

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Investigate the Prudence of Consolidated Edison Company of New York, Inc., in Relation to the Steam Pipe Rupture of July 18, 2007 at East 41st Street and Lexington Avenue, New York

Case 08-S-0153

NEW YORK STATE CONSUMER PROTECTION BOARD'S
STATEMENT IN SUPPORT OF JOINT PROPOSAL

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Dated: August 15, 2008
Albany, New York

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The New York State Consumer Protection Board ("CPB") submits this Statement in full support of the Joint Proposal filed in this proceeding on August 6, 2008, resolving issues raised in the investigation of the prudence of Consolidated Edison Company of New York Inc.'s ("Con Edison" or "Company") actions concerning the July 2007 steam pipe rupture in New York City ("Joint Proposal"). If approved by the New York State Public Service Commission ("PSC" or "Commission"), the Joint Proposal would benefit Con Edison's steam, electric and natural gas customers by assuring that they would not bear any costs attributable to the event, including capital spending, operating expenditures such as labor and materials, environmental clean-up costs, customer claims and the increase in the Company's liability insurance premiums. Customers would also benefit since Con Edison would provide approximately \$3 million to fund enhancements to the steam system. Some of these provisions could only have been attained through a negotiated settlement and as such, the CPB recommends that the PSC adopt the Joint Proposal in its entirety.

The CPB's primary objectives in this case have been to ensure that Con Edison's customers do not bear the costs of repairing the affected steam, electric or natural gas system and to help reduce the likelihood of a similar event in the future. The Joint Proposal, for the reasons we discuss below, fully satisfies the PSC's Settlement Guidelines and achieves each of the CPB's objectives in this proceeding. We recommend that the Commission approve it in its entirety.

BACKGROUND

On January 18, 2008, the PSC issued an Order requiring the Company to

show cause why the Commission should not institute a prudence proceeding to determine whether the Company was imprudent with respect to the management of its steam system.¹

After the Company filed its response to that Order, the PSC formally commenced this proceeding, stating:

Based on our review of the Con Edison Reports, the Staff Report and Con Edison's Response to the Prudence Order to Show Cause, we find that sufficient questions are raised to warrant the commencement of this prudence review.²

A pre-hearing conference was held on April 24, 2008, after which Administrative Law Judge ("ALJ") William Bouteiller issued a ruling establishing the case schedule. After notice to the ALJ and all parties on the service list in this proceeding, the active parties commenced confidential negotiations in an effort to resolve the contested

¹ Case 07-SA-0984, In the Matter of the Investigation of the Consolidated Edison Company of New York, Inc.'s Steam Pipe Rupture of July 18, 2007, East 41 Street and Lexington Avenue, New York New York, Order Directing Company to Show Cause, January 18, 2008. ("Show Cause Order")

² Case 08-S-0153, Order Instituting Proceeding, February 13, 2008, p. 9.

issues. Throughout the months of June and July, 2008, interested parties engaged in numerous discussions culminating with this Joint Proposal.

The active parties to the prudence proceeding included: CPB, Con Edison, Staff of the Department of Public Service Staff, and Consumer Power Advocates. A representative of the Energy East Companies monitored the confidential negotiation sessions but was not an active party. The CPB is not aware of any opposition to this Joint Proposal.

I. THE PROPOSAL PROVIDES SIGNIFICANT BENEFITS FOR RATEPAYERS.

The Joint Proposal would provide several important benefits to consumers, including those which the CPB has sought throughout this proceeding. Many of these benefits may not have been achieved in a litigated proceeding.

A. Capital Costs

The response to CPB Information Request ("IR") No. 1, updated to reflect the most recent information, reveals that the Company's capital and removal costs attributable to the steam incident totaled \$12.0 million, including replacement of steam mains, underground electric equipment and certain asbestos abatement efforts.³ This consisted of approximately \$4.7 million for electric, \$0.5 million for natural gas, and \$6.7 million relating to steam. The Joint Proposal calls for all of these costs to be borne by the Company. In addition, the Joint Proposal requires the Company to absorb approximately \$360,000 in interest and depreciation on the above cited electric plant,

³ This information is included as an Attachment to this document.

which otherwise would likely have been paid by ratepayers under the terms of the rate agreement in place when these expenditures were incurred.⁴

These provisions ensure that ratepayers do not pay any capital costs attributable to the steam incident, a result that would have been obtained in a litigated proceeding only if Con Edison was found to have been imprudent and that such imprudence was the sole cause of the rupture.

