

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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Request for Investigation of Utility Workers Union of America,  
AFL-CIO, Local 1-2, Utility Workers Union of America,  
New York Central Labor Council and New York State AFL-CIO  
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Case 12-M-0306

**RESPONSE OF  
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.  
TO MOTION FOR INITIATION OF EXPEDITED INVESTIGATION  
AND INTERIM RELIEF**

Marc Richter  
Anna Chacko  
Martin F. Heslin  
Attorneys for  
Consolidated Edison Company  
of New York, Inc.  
4 Irving Place, Room 1815-S  
New York, NY 10003  
(212) 460-4615  
[richterm@coned.com](mailto:richterm@coned.com)

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## **Executive Summary**

Consolidated Edison Company of New York, Inc. maintains that the UWUA Local 1-2 motion is misleading, factually inaccurate, has no basis in law, and should be denied in its entirety. In this executive summary, we will outline our reasons.

First, we will discuss how the company had no choice but to lock out its union employees because of the union leadership's refusal to let our employees keep working either under an extension of the contract in place at the time, or agreement to give reasonable notice of a strike or lockout. Next, we will demonstrate how critical notice of a strike is to keeping our commitment to the nine million people living in our region. Finally, we will conclude by describing how our contingency plan is allowing for continuity of services to meet our responsibility to our customers.

Let us be absolutely clear. We were left with no choice but to lock out our union employees. As the contract deadline approached on June 30, we offered union leadership a contract extension of two weeks. The union leadership declined our offer. We then offered seven days' notice for either side to initiate a work stoppage – either a lockout or a strike. The union leadership again refused our offer to allow our employees to continue to work. So at approximately 2 am on July 1, we had no choice but to protect the safety of our system to provide our customers uninterrupted service by locking our union workers out.

Later on Sunday, July 1, we asked our union leadership for 72-hour notice before striking in order to get our union employees back to work. Union leadership refused. To be clear, our offer to bring employees back to work if the union leadership agrees to give 72-hour notice of a strike remains open.

Advance notice is absolutely critical for the safe and seamless operation of our systems. The safety and reliability issues raised by the threat of a strike without advance notice are serious and indisputable. In fact, the union leader's June 29 statement in *Crain's NY Business* was a warning. "... when it comes time for June 30th, we will do whatever it takes at that 11th hour. If they push us, we will do whatever it takes." Given this threat, we had no other option but to protect our systems.

Maintaining a steady supply of electricity, gas, and steam is vital to our residential customers and New York's financial institutions, medical facilities, and other commercial businesses. By refusing to give notice, the union would force us to potentially compromise the integrity of the systems that keep our region energized.

If the union leadership directed our union employees to leave their jobs without warning, we would have understaffed energy control centers and substations. Critical facilities like transmission feeders would not be properly monitored. Our ability to respond to and fix gas leaks, power outages, or downed lines would be severely compromised. The union leadership's failure to agree to a mere 72-hour notice was clearly an attempt to hold all of us hostage.

If our gas systems were to fail, more than a million homes would not have a working stove to cook dinner. If steam systems depressurized, hundreds of thousands of people living in high rises throughout Manhattan would immediately lose cooling systems and hot water. And not just in the short term. Restoring gas and steam to our customers would take between several days to several months, depending on the extent of the restoration.

Exposing our customers and the general public to the potential for serious safety hazards and a loss of service would be unacceptable and irresponsible. Imagine if union employees walked off the job during a heat wave. Without prior notice, we would be unable to staff up quickly to respond to feeder failures. An easily contained problem could lead to cascading failures. Or consider a gas main damaged by a contractor. Without an immediate response to manually shut off gas valves, a serious situation could turn catastrophic.

Many of our facilities are generally operated mostly by our union employees with very few management employees. Some of our steam plants operate with only one manager. Our 101 substations, which extend from Dutchess County to Coney Island, have only two operating supervisors during the night shifts. We obviously could not assure reliable energy delivery to our customers if our union employees were to leave their operating positions without advance notice.

We owe our customers, the nine million people living in our region, the safe and reliable service they expect and deserve. Without advance notice, we would be unable to move our management employees into position to fill these critical roles.

The initiation of our contingency plan, after the union's failure to agree to provide 72-hour advance notice of intention to strike, enabled us to responsibly transition key field positions from our union workers to managers. We spent a year updating our contingency plan. The plan identified essential tasks and staffing levels necessary to keep our electric, steam, and gas systems operating. In addition to the operating procedures, we made sure that adequate support positions would be filled. Employees were trained, sent to their contingency assignments, and are keeping New York powered.

Next we would like to share how our contingency plan is keeping our business going. The plan was implemented at 7 pm, Saturday, June 30. With 750 management workers in the field, and another 4,000 people ready to report to work, we were fully prepared to fill the positions vacated by a work stoppage. Operating the systems with managers in place to take over union workers at a moment's notice is not a viable position to hold for several weeks or months.

Now in its third week, the contingency plan is working. Our systems remain reliable, despite the extreme heat. Our control centers are staffed, and our systems are being inspected and monitored. We are responding to emergencies in a timely manner, and we are keeping our systems safe and reliable. Our ability to restore feeders and outages is consistent with the high standards achieved before the work stoppage.

The union leadership's assertion that we are not able to operate the energy system safely and reliably is contradicted by the union's own actions. Union protestors are intentionally blocking the delivery of

equipment needed in our Bensonhurst substation. In the meantime, the protesters have blocked fuel deliveries to generators being used to offset the transformer needs. The generators are helping to keep the lights and air conditioning on in Bergen Beach, Canarsie, Flatlands and Marine Park. The union, not the company, is endangering our ability to deliver reliable service.

In conclusion, we are meeting our obligation to our customers, the general public, and all the stakeholders who depend on the vital service that we provide. Our contingency plan has been well planned and executed and is a plan that would work whether in response to a lockout or a strike. Our customers are receiving the same level and quality of service as they received before the lockout in keeping with the rates established for our services.

Our goal is to arrive at a mutually acceptable agreement with the union leadership. Our offer to bring employees back to work if the union agrees to give us 72-hours notice in advance of a strike remains open. We want our highly valued and skilled union people off the picket line and back on the job.

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**RESPONSE OF  
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.  
TO MOTION FOR INITIATION OF EXPEDITED INVESTIGATION  
AND INTERIM RELIEF**

Consolidated Edison Company of New York, Inc. (“Con Edison” or the “Company”) hereby responds to the July 10, 2012 *Motion for Initiation of Expedited Investigation and Interim Relief* (the “Motion”) submitted by the Utility Workers Union of America, AFL-CIO, Local 1-2, Utility Workers Union of America, New York Central Labor Council and New York State AFL-CIO (the “Union”), on July 10, 2012, requesting the Public Service Commission (“Commission”) to

1. initiate and conduct on an expedited basis an investigation into the quality, reliability, and safety of the service currently being provided by Con Edison to its utility customers;
2. investigate whether customers are being charged for a quality and level of service that Con Edison is not providing, and for costs that Con Edison is not incurring associated with some 8,500 workers who are involuntarily off the job; and
3. provide interim relief by directing the Company to terminate immediately its lockout of employees represented by UWUA Local 1-2 and direct their return to work during the pendency of the Commission’s investigation.

As explained in this Response, the Company developed and implemented a comprehensive corporate contingency plan designed to maintain during a work stoppage the

safety and reliability of the Company's services that customers have come to expect, in accordance with the standards governing the Company's provision of service to customers established by Commission rules and orders. The Company has communicated with the Department of Public Service ("DPS") the development and implementation of the contingency plan both before and during the work stoppage. DPS Staff has been actively monitoring the Company's performance during the work stoppage. In light of this diligent and comprehensive effort undertaken by the Company both in advance of and during the work stoppage, and DPS Staff's ongoing monitoring, a special investigation by the Commission into the quality, reliability or safety of service currently being provided by the Company to its customers is unnecessary. Accordingly, the Commission should reject the Union's request for investigations.

The Commission should also reject the Union's attempt to use false and unsubstantiated allegations concerning the services being provided by the Company as a premise for Commission intervention into collective bargaining negotiations. Such action would contravene the historical approach taken by the Commission, consistent with the law, to not intervene in collective bargaining negotiations.

Moreover, the interim relief requested by the Union<sup>1</sup> – that Union employees return to work – lies within the Union leadership's own hands. As detailed in this Response, the Company has offered, and continues to offer, the Union leadership opportunities to return to work, so long as the Union agrees that it will provide adequate prior notice to the Company should the Union decide to strike. Adequate prior notice is critical to the continuation of safe and reliable service to customers. The return to work of the Union members without a binding commitment of the Union to provide advance notice of a work stoppage would dramatically

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<sup>1</sup> The Union requests the Commission to "direct[] the Company to terminate immediately its lockout of employees represented by UWUA Local 1-2 and *direct their return to work* during the pendency of the Commission's investigation" [emphasis added](Motion, p. 2)



increase the risk of severe service curtailments to our customers. In fact, it is somewhat bewildering that the Union should be asking the Commission to order the Union to undertake action that is fully within the Union leadership's power to take on its own.

## **OVERVIEW OF COMPANY RESPONSE**

Although the thrust of the Motion is the Union's purported concern that the Company is not currently providing safe and reliable service to customers, the Union's position is disingenuous and inaccurate on multiple levels. This is readily apparent when one considers that every adverse consequence alleged by the Union in its Motion to result from the "involuntary" work stoppage would also be much more severe if the Union was to exercise its right to strike without adequate advance notice. Moreover, it is a gross misstatement to characterize as "involuntary" the Union workers being "off the job."

