was provided for this threshold, and recommended that the Scorecard be applied “to all events in which customers lose one or more types of utility service for at least twenty-four hours.”¹² The Revised Scorecard did not incorporate this recommendation, or provide either an explanation for this omission or a basis for adopting a three-day threshold for Scorecard application. This is an error – scorecard review should not be limited only to outages that persist for more than three days.

After submitting its June Comments and engaging in subsequent discussions with Department of Public Service Staff (“Staff”), the City has concluded that a multi-pronged threshold for Scorecard application would be superior to the one-size-fits-all approach reflected in both versions of the Scorecard. Accordingly, the City now recommends that the Commission adopt a three-pronged approach to reflect that utility responses to some service outages should be reviewed under the Scorecard even if a specific temporal threshold is not satisfied.

Initially, the City continues to recommend that any utility service outage that persists for at least twenty-four hours should trigger Scorecard review of utility preparedness for, operational response to, and communication during the event. The reasons underlying this recommendation are set forth in the City’s June Comments.¹³

¹¹ April Notice, Notes on Draft Emergency Response Performance Measures (Scorecard) at 1.

¹² June Comments at 5-6.

¹³ Id. at 5-7.

The significance of a service outage is not necessarily determined *only* by its duration. To address this issue, the City proposes two additional “prongs” that also should trigger Scorecard review if satisfied: (a) service is interrupted to 2.5 percent or more of customers within an operating area, regardless of duration; and (b) service is interrupted to one percent or more of customers in an operating area for at least twelve hours. In developing this recommendation, the City notes that 16 NYCRR Section 97.1(c) defines a “major storm” as “a period of adverse weather during which service interruptions affect at least 10 percent of the customers in an operating area and/or result in customers being without electric service for durations of at least 24 hours.” The City adopted this temporal threshold as a reasonable balancing of relevant interests for the purpose of Scorecard review. However, with respect to the second criteria, the City concluded that a standard tied to 10 percent of customers in an operating area would be too expansive. A single high-rise building may be one customer although including either or both of hundreds of residential units, each of which may be inhabited by multiple individuals, and multiple businesses that employ hundreds or thousands of individuals. The 10 percent threshold is too lax in this context.

The City submits that a service outage may be significant if it impacts a substantial population of customers, even if it persists for less than twenty-four hours. The Scorecard currently ignores this reality, however, effectively conveying the message that utility preparation for and response to outages are of particular concern only if they persist for an extraordinary amount of time (i.e., more than three days). Scorecard review instead should be triggered if utility service is interrupted to 2.5 percent or more of customers within an operating area, regardless of how long that outage lasts. This percentage is based on the “major storm” definition, and represents an effort to have Scorecard review applied to a meaningful population of service outages. As described above, a small percentage of customers in a utility operating area may

correspond to a large number of individuals and businesses, and the 10 percent standard reflected in the “major storm” definition would inappropriately narrow the population of outages reviewed under the Scorecard.

An outage also may be significant by virtue of its duration *in combination with* the number of customers impacted, even if the thresholds for either duration or scope alone would not be satisfied. Accordingly, the City proposes that Scorecard review also be triggered by outages that persist for at least twelve hours and impact one percent or more of customers in a utility operating area. These criteria are a blend of the standards embedded in the “major storm” definition. As described above, the specific standards recommended herein reflect the fact that widespread outages of significant duration can have a big impact on utility customers and, therefore, should be reviewed under the Scorecard.

The criteria for Scorecard review described above are consistent with the purpose of the Scorecard, and should be adopted by the Commission. The City acknowledges that the Commission may find that a three-pronged approach is appropriate, as recommended by the City, but that the individual standards should be modified. In that event, the City urges the Commission to adopt standards that would result in application of the Scorecard to a meaningful population of service outages. Under no circumstances should the Commission affirm that the Scorecard will be applied only to the longest outages that may occur (i.e., those that persist for more than three days), given that widespread outages of shorter duration can have material adverse effects on the public. Such result would be inconsistent with the underlying intent of Governor Cuomo, and would constitute a failure to seize the opportunity now presented to improve utility performance in areas that clearly need significant change.