B. Operations & Maintenance (“O&M”) Costs

The Company’s response to CPB IR No. 1, updated to reflect the most recent information, indicates that Con Edison spent approximately \$34.8 million in O&M costs for, among other things, asbestos clean up, legal and investigative costs and payment of customer claims.⁵ Net of insurance reimbursement, this totals \$13.3 million. Under the Joint Proposal, Con Edison would absorb the full amount of these costs, as well as any additional O&M costs related to the steam incident that have not yet been incurred.

As with the Joint Proposal’s resolution of capital costs, this outcome would have occurred in a litigated proceeding only upon a Commission determination that the steam incident was solely attributable to Con Edison’s imprudence.

C. Insurance Premiums

It is conceivable that the steam incident could increase the premiums for Con Edison’s liability insurance, a cost that would normally be paid by ratepayers. The Joint

⁴ Case 04-E-0572, 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, Order Adopting Three-Year Plan, March 24, 2005.

⁵ See Attachment.

Proposal ensures that ratepayers do not fund any such cost increase by limiting the total amount of annual insurance premiums for excess liability insurance to be funded by ratepayers through April 2010, to \$11.258 million, the annual premium paid at the time of the steam rupture. The Agreement would also ensure that over that same time period, Con Edison does not reduce its total excess liability insurance coverage beyond current levels, an action that would likely impose increased risk on ratepayers, absent catastrophic changes in the insurance market and justification to the Commission. Further, for each of the years beginning April 28, 2010 and April 28, 2011, Con Edison would absorb \$2 million of its premiums for this insurance.

Overall, these provisions assure that any increase in insurance premiums attributable to the steam incident does not harm ratepayers. The CPB estimates that these provisions require Con Edison to absorb approximately \$8 million in insurance costs that would have been born by consumers in the absence of a finding of imprudence.

D. Steam Plan Implementation Costs

To help reduce the likelihood of a similar event in the future, Con Edison submitted an Action Plan in Case 07-S-0894, and the Commission recommended further action in its Show Cause Order. The Joint Proposal identifies certain of those tasks, particularly maintenance and replacement of steam traps, that Con Edison must perform before October 1, 2008, and requires the Company to absorb all of the associated costs, estimated at \$3 million.

This is a considerable benefit to consumers, since the Company would likely have been permitted to recover those costs, under the terms of its current rate plan.⁶

E. Company Apology

Under the Joint Proposal, Con Edison would provide a written apology, in the form of a letter from its Chief Executive Officer to its customers affected by the event. In addition, the Company would include the apology in a press release to be issued upon approval of the Joint Proposal by the Commission.

This apology, to be conducted in a visible manner and directed to both Con Edison's customers and the public, would not likely have resulted from a litigated proceeding.

F. Other Provisions

The Joint Proposal also ensures that any recovery of direct damages that the Company receives from third parties that exceeds costs the Company has absorbed, are credited to customers. Similarly, any recoveries of punitive damages from third parties in excess of costs absorbed by the Company, would be deferred for disposition by the Commission. These provisions eliminate the possibility that Con Edison would be enriched as a result of this tragedy.

⁶ Case 05-S-1376, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc., for Steam Service, Order Determining Delivery Revenue Requirement and Rate Design, September 22, 2006.

The Agreement resolves all issues associated with the Commission-established prudence review, but does not forestall the Commission from pursuing a penalty action against the Company for violating the State Public Service Law.

II. THE PROPOSAL SATISFIES THE COMMISSION'S SETTLEMENT PROCEDURES AND GUIDELINES.

The Commission has adopted well-known standards to evaluate whether negotiated agreements are in the public interest.⁷ For the reasons explained below, the Joint Proposal satisfies these standards.