The Union workforce is currently off the job as a direct result of the Union leadership's rejection of Company offers to either extend the expired 2008-2012 collective bargaining agreement ("2008 Collective Bargaining Agreement"),<sup>2</sup> or to agree that there would be no strike or lockout without reasonable notice, while good faith negotiations for a new contract continue.<sup>3</sup> Permitting Union members to return to work without a commitment to provide reasonable advance notice of a strike would jeopardize safe and reliable service to customers. Moreover, there is no basis for the Union's insistence on the right to strike without notice other than to gain an unreasonable advantage in collective bargaining negotiations by threatening action that would harm the Company's customers and the general public in our service territory. As explained in detail below, this harm could materialize in the form of significant extended service outages and

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<sup>2</sup> The 2008 Collective Bargaining Agreement contains a no-strike/no-lockout provision.

<sup>3</sup> The Company first proposed seven days notice. When that offer was rejected, the Company requested seventy-two hours notice.

associated adverse impacts on the local economy stemming from the Company's inability to timely staff critical facilities and Company operations during the transition from Union to contingency plan employees, specifically, operations associated with major steam/electric production facilities, electric transmission and substation operations, the gas transmission system, and electric distribution facilities.

In contrast to the Union's irresponsible insistence on reserving the right to strike without notice, the Company has taken diligent and comprehensive steps to maintain safe and reliable service to customers in the event of a work stoppage. The Company operates extraordinarily complex systems designed to deliver significant volumes of energy in the most densely populated area in the United States. The Company's Contingency Plan establishes a vehicle to continue to operate these systems and conduct associated operations in a safe and reliable manner provided the Company has adequate notice to put this Plan into action. And, as demonstrated below, the Company is maintaining safe and reliable service to customers during the work stoppage.

Notwithstanding the absence of any reasoned basis for the Union's stated concerns, the Company hereby responds to the unfounded allegations made by the Union in order to provide any necessary reassurance to interested stakeholders. The essence of the Company's response may be reasonably summarized as follows:

- The lockout was necessary to avert an almost certain *strike without notice* that would place the safety and economic well being of our customers at significant risk.
- The Company is operating under a comprehensive contingency plan designed to enable the Company to maintain safe and reliable service during a work stoppage.
- The Company is maintaining safe and reliable service to customers during the work stoppage.

- The Union's various characterizations of required activities that are not being undertaken during the work stoppage are inaccurate and misleading.
- The rates payable by customers for service provided during the work stoppage are just and reasonable.
- Commission intervention into collective bargaining negotiations would contravene the historical approach taken by the Commission, which is consistent with federal doctrines of pre-emption.

For the reasons provided in this Response, the Company respectfully requests that the Commission find there to be no reasonable basis for initiating any investigation regarding the quality, reliability or safety of the service currently being provided by Con Edison to its electric, gas and steam customers, or the rates charged for such service. The Commission should therefore deny, in its entirety, the relief requested by the Union.

**I. The Lockout Was Necessary To Avert An Almost Certain *Strike Without Notice* That Would Jeopardize Safe And Reliable Service.**

Throughout the negotiations for a new collective bargaining contract, the Union repeatedly threatened to strike upon the expiration of the 2008 Collective Bargaining Agreement, which included no-strike/no-lockout provisions and expired at midnight on June 30, 2012. At that time, the Company asked the Union to sign an extension agreement (which would continue the no-strike/no-lockout provisions) and continue at work. The Union refused. The Company then asked the Union to agree to seven days advance notice of any strike or lockout. The Union refused. The day the lockout began the Company offered to immediately return all employees to work if the Union agreed to a no-strike/no-lockout agreement, this time with 72-hours notice, and once again the Union rejected it.

The Union's position was and is unreasonable and unacceptable to the Company.<sup>4</sup> Especially in the face of the Union's repeated strike threats, the Company had no reasonable alternative but to institute a lockout to avoid the extreme adverse consequences to customers and the general public of a strike without notice. The Company could not have continued to provide safe and reliable service to our customers had there been a strike without notice. Moreover, the Company continues to offer the Union the opportunity to return to work provided the Union commits to provide 72-hours advance notice of a strike.

Accordingly, the Commission must reject the Union's assertion that its members are "off the job" *involuntarily*. The safety and reliability issues raised by the threat of a strike without advance notice are both serious and indisputable. As explained below, the Company's comprehensive Contingency Plan is designed to maintain safe and reliable service during a work stoppage. However, no contingency plan of this scale can be implemented and mobilized on an instantaneous basis.

A strike by the Union without adequate notice would result in a myriad of critical Company facilities and functions being understaffed for some period of time. During that gap period, customers and the general public would be unreasonably and unduly exposed to major safety hazards and the loss of service. This exposure in many cases arises as a matter of simple arithmetic. Numerous Company facilities and activities require a minimum number of personnel to be on site or in the field at any point in time. If Union workers that share these responsibilities were to vacate the facility or activity before the Contingency Plan staff was notified and reported to their assignments, there would be an insufficient number of management employees on duty when the strike was called, and therefore those on duty would be unable to perform all of the

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<sup>4</sup> The Company notes that Verizon's union members are currently working under an indefinite extension of the expired collective bargaining agreement subject to seven days prior notice of a strike or lockout.

critical functions associated with the safe and reliable operation of the facility.

The following are several examples of how a strike without notice could severely and adversely impact the safe and reliable operation of major energy production, electric transmission and substation, and gas transmission facilities.

**A. Examples of Disruption to Utility Operations**

**1. Steam System**

*East River Generating Station*

The East River Generating Station (“East River”) occupies several city blocks on Manhattan’s East River. The East River site contains four large units capable of producing steam and electricity, five active industrial package boilers for steam production, and a 330,000 barrel fuel oil storage tank farm. The station is critical to both the steam and electric systems. The steam production capacity at the station is over 5,800 Mlb/hr. The electric production capacity at the station is over 600 MW in the summer. Typical staffing for an evening or weekend shift is comprised of three on-site management supervisors and thirteen union employees (four control room operators and nine field operators).

If the Union declared a strike and these thirteen union employees left their posts without notice, the three on-site management employees would not be able to manage the operations at the plant in a safe and reliable manner during the period that the replacement management personnel was notified of the work stoppage and reported to East River. Each manager would need to staff one of the three control rooms at East River. That would mean, at minimum, that the 14 million gallon fuel oil storage tank farm would not be monitored, the water treatment plant would not be operated, and necessary equipment inspections and field operations throughout the large facility would not take place.

While waiting for replacement management personnel, if any one of the management employees had to leave the control room (e.g., to check a boiler feed pump prior to starting it, check the water treatment plant), critical signals in the control room could be missed (e.g., a signal that a boiler had tripped or a directive from the Company's Control Center to take certain actions in response to an event). Conversely, if the three management supervisors did not leave the control room, they may remain unaware of operating situations impacting the fuel tank farm, water treatment plant, or other critical station equipment that could otherwise be safely and efficiently addressed if these facilities were properly monitored.

#### *Other Steam Generating Stations*

A similar unacceptable situation would also exist at Con Edison's other generating stations. At the 59<sup>th</sup> Street Generating Station and 74<sup>th</sup> Street Generating Stations there is one management person covering the off-shifts at each location with one control room at 59<sup>th</sup> Street and two control rooms at the 74<sup>th</sup> Street Generating Station. The one management employee assigned to the 74<sup>th</sup> Street Generating Station is also responsible for the generating assets at the 60<sup>th</sup> Street Station, Ravenswood Steam Plant, and the gas turbines at the Hudson Avenue facility. The 60<sup>th</sup> Street and Ravenswood locations are operated by union employees that hold City of New York High Pressure Boiler Operating Engineer Licenses. The boilers assets at these locations cannot be placed in service without a person holding such a license being on site. As such, in the event that the Union employees at these satellite locations left their posts without notice, if any of the production equipment was in service, the Union employee would likely trip the units offline and exit the locations.

#### *Consequences*

Numerous hospitals, financial institutions, City agencies, and other critical customers depend on Con Edison's steam system for heating, cooling, hot water, sterilization and dehumidification. An event at any of the steam generating facilities could result in service outages to many of these critical customer facilities and also have substantial adverse safety, reliability, and environmental ramifications. Credible impacts could be a steam system shutdown and a blackout of the electric networks in lower Manhattan served by the electric generators at East River.

An event at any of the foregoing steam and electric production facilities due to insufficient staffing triggered by a sudden union walkout could result in major long term damage to our plant generating equipment, the potential for development of hazardous conditions on the Steam Distribution System (e.g., overpressurization or low pressure) that could injure members of the public and property, and the risk of harming the environment (e.g., oil spills, chemical releases, air emissions exceedances). The steam system may also have to be shut down to ensure safety to the public and our customers as well as to protect the environment, as the remaining management employees on an off-shift would not be able to operate the generating assets. If shut down, the restoration of the steam system is likely to take 5 to 10 days.

## **2. Electric Bulk Power System**

### *Substation Operations*

The Company has 101 substations located within New York City, Westchester, Rockland and Dutchess counties. On a typical evening/weekend shift, the Company has approximately 30-35 Substation Operators, who are responsible for operating the control rooms and the field equipment in the substations, with only two field management supervisors. Tasks performed by the Substation Operators that are critical to system reliability include:

- Responding to transmission and distribution equipment trip outs by assessing field conditions and performing switching to restore equipment.
- Responding to various equipment alarms that provide vital information relative to equipment condition and status (e.g., loss of Direct Current systems needed to operate protective systems, low air pressure on breaker, loss of relay protection, transformer oil temperature and pressure, fire alarms, etc.).
- Monitoring and performing switching on the dielectric fluid system.