B. The Scorecard Should Include The Concept Of Resiliency In Its Metrics

The City noted in its June Comments that the Scorecard does not, but should, consider projects that increase the resilience of utility infrastructure (e.g., long-term preparatory actions), which are undertaken to reduce the frequency and duration of outages.¹⁴ The City also noted that the Scorecard does not assign sufficient weight to the short-term actions (i.e., the “Materials/Stockpiles” measure of the Scorecard) that utilities can and should take to facilitate their operational responses to outage events.

Accordingly, the City recommended that the Scorecard be modified to include a new program measurement for “Resilience.”¹⁵ Such change would reflect the fact that the utilities’ performance in restoring service after an outage is related to its performance in preparing for the event that caused the outage. Rather than focusing solely on short-term activities that a utility may undertake to prepare for a service interruption (e.g., the stockpiling and distribution of materials and equipment in advance of a storm), the Scorecard should look more broadly at utility actions that may shorten the duration of a service outage, or avoid such outage altogether.

Importantly, this recommendation is consistent with the findings of the Moreland Commission on Utility Storm Preparation and Response (“Moreland Commission”), which supported Governor Cuomo’s decision to have the Commission develop and implement the Scorecard. For instance, the Moreland Commission found that Consolidated Edison Company of New York, Inc.’s (“Con Edison”) response to Hurricane Sandy was hampered by its inadequate

¹⁴ Id.

¹⁵ Id.

preparation for the storm response. This manifested, in part, as “difficulty in timely obtaining a sufficient supply of sandbags and inflatable dams to fortify low-lying Con Edison infrastructure.”¹⁶

Con Edison has proposed a number of constructive storm hardening projects in its pending electric, gas, and steam rate cases that include efforts to prevent floodwaters from infiltrating utility infrastructure located in flood-prone areas, and to install water pumps and other equipment to remediate water that does penetrate its structures.¹⁷ Those projects should shorten the duration of future outages caused by severe weather events, or avoid such outages altogether. They also represent a more robust solution to the problem than does the periodic stockpiling and deployment of sandbags or other temporary flood-control measures.

It is clear, therefore, that a utility’s preparation for responding to a service outage includes long-term term capital projects that may shorten the duration of an outage, or avoid it altogether. This reality should be reflected in the final Scorecard as a new Resiliency metric.

The City advocated in its June Comments that resilience issues, and the manner in which Con Edison is preparing for future storms, are central themes advocated by Con Edison and many parties in that utility’s pending electric, gas, and steam rate cases.¹⁸ In those cases, the City advocated, *inter alia*, that metrics should be developed and used to evaluate the resiliency of Con Edison’s electric system.¹⁹ Staff opposed this proposal, asserting that such recommendations

¹⁶ Final Report, Moreland Commission (dated June 22, 2013) at 64 (“Final Report”), *available at* <http://www.moreland.ny.gov/>.

¹⁷ See Cases 13-E-0030, *et al.*, Consolidated Edison Company of New York, Inc. – Electric, Gas, and Steam Service, Direct Testimony of Electric Infrastructure and Operations Panel, Gas Operations and Infrastructure Panel, and Steam Infrastructure and Operations Panel.

¹⁸ Cases 13-E-0030, *et al.*, Consolidated Edison Company of New York, Inc. – Electric, Gas, and Steam Service, *supra*.

¹⁹ Case 13-E-0030, *et al.*, *supra*, Direct Testimony of the New York City Electric Infrastructure Panel (dated May, 2013) at 44-49.

“would be more properly raised in Case 13-E-0140”²⁰ Although the City continues to believe that the pending rate cases are the most appropriate forum for the development and application of such metrics, the City urges the Commission to act on these recommendations in this proceeding if it determines that such metrics should not be developed in the pending rate cases.

C. The Points Allocated to the Preparation Category Should Be Increased

The City noted in its June Comments that the relative weighting of the Scorecard categories, and their constituent criteria, should be reflective of the relative importance of each category to a utility’s ability to restore service following an outage.²¹ The City explained that the weighting assigned to the Scorecard categories under-valued preparatory efforts, and should be increased to better reflect contributions of these actions to a utility’s ability to restore service in a timely manner.²² The Revised Scorecard neither incorporated these recommendations nor provided any explanation for those omissions.