The Joint Proposal reasonably balances the interests of ratepayers, investors and the long-term viability of the utility. Ratepayers are protected since they will not bear any of the capital costs, O&M costs or likely liability insurance premium increases that Con Edison incurred as a result of the event. The Commission can reasonably conclude that the Joint Proposal is fair to investors and consistent with the long-term viability of the utility, by virtue of the fact that Con Edison is a signatory.

The Agreement is also consistent with the policies of the Commission and the State. The alternative to the Joint Proposal is complex and lengthy litigation, with an uncertain outcome. Litigation would require significant resources by State agencies and the Company, which could be better spent on other pressing energy matters, such as enhancing the Company's infrastructure in a cost-effective manner and evaluating Con Edison's most recent rate increase for its electric operations. The Joint Proposal also

⁷ Cases 90-M-0255 and 92-M-0138, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines ("Settlement Guidelines"), Opinion No. 92-2, issued March 24, 1992; also, Appendix B, at 8.

further the State's goal of holding down energy costs for consumers and helps ensure that Con Edison's steam system operates in a safe and reliable manner.

The Joint Proposal is also within the range of likely results from litigation. In a litigated prudence proceeding, parties would have had to demonstrate that incremental capital, O&M and liability insurance premiums would have been avoided but for Con Edison's alleged imprudent conduct. There is no guarantee that the Commission would have found that Con Edison was imprudent and that such imprudence was solely responsible for the steam rupture. Other provisions of the Joint Proposal that compare favorably with the likely outcome of a fully litigated prudence proceeding, include an assurance that the Company will not retain any costs it recovers as a result of third party litigation that exceed amounts identified in this Agreement, and the requirement that Con Edison fund approximately \$3 million to enhance the reliability of the steam system.

Finally, the Proposal is supported by parties representing diverse interests, who in past proceedings before the Commission, have taken adversarial positions, thereby demonstrating that the Proposal is in the public interest. Importantly, the CPB is not aware of opposition to the Joint Proposal by any party that worked on these issues.

In light of these reasons, the Commission should conclude that the Proposal fully satisfies the Settlement Guidelines.

CONCLUSION

For all of the above-highlighted reasons, the New York State Consumer Protection Board recommends that the Public Service Commission approve the August 6, 2008 Joint Proposal in this proceeding.

Respectfully submitted,



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Chairperson and Executive Director

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Dated: Albany, New York
August 15, 2008

ATTACHMENT

The following Attachment is Con Edison's response to CPB Interrogatory, Set CPB1, No. 1. It consists of the narrative dated April 11, 2008, and a table reflecting the most recent data available at the time the Joint Proposal was finalized, June 2008.

Company Name: Con Edison
Case: 08-S-0153

Response to CPB Interrogatories – Set CPB1
Date of Response: 04/11/2008

Question No. :1

Please explain whether Con Edison expects its customers to bear any cost, expense or capital expenditure incurred by the Company attributable to the July 18, 2007 steam event. If the answer is "yes" in whole or in part, please describe and quantify the amount of the cost, expense or capital expenditure which the Company believes should be paid by its customers, as well as the total cost, expense and capital expenditures that the Company has incurred attributable to this event.

Response:

Please see attached spreadsheet.¹ The Company will seek recovery for approximately \$13.2 million of capital expenditure as follows:

| | |
|----------------|------------------------|
| Steam plant | -- \$ 7,899,093 |
| Electric plant | -- 5,195,888 |
| Gas plant | -- <u>99,950</u> |
| Total | -- <u>\$13,194,931</u> |

¹ The Company notes that costs to implement the Company's Recommendations and Action Plan, Staff Report recommendations, and any future Company, Staff and/or Commission recommendations, are not addressed.