It is readily apparent that two Company management employees, no matter how experienced or how skilled, cannot safely and effectively staff a critical field operation that covers a geographical footprint that includes the entirety of the Company's service territory plus additional upstate counties.

*System and Transmission Operation (monitoring transmission feeder system)*

Con Edison's underground transmission system runs from the Sprainbrook Parkway in Westchester County south through all five boroughs of New York City. The underground transmission system consists of over 600 miles of high pressure fluid filled ("HPFF") transmission feeders that utilize over 8 million gallons of dielectric fluid. System and Transmission Operations ("S&TO") staffs personnel adequate for the Company to respond immediately to high pressure leaks on the underground transmission system 24 hours per day, 7 days per week. Typical staffing for the evening/weekend shift is three field crews (six union employees) and one management supervisor. If the Union declared a strike and the three field crews (six Union employees) left their posts before contingency staff was in place, the management supervisor would not be able to respond promptly and effectively to an emergency involving one of the Company's transmission feeders.

Transmission feeders on the Company's system run for miles, some as long as approximately 18 miles long. Although the management supervisor would be in a position to



identify which of the Company's transmission feeders is experiencing a problem, the supervisor would not be in a position to determine the location of the emergency on the feeder, thereby delaying the Company's ability to respond to the emergency situation. Determining the location of the emergency situation on the feeder is one of the duties performed by the field crews

### *Consequences*

During the time between the initiation of a strike and the transition to a contingency staff, critical functions could not be performed. During this "gap" period, the Company would not have the ability to quickly assess substation field conditions and communicate information to the control center operators, perform switching operations to restore equipment, and respond to alarms that provide information on the status of key equipment. This inability could lead to localized or widespread electric system interruptions that would blackout electric service to our customers.

In the event of a dielectric fluid leak on a HPFF transmission feeder, prompt response is essential as the dielectric fluid is an essential component that provides the insulating properties required for the transmission feeder to remain in service. If the leak is not addressed in an expeditious fashion, there is the potential for the transmission feeder cable to fail and require long-term repairs that may otherwise have been avoided. In addition, the potential adverse impact to the environment, including waterways, increases the longer the leak goes unattended. If repairs are required, the feeder would be unavailable to the system, which would reduce the reliability of the transmission system (with the impact varying depending upon the feeder and the outage period, among other factors). The removal of a transmission feeder from service also has the potential to impact a significant number of customers and could require extensive field construction to repair the faulted section of the feeder.

### **3. Electric Distribution System**

The Company's vast electric distribution system includes 64 underground networks. These complex systems supply electric to approximately 2.5 million customers. A typical network supplies 50,000 to 150,000 metered customers, including schools, transportations facilities, hospitals, and financial institutions. Typical networks are designed with 12 to 24 feeders delivering power to a defined geographic boundary. Although very reliable, these networks are challenged during severe heat events. In a network system, when a feeder fails, the demand it was supplying is transferred to the remaining in-service feeders in the network. Although the design for these networks includes second contingency for feeder failures (the loss of any two components during a peak load day), the inability to quickly restore feeders in a timely manner can result in cascading feeder failures and severely overloaded components. These types of events can result in public safety issues such as manhole fires and explosions or a network system shutdown.

#### *Consequences*

During the time between the initiation of a strike and the transition to a contingency staff, the delay in critical repairs could result in additional component failures, which could result in, public safety risks, widespread customer interruptions and worse case a network shutdown.

### **4. Gas Transmission System**

#### *Third Party Contractor Damage of a Gas Transmission Main*

If a third party contractor were in the midst of excavation work in close proximity to a Company's gas transmission main, the Company would have a contingency plan in place in the

event of an emergency that includes field oversight of the excavation activities by a Union employee, as well as staffing of manually operated transmission main valves, again, by Union employees. If those employees walked off the job without notice and a contractor damage occurred to the gas transmission pipe causing a major uncontrolled release of natural gas, the Company's emergency response would be delayed because the Company would have no field presence. There would also be no immediate notification to Gas Control of this incident. The contingency valves would not be operated and the Company would likely hear from a third party that an incident had occurred.

Without personnel on location, or a Contingency Plan work force to assist in the response, the Company would need to remotely operate its valves from the Gas Control Center to isolate the section. Because of the location of these remotely operated valves (ROVs), the closure of ROVs would cause a larger section of the transmission system to be affected. This, in turn, could result in a wider impact, including the loss of tens or hundreds of thousands of customers – perhaps even a loss of supply to electric and steam generating stations – and other losses of supply to the gas distribution system. These customers, including large apartment buildings, single family homes, hospitals, nursing homes, hotels, and restaurants, would potentially be without hot water and cooking (in the summer; and heat in the winter) for an extended period of months. This would severely impact our customers' quality of life as well as cause a major economic hardship for our customers and the region.

#### **B. Compliance With Regulatory Requirements**

Even absent an incident during any "gap" period, understaffing at certain of the Company's critical facilities would constitute serious safety, reliability and security violations in the view of various Federal, State and municipal governmental agencies, such as NERC, FERC,

EPA, and the DEC.

**C. Mitigating Union Actions Interfering With Safe and Reliable Service**

Finally, the Company cannot ignore the real possibility that a Union member(s) would commit an unsafe act, either intentional or unintentional, when exiting his or her job after a strike is called. This creates a significantly increased security risk on the electric transmission system and at the electric substations, among other critical facilities. A 72-hour advance notice allows management to have proper supervision and oversight within our facilities, and to escort Union personnel offsite if a strike were declared.

This concern is validated by the fact that the Company has experienced several instances of sabotage to Company facilities and operations since the initiation of the work stoppage,<sup>5</sup> as well as the arrest of a Union employee for actions causing injury to a management employee on duty during this contingency.

The Company is also aware of various social media messages from Union representatives encouraging Union members to engage in activities designed to interfere with the Company's operations, thereby showing the Union's indifference to the interests of the Company's customers during the work stoppage, contrary to the purported premise of the Motion. For example, there have been ongoing efforts by the Union to delay the replacement of a transformer at Bensonhurst, including the following social media postings:<sup>6</sup>

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<sup>5</sup> For example, the Company experienced two feeder failures – one the result of an arrow and the other the result of a bullet. The targets of these actions indicate intimate knowledge of the Company's electric system since damage to either feeder individually would not have impacted service to customers while damage to the two feeders impacted service to 3,200 customers. False gas leak and false outage calls, as well as Union activities blocking egress from Company facilities, have adversely impacted the Company's response to real customer outages.

<sup>6</sup> <http://www.facebook.com/uwua.local12>

- Urgent! We need coverage at Bensonhurst substation, Bay Parkway and McDonald Ave. They will not fire up generators if they see Local 1-2, they have been told to walk away. Please get out there. Stop the Bosses!
- Pass it along to any one in Bklyn, need day & night coverage from Sunday onto Tuesday to keep this TRANSFORMER from being dropped by ANY CRANE OPERATORS...if we're here that won't cross...21 ave & 53 st Bklyn. Many feeders are affected by this OUTAGE!

Union workers operate major equipment, such as cranes that move multi-ton equipment, where the proper hand-off to the Union member's contingency replacement personnel is critical to avoid a major incident. Similarly, the Company seeks to avoid even a single customer or member of the public from being exposed to an unsafe condition resulting from a Union member responding to a strike directive without first either completing his or her job or taking the steps necessary to leave a work site in a safe condition.

The Company also had hundreds of additional management people at work at the time of contract expiration to be prepared for the possibility of a work stoppage. Without that preparation, the Company would not have been able to operate the system.

For all of the above reasons, the Company was duty-bound to take action in the form of a lockout to avoid circumstances that would prevent the Company from discharging its public utility responsibilities in a safe and reliable manner.

## **II. The Company Is Operating Under A Contingency Plan Designed To Enable The Company To Maintain Safe And Reliable Service During A Work Stoppage.**

In July 2011, approximately one year before the expiration of the 2008 Collective Bargaining Agreement, the Company commenced its preparations for the possibility of a work stoppage on July 1, 2012. A Contingency Preparation Team consisting of a Director (General Manager Level position) and 36 representatives from all Company operating areas began

updating the Corporate Contingency Plan for operating the Company's energy systems, its customer operations functions and corporate support functions during the period of a work stoppage ("Contingency Plan" or "Plan").

The Company routinely updates a Contingency Plan as the expiration of the current collective bargaining agreement approaches because the threat of a strike is real. The fact that the last strike by Local 1-2 on the Company's system was almost 30 years ago is, in the Company's view, attributable at least in part to the Company's readiness to operate its system in a safe and reliable manner in the event of a work stoppage.

The threat of a strike was particularly real as the current collective bargaining agreement approached expiration. Both the Company and the Union recognized the issues to be addressed as both significant and challenging. As the Company prepared for the possibility of a work stoppage, the Union membership formally authorized the Union leadership to call a strike. Although such a vote is routine, the Union leadership made various public statements clearly indicating that the Union was prepared to exercise this authority to strike as a means for achieving the Union's negotiated contract objectives, even if that meant service disruptions to customers.<sup>7</sup>

Contrary to the Union's posture, the Company was unwilling to allow its labor negotiations to adversely impact service to customers or safety to the general public. Accordingly, the Corporate Contingency Plan necessarily addresses the impact of a work stoppage, whether by strike, lock out or other circumstance, because the impact on providing

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<sup>7</sup> For example, a June 29, 2012 Crains New York- Online Article titled "Con Ed contract running out as temps run up." The article acknowledges the preparatory steps taken by the Company to maintain service. The article also includes remarks by the Union leadership clearly indicating the Union's intention to strike if the Union is dissatisfied with the progress of contract negotiations:

...the system shows every indication that it will not be able to hold up in another heat wave. There will be outages, and Con Ed will not be able repair the damage... When it comes time for June 30th, **we will do whatever it takes at that 11th hour. If they push us, we will do whatever it takes.** [emphasis added]

service is the same.