The Commission should modify the points allocated to Scorecard categories, as recommended by the City. Specifically, the points assigned to the Preparation category should be increased to at least 300, with the points for the Operational Response category reduced to 500 and the points for the Communication category reduced to 200. The City respectfully submits that making physical preparations to prevent or minimize outages, and to gather supplies to be able to respond immediately are equally as important, if not more important, as pre-event communications – which are assigned greater weighting under the Revised Scorecard.

²⁰ Cases 13-E-0030, et. al., Staff Initial Brief (dated August 30, 2013) at 230.

²¹ June Comments at 9-10.

²² Id. at 9.

Importantly, the weighting proposed by the City is more consistent with the basic purpose of the Scorecard. In directing the Commission to develop the Scorecard, Governor Cuomo explained that the Scorecard “will help establish standards to promote *effective emergency preparation* and response by utilities in the restoration of power to their communities.”²³ Governor Cuomo subsequently explained that the Scorecard “will help ensure that utilities *are adequately prepared* to respond to emergency events,” and that “[h]olding utilities accountable to such standards will ensure that they have the ability, capacity, and mindset to act quickly and effectively.”²⁴ It is clear that the Governor was very concerned with the utilities’ preparation for service outages, as well as their response to same. Moreover, the Final Report of the Moreland Commission identified “industry-wide deficiencies that need to be addressed across all utilities in the State,” many of which pertained to inadequate utility preparation for responding to service outages.²⁵ Assigning ten percent of total potential Scorecard points to the Preparation category does not reflect the major impact that utility preparation may have on its response to a significant outage. The assigned points should be increased as recommended by the City.

POINT II

A MATERIAL NUMBER OF POINTS SHOULD BE ASSIGNED TO THE RESTORATION TIMES METRIC

The Scorecard included a “Restoration Times” metric in the Operational Response category. This metric is defined as the amount of time it takes the utility to restore power to 90

²³ April PR (emphasis added).

²⁴ August PR (emphasis added).

²⁵ See, e.g., Final Report at 14.

percent of customers affected. The Restoration Times metric would establish an objective standard against which the utility's response to a service outage may be evaluated. The City, therefore, fully supports the proposal to include this metric in the Scorecard. Importantly, the Scorecard assigned 70 points to this metric, the largest such allocation under the Operational Response category.

The Revised Scorecard, however, redistributes to other metrics *all* 70 points that previously were assigned to Restoration Times. Such change, if adopted as proposed, would eviscerate the utility of that metric. The time necessary for a utility to restore service arguably is the single most important measure of its outage response capabilities. The Commission should be seeking opportunities to promote improved service restoration times, and assigning a material amount of Scorecard points to the Restoration Times metric represents a simple means of doing so. To the extent that a primary purpose of the Scorecard is to shorten the duration of service outages by improving utility preparation for and response to such events, the Scorecard would miss an important opportunity if it fails to assign any points to the Restoration Times metric.

The City urges the Commission to remedy this issue by assigning a material number of points to the metric. The Revised Scorecard increased the points assigned to the Safety component of Operational Response from 20 points to 100 points. Although the City agrees that Safety is an important consideration that is worthy of substantial points under the Scorecard, it disagrees that Safety considerations should be assigned more points than the Restoration Times metric. Accordingly, the City recommends that the Commission rebalance the weighting of Operational Response metrics by assigning 100 points to the Restoration Times metric.

Finally, customers, not shareholders, should be the primary focus of the nascent Scorecard. The August Notice indicates specifically that revisions responsive to “a major concern

of” the Joint Utilities were incorporated into the Revised Scorecard. There is no similar statement that modifications responsive to the City’s “major concerns”, which were proposed for the benefit of utility customers, also were incorporated therein. It bears emphasis, again, that the Scorecard is being developed in response to gubernatorial concerns – reinforced by the Moreland Commission – that the State’s utilities must improve their abilities to prepare for and respond to extended service outages. To the extent that the Commission ultimately approves Scorecard modifications that weaken its power as an evaluative tool, or otherwise decrease the utilities’ accountability under the Scorecard for outage preparation and response, such decision would be made in spite of the Moreland Commission’s findings, in seeming conflict with the will of the Governor, and in furtherance of shareholder interests rather than the public interest.

CONCLUSION

For the foregoing reasons, the City respectfully recommends that the Commission adopt and implement the use of the Scorecard, subject to the modifications discussed herein and in the City’s June Comments.

Dated: September 19, 2013
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Respectfully submitted,

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