Consolidated Edison Company of New York, Inc.
Steam Incident Summary - As of June 2008

| | Total | O&M | Other Than O&M | | | |
|---|---------------------|---------------------|------------------|------------------|---------------|-------------------|
| | To-Date | Total | Capital | Retirement | Other | Total |
| 84493 Steam Incident - Response & Clean Up | 2,307,053 | 1,960,889 | 215,528 | 130,636 | - | 346,165 |
| 84494 Steam Oper .Asbestos Abatement/Clean Up | 19,674,838 | 13,328,656 | 4,768,940 | 1,577,243 | - | 6,346,182 |
| 84498 CERC (includes Misc. Expenses) | 708,820 | 708,820 | - | - | - | - |
| 84500 Gas Operations | 173,088 | 73,130 | 79,486 | 20,473 | - | 99,958 |
| 84536 To Collect Non-labor Engineering Costs 7/07 | 73,193 | - | - | - | 73,193 | 73,193 |
| 84670 Collect Legal & Investigative Costs | 10,429,780 | 10,429,780 | - | - | - | - |
| 89397 Customer Contact | 132,759 | 132,759 | - | - | - | - |
| 89398 Customer Claims Paid | 3,862,869 | 3,862,869 | - | - | - | - |
| 89399 Substations / S&TO | 104,666 | 104,666 | - | - | - | - |
| 16957 Ug transformer installations | 38,949 | - | 38,949 | - | - | 38,949 |
| 17987 Ug primary | 1,926,981 | - | 1,926,981 | - | - | 1,926,981 |
| 17988 Ug secondary | 413,052 | - | 413,052 | - | - | 413,052 |
| 17989 Ug services | 8,919 | - | 8,919 | - | - | 8,919 |
| 20711 Replacement steam mains - stm explsn | 2,244,825 | - | 2,244,825 | - | - | 2,244,825 |
| 20714 Inst'll replacement of stm manholes | 44,010 | - | 44,010 | - | - | 44,010 |
| 21256 Conduit - for emergency use | 83,898 | - | 83,898 | - | - | 83,898 |
| 42146 Ug primary | 256,753 | - | - | 256,753 | - | 256,753 |
| 42147 Ug secondary | 42,446 | - | - | 42,446 | - | 42,446 |
| 42148 Ug services | 5,507 | - | - | 5,507 | - | 5,507 |
| 47083 Replacement of steam mains | 51,631 | - | - | 51,631 | - | 51,631 |
| 96779 Ug burnout secondary main distrb | 4,159,000 | 4,159,000 | - | - | - | - |
| 96001 Ug serv burnout and no-lights | 30,000 | 30,000 | - | - | - | - |
| 96002 Ug burnout primary fdr othr maint | 25,000 | 25,000 | - | - | - | - |
| Total Expenses | 46,798,038 | 34,815,568 | 9,824,587 | 2,084,689 | 73,193 | 11,982,469 |
| <u>Insurance Reimbursement</u> | | | | | | |
| 84493 Steam Incident - Response & Clean Up | (930,686) | (930,686) | - | - | - | - |
| 84494 Steam Oper .Asbestos Abatement/Clean Up | (8,387,407) | (8,387,407) | - | - | - | - |
| 84498 CERC (includes Misc. Expenses) | - | - | - | - | - | - |
| 84500 Gas Operations | - | - | - | - | - | - |
| 84536 To Collect Non-labor Engineering Costs 7/07 | - | - | - | - | - | - |
| 84670 Collect Legal & Investigative Costs | (9,363,891) | (9,363,891) | - | - | - | - |
| 89397 Customer Contact | (3,762) | (3,762) | - | - | - | - |
| 89398 Customer Claims Paid | (2,780,815) | (2,780,815) | - | - | - | - |
| 89399 Substations / S&TO | - | - | - | - | - | - |
| Total Reimbursements | (21,466,562) | (21,466,562) | - | - | - | - |
| Net Amount to Expense | 25,331,476 | 13,349,007 | 9,824,587 | 2,084,689 | 73,193 | 11,982,469 |
| Electric | 15,101,802 | 10,357,076 | 3,941,431 | 803,295 | - | 4,744,726 |
| Gas | 1,861,874 | 1,291,352 | 426,362 | 144,160 | - | 570,521 |
| Steam | 8,367,800 | 1,700,578 | 5,456,794 | 1,137,234 | 73,193 | 6,667,222 |
| | 25,331,476 | 13,349,007 | 9,824,587 | 2,084,689 | 73,193 | 11,982,469 |