The Corporate Contingency Plan establishes policies and procedures for operating the energy systems, customer operations functions, and corporate support functions to perform this mission. The Plan is highly detailed and comprised of department plans or subordinate plans that contain detailed operating plans and staffing assignments at the department level. The department plans roll up into a consolidated Corporate Contingency Plan that establishes the integrated corporate response to a work stoppage.

The Plan focuses on continuity of service and high priority work and identifies the tasks to be performed and staffing levels required to achieve these objectives. Staffing levels were based on a Unified Staffing Model that established work activity levels derived from an assessment of historical work volumes accounting for the variability of work flows for the summer period. The model projected the work load and staffing levels required to meet each of three work levels in critical work areas such as Overhead Crewing and Underground Splicing:

1. Base Load Essential Activity: “blue sky day” conditions requiring only essential, non-storm emergency activities, such as no lights, gas odor calls, feeder repair, service turn ons.
2. Base Load Essential Activity plus Sensitive Activities: essential activities plus sensitive functions, like establishing new service for customers, gas main replacements.
3. Projected Peak Day Activity (Heat, Overhead Storm, etc): projected work load for reasonably expected worst case conditions that can be expected to occur in July, which could include the activities associated with storms, heat waves and full scale heat events.

The bulk of the staffing requirements established by the above-described model are provided by management employees. The staffing-level models assume management employees working 12 hour shifts six days a week, allowing for one day off per week from the start of the

Plan.

Management employees are designated as one of two types, retained employees and augmentees. Retained employees (about 3,500 personnel) are retained by their home organizations, like Electric Operations, Gas Operations, Customer Operations and Finance. They are either shifted into roles to perform worker functions or take on additional work in their normal areas to allow others to be released to support field work. Based on their skills and background, they are generally qualified to act as a ‘crew leader’ or to directly conduct key activities. Augmentees (about 1,500 personnel) are employees that are released by their home organizations for re-assignment to line organizations (generally Electric Operations, Gas Operations, Central Operations and Customer Operations). In general, augmentees have a lower skill level with respect to the functions of the organization to which they have been assigned and are assigned to support functions or act as a ‘second person’ supporting a retained employee.

About 685 non-employee personnel – mainly contractors and some management retirees – supplement our management workforce in key positions. These contractors are subject to the same qualifications that Con Edison employees and contractors are subject to under normal operating circumstances. As an example, as part of the Contingency Plan, contractors were retained to supplement Con Edison management overhead crews to respond to storms affecting the overhead system, in addition to also performing various routine functions.

The Company is prepared to respond to a “severe level” storm (up to 40,000 customers interrupted in Brooklyn, Queens, Bronx and Westchester) as provided by our storm plan using a combination of internal resources and contractors. The storm plan establishes a staffing level of 96 OH crews for the affected regions for a severe level storm. The Contingency Plan for the period of a work stoppage exceeds this staffing requirement with 118 available crews in the



affected regions. To supplement those resources, if necessary, the Company has additional contractor crews on retainer. For more catastrophic storms, the Company will follow the Mutual Assistance protocols and obtain crews from other companies and contractors who will cross the picket lines to support the Company.<sup>8</sup>

Flexibility is built into the Contingency Plan. Implementation of the Plan is subject to modification to accommodate changing conditions, and 10 percent of the workforce in each group is designated for re-assignment in the event of extreme system conditions.

A key aspect of the planning process is putting the right people in the right assignments to maximize their effectiveness. Management employees are assigned to support various organizations based on skill set and previous work experience. The Company has 1,285 first line supervisors who by the nature of their job responsibilities are closest to the functions that need to be replaced in a work stoppage. The average work experience of these first line supervisors is 16 years with on average 10 years spent hands-on as a worker in the field followed by six years as a supervisor. In total, 35 percent of management staff started as union workers, and that experience was matched with the Contingency Plan assignment.

The core-business lead functions, such as overhead lineman, splicing, gas mechanic, and substation operator, are assigned to experienced employees. These employees have been previously qualified in a function and have recently attended refresher training to update their qualifications.

Other employees who have not previously performed a role in core operating groups are assigned as assistants or helpers, for example, an Assistant Operator in Substations, or may be assigned to support functions with less critical skills sets, for example, a Store Keeper in Central

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<sup>8</sup> In addition, Staten Island, which is represented by a different labor union and is not affected by the work stoppage, has its full complement of crews for storm response.

Field Services. These employees received training in the base qualifications needed for their Contingency Plan assignment.<sup>9</sup>

### **III. The Company Is Providing Safe And Reliable Service To Customers.**

In accordance with the design and objectives of the Contingency Plan, Con Edison's management personnel supported by contractors are maintaining safe and reliable service to the Company's customers during the work stoppage. This statement is not mere opinion on the Company's part. This view is, in fact, substantiated by objective measures of performance.

Specifically, the Commission has established electric, gas and steam performance metrics relating to critical aspects of the Company's operations. These metrics reflect key measures of safety, reliability, and service quality. The rate plans established by the Commission provide for the Company to meet these performance thresholds each year in order to avoid material reductions in its earnings.

A snapshot of the Company's current performance relative to these metrics (recognizing that many of the threshold performance levels are annual targets) is set forth in Appendix A.<sup>10</sup>

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<sup>9</sup> As an example, the critical core function, underground cable splicer, was staffed as follows. The Company identified 162 experienced management employees to function as crew leaders on two-person underground cable splicing crews. These 162 employees were previously qualified as splicers, troubleshooters, or qualified operating supervisors. These employees had previously completed a full splicer training program, which is currently 60 days of classroom and lab training. In order to further sharpen their skills, employees who had not performed the physical job functions of a cable splicer in several years attended a three-day skills refresher training class at the Company's Learning Center in the months leading up to expiration date of the collective bargaining agreement. To establish an underground cable splicer crew, 162 management employees have been assigned as splicer's helpers. These employees may have electric operations experience, for example, engineering employees, but like union workers in helper titles, they are not qualified as splicers. These employees attended a two-day overview training class covering their job responsibilities and an additional two days of training to cover safety matters. The weekly productive man-hours available for cable splicing under the Contingency Plan is approximately equivalent to that of the normal workforce. The 162 underground cable Contingency Plan splicers, working a base 6-day, 12-hour week ( $162 \times 72 = 11,664$  man-hours), replace 310 union splicers with a normal allotment of sick, vacation, training and over-time ( $310 \times .77 \times 40 \times 1.2 = 11,457$  man-hours).

<sup>10</sup> The Company's Commission-established rate plans, as well as Commission policy, provide the Company the opportunity to seek relief from negative rate adjustments resulting from strikes, extraordinary circumstances and other circumstances outside the Company's control. The Company reserves its rights under these provisions.

A more comprehensive listing of the operations and customer service functions that continue to be performed during the work stoppage is described in Appendix B.

#### **IV. The Union's Various Characterizations of Required Work Not Being Performed by the Company During the Work Stoppage are False and Misleading.**

The Motion (p. 8) asserts that “substantial and critical O&M-related work ... is not being conducted” and provides nine examples to support its claim.<sup>11</sup> As explained above, Con Edison is continuing to perform all activities necessary to maintain safe and reliable electric, gas and steam service. Each of the nine examples raised in the Motion is factually incorrect. Each example is discussed below.

***Transformer Inspections:*** Con Edison conducts a thorough inspection (approximately a four-hour process) of each network transformer every five years. Based on our transformer maintenance specification, we are required to perform approximately 6,600 transformer inspections in 2012. As of July 1, we have completed 3734 inspections compared to our year-to-date goal of 3200 (putting the Company 534 inspections over goal). These transformer

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<sup>11</sup> The Motion (p. 2, footnote 1) states that the factual allegations in the Motion are supported by the Affidavit of James Slevin, the Vice-President of the Union, formerly employed by the Company as a splicer in the Bronx. From June 2005, Mr. Slevin has been on a leave of absence from the Company for Union business. Mr. Slevin's affidavit is a mere three sentences stating his title with the Union, that his affidavit is made on behalf of the Union's Motion, and attesting that the factual allegations alleged in the Motion are true and correct “to the best of my knowledge.” The Company submits that Mr. Slevin's affidavit adds no probative support for the Union's allegations. In his position with the Union for the last seven years, there is no basis for assuming that Mr. Slevin has any current knowledge or experience that would enable him to attest to the factual allegations contained in the Motion regarding the Company's electric, gas, steam and customer service operations. New York case law requires an affiant to have personal knowledge of the facts to which he or she attests. (*See Currie v. Wilhouski*, 93 AD3d 816 (2d Dep't 2012); *Wechsler v. New York*, 13 AD3d 941 (3d Dep't 2004); *Castro v. New York University*, 5 AD2d 135 (1<sup>st</sup> Dep't 2004); *Dempsey v. Intercontinental Hotel Corp.*, 126 AD2d 477 (1<sup>st</sup> Dep't 1987). Without personal knowledge on the part of the affiant, the courts hold that the affidavit in question is without probative value. (*Id.*) Further, the courts have dismissed affidavits where the affiant's knowledge has been obtained from unnamed and unsworn third parties, such as in the case of Mr. Slevin's role as an officer with the Union. (*Castro, supra*; *Dempsey, supra*) While the Company understands that the Commission is not bound by the technical rules of evidence in its investigations, and therefore may not dismiss Mr. Slevin's affidavit, there is no basis for finding that Mr. Slevin's affidavit provides any support for the Commission's evaluation of the Union's allegations.

inspections are not generally conducted during summer months. Thus, the assertion that such inspections are not being conducted during the work stoppage due to a lack of personnel is false and misleading. The transformer that failed in midtown Manhattan on July 7 had been inspected within the last 5 years.

Over 90 percent of network transformers have remote monitoring equipment where the status of the transformer and network protector is remotely monitored by control room operators and engineering personnel. In addition, approximately 60 percent of these units have advanced remote monitoring systems that report the pressure, temperature and oil level of the individual transformers to the control room. When an abnormal transformer condition is detected, the condition is analyzed, and where warranted, the Company typically dispatches personnel to check the transformer (a “switch check”). The Company continues to perform these switch checks during the work stoppage.

***Manhole Inspections:*** The Commission’s Electric Safety Standards require that the Company inspect all electric facilities, including distribution manholes, on a five-year cycle and complete the inspection of 20 percent of all facilities each year. The Company is presently about 10 percent ahead of its facility inspection schedule requirement for 2012. During the work stoppage, management crews are being assigned to manhole inspection work. As was the case before the work stoppage, the Company is also using contractor crews to conduct manhole inspections during the work stoppage. (These contractors are also available to perform other underground work, such as switch checks when needed.) The Company fully expects to inspect 20 percent of all facilities this year.

Transmission manholes are inspected on a four-year cycle in accordance with Company specification and in compliance with the Commission’s Electric Safety Standards. The visual

inspection includes reviewing the overall manhole structural condition, and checking for evidence of dielectric fluid leaks, damaged coating, proper bonding and cathodic protection and the presence of feeder and vault identification tags. Inspections are performed throughout the year. In preparation for a possible work stoppage, Transmission Operations advanced its inspection schedule to adjust for the possibility of not performing inspections during a work stoppage. To date, 434 inspections have been performed out of the 748 scheduled for inspection in 2012, and no inspections are past due.

***Coating Refurbishment Program:*** In this program, transmission piping is inspected, deteriorated sections are identified and excavated, pipe coating is removed, and the pipe section is recoated. This proactive program reduces dielectric fluid leaks and increases the availability of transmission feeders. While this program is not mandatory, this program represents best practice principles and environmental initiative. Because there is a possibility of creating a dielectric fluid leak that could require the feeder to be removed from service, the work associated with coating refurbishment is primarily performed during the spring and fall periods to coincide with scheduled feeder outage periods. Thus, the Union's assertion that such inspections are not being conducted during the work stoppage due to a lack of manpower is false and misleading.

***Stray or Contact Voltage Work:*** To detect contact voltage (also called "stray voltage") in underground network areas of New York City, Con Edison uses a truck-mounted, mobile detection system that is designed to detect stray voltage that may be hazardous to humans or animals. The system contains hardware and software components that identify and record the potential sources of stray voltage, whether from Company or non-Company sources, at a range of up to 25 feet while moving at speeds up to 20 mph. Identified stray voltage sources are guarded until a repair crew arrives to make the condition safe.

Con Edison generally uses between 10 and 14 vehicles daily (depending on weather conditions and work backlogs) to perform 12 mobile scans per year of the entire underground system in New York City. The Company is presently ahead of schedule, having completed seven scans of the system. Typically, July detections are below the yearly average stray voltage detections per mile due to dry conditions. Detections are higher in winter months because the spreading of salt to melt snow and ice on roadways creates conductive conditions that enhance stray voltage. The Company is using one vehicle daily to perform mobile scans at this time, and all stray voltage conditions detected on Company or non-Company sources are made safe. The Company also performs manual stray voltage testing of electrically conductive equipment on wooden utility poles once per year. The Company is presently about 25 percent ahead of schedule with most testing completed in Westchester, Bronx, Queens, and Brooklyn. During the work stoppage, the manual testing program is ongoing in Staten Island. In addition, work crews manually test structures for stray voltage before beginning work in the structure, at the end of each work day (if the work extends for more than one day), and at the conclusion of such work.

***Preventative Maintenance to Avoid Voltage Reduction:*** The Company uses voltage reduction as an operator tool to relieve thermal stresses on the primary distribution system during contingency situations. This action has been successfully used in heat waves in prior years and was successfully used in 2012 both before the work stoppage and during the July 2012 heat wave. Thus, voltage reduction during the work stoppage is not a result of the work stoppage. The Company performs system reinforcement work during the year to increase the capacity of its distribution systems (primary and secondary) to meet customer demand. This work is performed during non-summer periods. Thus, the Motion's assertion that work that could reduce the use of

voltage reduction is not being conducted during the work stoppage due to a lack of personnel is false and misleading.

***Heat Event Response:*** The Motion asserts that the Company currently lacks sufficient personnel to implement its “Underground Contingency Heat Event Response Procedure.”

As discussed above, the Company is adequately staffed with field crews to promptly respond to equipment failures and service outages in heat events during the work stoppage. The Company experienced six days in the beginning of July in which the temperatures reached or surpassed 90 degrees. During this period, the Company experienced the fourth highest weekend load ever recorded. Through this heat wave, the system and the work force have performed well.

For the period July 1 through July 15, the Company has received and processed 4,435 electric trouble tickets, including 491 customer outage events on the network and overhead systems (an outage event can involve multiple customers). The average service restoration time for network customer outages is 4.06 hours per job and the average service restoration time for overhead customer outages is 1.74 hours per customer interrupted (CAIDI). In 2011 for the same time period, the Company processed 480 customer outage events in an average restoration time of 4.32 hours per job for network customers and an average restoration time of 1.91 hours per overhead customer interrupted (CAIDI).<sup>12</sup>

The duration for repair and restoration of distribution feeders to service is an important aspect of service reliability during heat wave periods. Feeder restoration time has been similar before and during the work stoppage. Since July 1, Con Edison has processed 118 distribution feeders in an average duration of 14 hours and 1 minute per feeder. This is similar to past performance. Prior to July 1, there were three days when the Temperature Variable (TV)

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<sup>12</sup> Under Con Edison’s Reliability Performance Mechanism, the duration of network outages is measured by job and the duration of overhead outages is measured by CAIDI (the average outage duration of customers who experienced an outage).

exceeded 82 degrees -- June 21, 22 and 29. There were a total of 34 distribution feeder outages with an average restoration time of 18 hours and 32 minutes. After July 1, there was one day when the TV exceeded 82 degrees -- July 5. There were 13 distribution feeder outages that day with an average restoration time of 18 hours and 7 minutes.

***Permanent Repairs (Shunts):*** The Motion asserts that the Company is not making the equipment repairs needed to allow the removal of publicly accessible shunts and is not removing street plates following the completion of repairs in streets. This assertion is incorrect.

The Company continues to remove publicly accessible temporary services (shunts) during the work stoppage and is within the RPM goal of removing 90 percent of all shunts installed in the summer months within 60 days. The Company also has 10 percent fewer “bridged” services (non-publicly accessible shunts) at this time than at this time one year ago. More importantly, the Company has over 30 percent fewer open mains on the secondary network system than one year ago.

During the work stoppage, the Company’s contractors install street plates as necessary for construction and repair activity. The contractors are removing the street plates as the work is completed and the streets are restored. The Company tracks the progress of this activity.

***Gas Service:*** The Motion asserts that street work for oil-to-gas conversions is not being performed during the work stoppage and a backlog of such work exists. This statement is incorrect.

Con Edison continues to process customer requests for oil to gas conversions during the work stoppage. The Company also continues to reinforce the gas distribution system to meet the increased demand expected from oil to gas conversions. This includes the construction of nine regulator stations, five of which are currently under construction, and all are scheduled to be



online for this upcoming heating season. Mains and services installation work associated with oil to gas conversions continues to be engineered and constructed. Oil to gas service and main installations, and associated trenching, are typically performed by contractors, and therefore, that work is largely unaffected by the work stoppage. The Company continues to process and correspond with customers regarding conversion incentives and applications.

***Steam Services:*** The Motion asserts that the checking of steam pipe “traps” after rain storms is not being conducted because of a lack of adequate personnel. Contrary to the Motion’s assertion, the inspection of traps is not a requirement during rain events.

The Steam Distribution Rain Response procedure requires a vapor survey and an inspection of priority structures to be performed every time there is a “rain event.” A rain event is defined as “rainfall exceeding 0.75 inches in a 3 consecutive hour period” as measured by the National Weather Service at Central Park. From the start of the work stoppage, there has not been a need to perform the vapor patrol or priority structure inspections because it has not rained enough to declare a rain event. If a rain event is declared, the Steam Distribution department is prepared, trained and adequately staffed to perform the necessary inspections. Prior to the work stoppage, these inspections were primarily performed by management personnel and contractor resources and will continue in the same manner when needed during the work stoppage.

The Motion also asserts that the Company has stopped reading meters and has closed Walk-in Centers in violation of the Public Service Law. While the Company has reduced these functions, the Company has maintained its services to customers and has not violated any provisions of law.

***Meter reading:*** The Motion asserts that the Company’s suspension of meter reading violates Public Service Law §39(1). (Motion at 6) This statute permits a utility to “render an

estimated bill for any billing period if ... (c) circumstances beyond the control of the utility or municipality make an actual reading of the meter extremely difficult.” The unavailability of the Company’s entire meter reading staff due to the work stoppage clearly makes meter reading “extremely difficult.” The Company has previously explained that the lockout of the Company’s Union workers was necessary to maintain safe and adequate service to Customers.

The suspension of meter reading is not applicable to all customer accounts. The Company continues to perform cycle meter reading in Staten Island and on the over 960,000 accounts with Automated Meter Reading (“AMR”) devices and for about 50,000 demand and high-revenue accounts. For other accounts, estimated bills are being produced based on long-standing estimating algorithms in the Company’s Customer Service System. Concerns about customers being overcharged by estimated bills ignore the fact that the Company’s bill estimation routines have been continually refined over the years. Moreover, the Company is closely monitoring weather fluctuations and utilizing data obtained from AMR devices to make adjustments to its estimating logic as necessary to reflect this information. In addition, customers who contact the Company through the Company’s toll-free number will hear a pre-recorded message advising them that although their meters will not be read by Company personnel, they may submit meter readings over the telephone through the Company’s interactive voice response unit or on the Company’s Internet site, [www.coned.com](http://www.coned.com). A bill message will also advise customers about their estimated bills and educate customers about self-service options available to them. Estimated bills will be reconciled as soon as actual meter readings can be obtained from customers or Company personnel.

For the foregoing reasons, the Company’s issuance of estimated bills to certain customers is not in violation of Public Service Law §39(1).

**Walk-in Centers:** The Motion alleges that Con Edison closed its “Walk-in Centers” contrary to the Company’s statutory obligations under Public Service Law §65(13)(b) (Motion at pp. 7-8). The Union’s allegation is without merit.

Section 65(13)(b) refers to utility call centers and also to “other facilit[ies] providing the customer assistance” described in subparagraph (a) of that section. The Union asserts that Con Edison’s Walk-in Centers constitute such “other facilities.” (Motion at 7) Contrary to the Union’s assertion, these facilities are not “closed” in the manner that the law addresses nor as contemplated by the intent of the New York State Legislature. That is, the Walk-in Centers are not permanently closed and the functions performed at those locations are not being relocated to another area of the State or out of State. The functions performed at these locations continue to be available through the Company’s Call Center, which has not moved from the locations occupied before July 1. The Walk-in Centers will resume full business services when the work stoppage ends. As discussed below, certain services remain available at some of the Walk-in Centers.

The Bill Sponsor memorandum supporting the addition of subdivision 13 to Section 65 of the Public Service Law states that the amendment addresses the fact that “many public utilities are considering or are already employing the services of call centers located out-of-state and outside the service areas of these companies.” The memorandum characterized this as a “disinvestment” in New York’s economy.<sup>13</sup> Other groups also addressed their support for the legislation as it “would require public utilities to keep certain call center services located in the area they service and within New York State” and would require “utilities to maintain their call

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<sup>13</sup> Memorandum in Support of Legislation, NY Bill Jacket, 2010 A.B. 7593, Ch. 330.

centers within the State” and “preserve jobs within the State.”<sup>14</sup>

The legislative intent of PSL§65(13) is to preserve jobs in New York State. Clearly, the temporary closures and suspension of face-to-face services at the Walk-in Centers are not the permanent closures and relocations that were the concern of the Legislature. The Union’s argument is without merit.

The Public Utility Law Project, Inc. (“PULP”) filed on July 13, 2012, a request for intervention and comments in this proceeding (“PULP Comments”), with specific concerns about the Company’s Walk-in Centers, particularly with respect to the Company’s compliance with the terms of the Joint Proposal regarding the closing of the Company’s Customer Service Centers and with Public Service Law requirements for the prompt provision and restoration of utility service to residential customers.<sup>15</sup>

The Joint Proposal was approved by the Commission in an order issued in Case 99-M-0851 on March 27, 2001 (the “Order”). PULP contends that the Company’s temporary closure of its Walk-in Centers constitutes a violation of the Order.<sup>16</sup> (PULP Comments at 2) PULP speculates (PULP Comments at 4) that customers will be unable “to obtain or reinstate service or negotiate payment plans” because the Walk-in Centers are not open. PULP insinuates (*id.*) that service is not being provided on a timely basis or restored promptly when a payment of outstanding arrears is made. Con Edison disagrees and responds that its customers and applicants for service have substantially the same services as they had prior to the work stoppage. The Company is not in violation of the Order by its actions.

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<sup>14</sup> *Id.*, Comments of the New York State Consumer Protection Board, Mindy A. Bockstein, Chairperson and Executive Director, July 22, 2010.

<sup>15</sup> The Company’s response here constitutes the Company’s response to the PULP Comments.

<sup>16</sup> The Joint Proposal allowed Con Edison to replace its remaining Customer Service Centers in The Bronx, Manhattan, Queens, and Brooklyn with Walk-in Centers provided that applicants for service and customers could receive the same customer service and assistance in the new locations as in the old. The Joint Proposal also required the Company to open one Walk-in Center in Westchester and another in Staten Island.

Beginning July 1, 2012, the Company did *temporarily* suspend on-site services provided at its Walk-in Centers in the Bronx and Manhattan. The Company's Walk-in Centers in Westchester (Mount Vernon), Queens, and Brooklyn have not been staffed by the Company's Customer Care Representatives but remain open because these three facilities are located in premises shared with other occupants (with National Grid in Queens and Brooklyn and with Food Bazaar in Mount Vernon) whose operations continue. Payments continue to be accepted by tellers at those three locations as well as at 31 Authorized Payment Agent locations in the Company's service territory. Self-service kiosks that accept payments are also available at the Queens and Brooklyn Walk-In Centers. Courtesy telephones in the three locations permit customers to speak to Company representatives and receive customer services via the Company's Call Center. The Staten Island Walk-in Center is staffed and operating as it was before July 1. The Company's withdrawal of its personnel from the Walk-in Center sites was done out of concern for the security of the on-site personnel and the potential that the presence of Company personnel at National Grid and Food Bazaar premises might have resulted in National Grid's and Food Bazaar's personnel and customers having to cross a Union picket line to enter for work or to transact business.

The Joint Proposal provided for the Company to make contact with its Customer Service Representatives ("CSRs") simple and without cost. Even with the Walk-in Centers temporarily closed, contact with Company representatives and the receipt of a full panoply of customer services is simple and without cost. Con Edison's Call Center remains open to provide all services provided at the Walk-in Center. Assistance is available for all kinds of customer inquiries and transactions. Translation services in more than 100 languages are also available. By calling the Company's toll-free Call-Center number, a person may, among other things,

report emergencies; make inquiries about and apply for utility service; determine their balance due; make a payment; provide a meter reading; or enter into a deferred payment agreement. Some of these functions are automated and at the caller's option do not require the assistance of a CSR.<sup>17</sup> Beginning on July 1, Company representatives have been available in the Call Center during weekday business hours for these customer care functions and during all hours for emergency calls.<sup>18</sup>

With respect to service disconnections, PULP cites statistics of service terminations in 2011 to indicate how many customers could lose their service through service terminations and speculates that those customers will be unable to have service restored. First, for low-income New Yorkers who are payment-troubled and who receive governmental financial assistance for the payment of utility charges, the Company's interaction with the New York City Human Resources Administration ("HRA") has been substantially automated since 2001. It is easier for the City and the Company to exchange necessary information about individuals entitled to benefits and to prevent service disconnections. Second, the Company's Public Assistance Unit, the liaison between the Company and HRA and the County of Westchester Department of Social Services, is fully functional during the work stoppage. Third, customers who seek to avoid termination of service or who want their service restored after such a turn-off can enter into deferred payment agreements by phone with the Company through the Call Center

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<sup>17</sup> Prior to July 1, 2012, CSRs were available in the Call Center 24 hours a day, seven days a week for emergency and non-emergency calls.

<sup>18</sup> Some aspects of the Joint Proposal are outdated. At the time of the Joint Proposal in 2001, customers who made payments to Authorized Payment Agents after they received final notices of termination of service had to contact the Company by telephone to provide information from the payment receipt to forestall disconnection. However with automated systems, customers have not had to provide this information to the Company for quite some time. Thus, disconnections scheduled for the following day can be prevented upon the customer's making the payment without the need for the customer to make a follow-up call.

representatives; there is no need for a face-to-face interaction.<sup>19</sup> Payments can be made at any of the more than 30 Authorized Payment Agents that accept payments from customers with pending disconnect notices. There is no charge for the Agent's service.

For the foregoing reasons, the Company's temporary cessation of services at Walk-in Centers is not in violation of its statutory obligations under Public Service Law §65(13)(b) or Commission rulings.

**V. The Rates Payable By Customers For Service Provided During The Work Stoppage Are Just And Reasonable.**

The Union asks the Commission to investigate "whether customers are being charged for quality and level of service that ConEd is not providing, and for costs that ConEd is not incurring associated with some 8,500,<sup>20</sup> workers who are involuntarily off the job." Motion, p.2

The simple response to the Union's question is that customers are being charged just and reasonable rates for the service provided during the contingency. Con Edison customers are receiving the same level and quality of service today as they were receiving before the lockout. While the Company is avoiding certain costs during the work stoppage, the Company is incurring other significant, incremental costs in order to maintain safe and reliable service through alternate and equivalent means.

The incremental costs incurred by the Company during the contingency include management overtime, contractors,<sup>21</sup> and enhanced guard services. The Company also incurred

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<sup>19</sup> Notices sent to customers offering deferred payment agreements with standard terms explicitly inform customers that if they need assistance with making the agreement, understanding the terms of the agreement or are unable to pay the terms of the standard agreement, they should call the Company.

<sup>20</sup> Although the Motion repeatedly refers to 8,500 Local 1-2 employees being "off the job," the Company notes that as of June 30, 2012, the approximate number of Local 1-2 members in the Company's employ is 7,900, not 8,500.

<sup>21</sup> The Company is currently using the services of approximately 685 contractors to supplement work being performed by management and 250 contractors for additional security and other service.

significant costs in advance of the work stoppage in order to prepare for the contingency.<sup>22</sup>

Finally, the terms of any collective bargaining agreement resulting from a settlement of the labor dispute may also bear on the financial impact of the work stoppage.

Accordingly the Company will not have a reasonable estimate of the total financial impact of the contingency until after the labor dispute is resolved. Moreover, whether the costs avoided will ultimately be more or less than the incremental costs incurred will be difficult to determine with any degree of certainty and can only be reasonably estimated after the labor dispute is resolved.

Finally, as a general matter, the Commission's ratemaking practice recognizes that from time to time a utility will incur different costs than those assumed to be incurred when rates are set, or amounts of projected costs higher or lower than the amounts reflected in rates, in the course of providing utility service. Except for certain material costs that cannot be reasonably projected (which are recovered pursuant to various reconciliation mechanisms), the Company bears the risks of incurring higher costs than those reflected in rates and may retain certain efficiencies achieved when actual costs are less than projected costs. Absent circumstances warranting different treatment<sup>23</sup> (which the Company does not foresee at this time), the current situation should be treated accordingly.

## **VI. The Commission Should Follow Its Long-Standing Precedent of Non-Intervention**

As explained above, the Company has taken comprehensive efforts to maintain the quality, safety and reliability of service to the Company's customers. The Company has also

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<sup>22</sup> The cost of preparing for a work stoppage is a recognized cost of doing business by the Commission. Moreover, the Company notes that the costs incurred to prepare for the current work stoppage exceed the contingency preparation costs reflected in the Company's current delivery rates.

<sup>23</sup> The Company's electric, gas and steam rate plans contain provisions designed to address situations where projected costs and/or revenues are materially different than assumed when rates were established.



diligently pursued negotiations for a collective bargaining agreement with the Union that would establish reasonable terms and conditions for its members, thereby leading to reasonable rates and charges to the Company's customers. The Union's request that the Commission "direct[] the immediate reinstatement of the locked-out workforce . . ." (Motion at 5) is an attempt to circumvent federal labor law and thereby create an unlevel playing field in these collective bargaining negotiations in favor of the Union, to the ultimate detriment of the Company's customers.

As discussed here, the Commission has, consistent with federal law, historically declined to interfere with collective bargaining between a utility and its Union.<sup>24</sup> There are no circumstances here that would warrant a change in approach, even if the law were to allow it.

First, the Union's request for the Commission to direct the Company to terminate the lockout is premised upon the Commission deciding that an investigation is warranted. As demonstrated in this Response, no showing has been made that an investigation is warranted. Moreover, the Motion incorrectly presumes that the Commission is not already exercising oversight of the Company's operations, both before and during the work stoppage. In fact, the Department of Public Service (the "Department") is actively monitoring the Company's operations on a daily basis, having established a Strike Contingency Coordinator and team of Staff technical experts who communicate daily with the Company regarding current operations, actively visit various Company work locations, and reach out to Company personnel for additional information in order to gain a better understanding of various elements of the Corporate Contingency Plan. Moreover, communications between Staff and the Company began

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<sup>24</sup> See Case 01-M-0075, *Joint Petition of Niagara Mohawk Holdings, et al.*, Order Dismissing Petition (issued January 31, 2003) p. 5 in which the Commission said, "Although the Union would characterize the issues raised by its petition as arising under the Joint Proposal . . . the issues in fact relate to labor relations matters over which our authority is limited. Moreover, . . . the specific relief sought . . . would interject us into the collective bargaining process in a manner we have, for good reason, historically avoided."

well in advance of the work stoppage, in the planning stage. The Company is also proactively communicating with members of the Department at various levels on a daily basis in order to keep Department of Public Service Staff informed as to all material events and circumstances associated with Company operations.<sup>25</sup>

Second, the Union has not established that there has been or that there will be any degradation in service. On the contrary, as described above, the Company has been effective, as planned, in maintaining service levels, including through several high demand and high temperature days during the work stoppage.

Third, even if the Commission should determine that an investigation of some nature is warranted, the Commission should nevertheless reject the Union's request for interim relief (i.e., directing the Company to terminate the lockout) because as the Union implicitly acknowledges by challenging the lockout as an unfair labor practice with the National Labor Relations Board ("NRLB"),<sup>26</sup> the proper and only forum for assessing whether a lockout or strike should be terminated is the NRLB.

**A. The Relief Sought Would Interject the Commission Into the Collective Bargaining Process**

The Union here goes well beyond asking the Commission to review the safety and adequacy of the service the Company is providing during the pendency of labor negotiations. It is indisputably asking the Commission to intervene in labor disputes in seeking that the

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<sup>25</sup> In similar circumstances, another regulator, the Nuclear Regulatory Commission, closely monitored the contingency plans of a generating plant and was satisfied with them. On July 8, Entergy and its UWUA workers signed an agreement that ended a lockout at the Pilgrim nuclear power plant that began in early June. Union representatives and others said the lockout jeopardized safety at the plant. In response to these concerns, the NRC said it has been long aware of a possible lockout and that it approved Entergy's contingency operating plan. "We reviewed the plans and made sure they were qualified to do what they were assigned to do," says NRC spokeswoman Diane Screnci. "We reviewed the qualifications and continue to have enhanced oversight at the plant to make sure the plant is operated safely."

Elk, Mike. <http://www.inthesetimes.com/working/entry/13382> (June 14, 2012).

<sup>26</sup> *Consolidated Edison Company of New York, Inc.*, NLRB Case No. 02-CA-84556.

Commission “direct” the Company to terminate its lockout. The Commission has long established precedent that it will not do so. The Commission has taken the position, repeatedly, when presented with issues arising out of disputes between utilities and labor unions, that it is “standard regulatory practice” to “avoid governmental interference in the collective bargaining process and in matters that are best addressed by management and unions across the bargaining table.”<sup>27</sup> In fact, the Commission has referred to this practice as its “venerable policy of non-intervention in collective bargaining matters.”<sup>28</sup> Indeed, the Union has already had “one bite at the apple” by challenging the lockout at the NLRB, the body with exclusive jurisdiction over labor disputes. The Company asserts that the Commission should continue to adhere to this approach of non-intervention and should not attempt to influence matters that are clearly within the purview of the collective bargaining process.

**B. There is No Legal Basis for the Interim Relief Sought**

The interim relief sought by the Union, that the Commission terminate the lockout, has no basis in law or fact. Such an act is not supported in the Public Service Law, federal labor law or in any of the cases relied on by the Union, nor is it factually warranted based on the comprehensive preparation of the Company and the oversight that the Department of Public Service is already exercising.

Finding no support under New York law for the relief it seeks, the Union relies on a West Virginia utility case for the proposition that the regulator has the power to ensure that utilities are

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<sup>27</sup> Case 07-E-0523, *Proceeding on the Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service*, Recommended Decision (issued January 8, 2008) pp. 205-206. See also, Case 07-E-0949, *Re Orange and Rockland Utilities*, Order Establishing a Three-Year Rate Plan (issued July 23, 2008) p. 79; Case 01-M-0075, *Joint Petition of Niagara Mohawk Holdings, et al.*, Order Dismissing Petition (issued January 31, 2003) p. 5; Cases 00-G-1456 & 97-G-1380, *Re Consolidated Edison Company of New York, Inc.*, Order Concerning Gas Rates, Restructuring, Competition, and Other Issues (issued April 22, 2002) p. 16.

<sup>28</sup> Case 01-M-0075, *Joint Petition of Niagara Mohawk Holdings, et al.*, Order Denying Petition for Reconsideration (issued April 16, 2003), p. 4.

adequately staffed with skilled personnel when necessary to protect quality, safety and reliability of service. The Company has communicated with the Department in this regard well ahead of the expiration of the contract with the Union and the Company continues to keep the Department informed and updated during the work stoppage.

The facts in *West Virginia-American Water Company*, Case No. 11-07400-W-GI, 2011 W. Va. PUC LEXIS 2425, (W.Va. Pub. Serv. Comm'n Oct. 13, 2011), *modified*, Case No. 11-0740-W-GI, 2012 W. Va. PUC LEXIS 230 (W.Va. Pub. Serv. Comm'n Feb. 2, 2012) are readily distinguishable and the finding does not, in any event, support the Union's assertions. In that case, the utility sought to *permanently* lay off ten percent of its workforce immediately following a rate case in which it did not disclose such staffing reductions. The West Virginia Public Service Commission stated at the outset that the actions it took are not routine, and that "it has no intention of becoming . . . an appellate authority for the adjudications of disputes regarding day-to-day, ordinary management or staffing decisions of any utility." *Id.* at 2. Its review of the impact of such cutbacks, without notice to the regulator, on the service or operations of the utility was an "extraordinary" action. Upon such review the Commission concluded there that, with limited exceptions, it would allow the management of the utility the freedom to operate its business by reducing its staffing levels and assume full responsibility for the outcomes. *Id.* at 14. Indeed, in its Order granting reconsideration with regard to layoffs, the West Virginia Commission disavowed jurisdiction over labor disputes, stating:

The Commission is not charged with resolving collective bargaining disputes, and we are uncomfortable with either side reducing what we view as quality of service issues to pro-union/pro-management arguments.

The facts of this case are not analogous to the instant dispute, in which there is no evidence that the quality of service has suffered or will suffer. Rather, the Company has

successfully and efficiently maintained service levels. More importantly, the work stoppage is *temporary*, and is the result of a pending collective bargaining dispute, quite unlike the circumstances leading to permanent reductions and the layoffs in *West Virginia-American*. In fact, the Company has made it abundantly clear that it wants its employees to return to work and has made multiple attempts to bring them back through alternate proposals to the Union, all of which, as described above, have been refused. To cry foul when the Union has brought about this lockout by its refusal to be willing to provide notice of a strike and thereby enable the Company to continue to provide safe and reliable service is disingenuous, at a minimum.

Similarly, in yet another non-New York case relied on by the Union, *DPUC Investigation into the Contemplated Workforce Reductions*, Docket no. 09-09-08 (Sept. 24, 2009), the Connecticut Department of Public Utility Control did not address short-term work stoppage, strikes or lockouts. Instead, the issue again was *permanent* terminations and workforce reduction plans that the DPUC believed might impact long-term quality of service. Noting the Connecticut law's strict prohibition against its interfering with contracts between utilities and their employees, the Department emphasized its need to be informed about the impact of proposed workforce reductions on the safety of the operations of the utilities. The Department concluded there that it could find no evidence that the permanent workforce reductions would affect the utilities' operations, including its Performance Metrics and Annual Goals. The Department also stated that it will not prevent the utilities from prudently managing their workforce levels. This case is inapposite and distinguishable in any event because it relates to permanent layoffs and has no precedential or persuasive value with regard to the Union's motion or any of the relief it seeks.

All the other cases relied on by the Union relate to concerns over attrition, long-term

staffing problems and the resulting impact on the adequacy of service, none of which are issues here, since the Company's Union workforce will return to work upon conclusion of the pending labor negotiations.<sup>29</sup>

### **C. The Company's Actions were Legal under Governing Federal Law**

The Commission's policy and practice of non-intervention in collective bargaining matters is consistent with, and, indeed, required by, the doctrine of federal pre-emption in such matters, repeatedly recognized by the Supreme Court of the United States. *Golden State Transit Corp. v. City of Los Angeles*, 475 U.S. 608 (1986); *Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132 (1976); *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959).<sup>30</sup>

In *Machinists*, *supra*, the Supreme Court held that states could not regulate conduct that Congress had intended to leave unregulated. Subsequently, in *Golden State Transit*, *supra*, the

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<sup>29</sup> The Union cites to an Illinois case (*In Re N Shore Gas Co.*, Docket No. 07-0241, 2008 WL 631214, at \*290 (Ill. Commerce Comm'n Feb. 5, 2008), in which the Illinois Commerce Commission is *not* considering work stoppage but whether in the context of enforcing the safety of the customers under Illinois law, the utility was maintaining an adequate permanent workforce. The NYPSC has stated, on a similar issue, that:

This Commission's longstanding policy is to remain neutral concerning disputes between any utility and those who work for it. This includes, for example, disputes about . . . the relative degree to which labor should be provided by utility employees and/or outside contractors.

Case 07-E-0949, *Re Orange and Rockland Utilities, Inc.*, Order Establishing a Three-Year Rate Plan for the Delivery Service of an Electric Utility (issued July 23, 2008) at 79.

<sup>30</sup> See also *Marquez v. Screen Actors Guild, Inc.*, 525 U.S. 33, 49 (1998) ("When a plaintiff challenges an action that is 'arguably subject to § 7 or § 8 of the [NLRA],' this challenge is within the primary jurisdiction of the NLRB." (quoting *Garmon* at 245)); *Brown v. Hotel & Restaurant Employees, Local No. 54*, 468 U.S. 491, 503 (1984) ("If the state law regulates conduct that is actually protected by federal law [NLRA], however, pre-emption follows not as a matter of protecting primary jurisdiction, but as a matter of substantive right."); *Farmer v. Carpenters*, 430 U.S. 290, 296 (1977) (quoting *Garmon* at 244, "When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by section 7 of the National Labor Relations Act, or constitute an unfair labor practice under section 8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger or conflict between power asserted by Congress and requirements imposed by state law."); *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 288 (1971) ("The rationale for pre-emption, then, rests in large measure upon our determination that when it set down a federal labor policy Congress plainly meant to do more than simply to alter the then-prevailing substantive law. It sought as well to restructure fundamentally the processes for effectuating that policy, deliberately placing the responsibility for applying and developing this comprehensive legal system in the hands of an expert administrative body rather than the federalized judicial system.")

Supreme Court applied that rule to a situation very closely analogous to the situation the Union presents here. The City of Los Angeles conditioned the renewal of Golden State's taxi franchise on settlement of a strike called by a union against Golden State. The Supreme Court found that:

The parties' resort to economic pressure was a legitimate part of their collective-bargaining process. [Citation omitted.]. But the bargaining process was thwarted when the city in effect imposed a positive durational limit on the exercise of economic self-help.

*Supra* at 615. Applying *Machinists*, the Court concluded:

States are therefore prohibited from imposing additional restrictions on economic weapons of self-help, such as strikes or lockouts, [citation omitted] unless such restrictions presumably were contemplated by Congress.

*Supra* at 614-615.

As in *Golden State Transit*, the Commission must, consistent with its policy and practice as discussed above, protect the parties from interference with their exercise of federally protected rights under the National Labor Relations Act, and not intervene in the bargaining relationship between Con Edison and the Union.

This non-intervention is particularly apt in the present situation, where the Union caused the very lockout it is now seeking to halt through this Motion.

Beyond the "*Machinists* pre-emption," the courts have also recognized "*Garmon* pre-emption" – federal pre-emption of state regulation of "action that the NLRA protects, prohibits, or arguably protects or prohibits." *Wisconsin Dep't of Industry v. Gould, Inc.*, 475 U.S. 282, 286 (1986) ("States may not regulate activity that the NLRA protects, prohibits, or arguably protects or prohibits.");<sup>31</sup> *Sullivan v. Am. Airlines, Inc.*, 424 F.3d 267 (2d Cir. 2005) (NLRB has

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<sup>31</sup> See *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 at 244-245; *Domnister v. Exclusive Ambulette, Inc.*, 607 F.3d 84, 89 (2d Cir. 2010) ("In *Garmon*, the Supreme Court held that '[w]hen an activity is arguably subject to [§ 17 or § 18 of the NLRA], the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board."); [Healthcare Ass'n of New York State, Inc. v. Pataki](#), 471 F.3d 87, 96 (2d Cir.

exclusive jurisdiction over claims of unfair labor practices under Sections 7 and 8 of the National Labor Relations Act).

That the lockout action falls squarely within the purview of the NLRB and can only be reviewed by the NLRB is beyond dispute. The Union's attempt to characterize it as a public utility law issue and thereby sidestep the absence of a legal basis for the interim relief sought in its Motion, fails in the face of well-established federal law. The National Labor Relations Act ("NLRA") establishes a collective bargaining process in which economic measures are available to employers and employees. Specifically, the NLRA recognizes the workers' right to strike and the NLRB and Courts have recognized the employer's *concomitant right to lockout employees from work*. The National Labor Relations Board and Courts have long recognized and upheld lockouts as lawful if motivated by legitimate business reasons. Lockouts can be defensive if used to preempt a strike that could cause significant disruption to the employer's business operations.

The legitimacy of the lockout as the employer's countervailing device to the workers' right to strike was recognized by the U.S. Supreme Court in the landmark decision *American Ship Building v. NLRB*, 380 US 300 (1965). The Court recognized that a "lockout" was not unlawful as interfering with the right to strike in that it allowed an employer to preempt the possibility of a strike and thus leave the union with "nothing to strike against" since the work stoppage that would have been the object of the strike had in fact occurred. Specifically, the Court noted with approval the NLRB's position that certain classes of lockouts were lawful, *such as to safeguard against loss where there is reasonable ground for believing that a strike was*

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2006) ("where the conduct in issue is arguably protected by the NLRA, there is a substantive Supremacy Clause concern that the state tribunal could restrict or hamper federally protected rights").



*threatened or imminent.*<sup>32</sup>

In this year's collective bargaining negotiations, when the Union refused to extend the existing contract beyond June 30, 2012, the Company and the Union lost the protection of the no-strike/no-lockout clause therein. The Union wanted to retain the leverage of an immediate strike to support their bargaining position. Because the Union had the right to strike without notice as of July 1, the Company was left with no choice but to respond to protect its customers from vulnerability to a strike. It invoked the lockout to allow it to put management in place to operate utility systems and maintain safe and adequate service without a gap in service. The strike and the lockout are equivalent actions in that both result in work stoppage. The latter allows management to take steps to avoid an interruption in service, as is the Company's charge.

Whether the Commission looks to the instant matter as one requiring *Machinists* pre-emption – because the area of use of economic measures such as strikes and lockouts is one that Congress specifically intended to be exempt from outside governmental interference – or as one requiring *Garmon* pre-emption – because the legality of the lockout calls into question whether it is protected or prohibited by the NLRA – the result is the same. The Commission, consistent with its practice and policy, should not intervene in the collective bargaining process. The Union's thinly veiled effort to seek to utilize the auspices of the Commission to further the Union's bargaining position should not be countenanced.

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<sup>32</sup> *American Ship Building*, 380 U.S. at 307 (emphasis added); see also *NLRB v. Brown*, 380 U.S. 278 (1965).

## CONCLUSION

For the foregoing reasons, the Company respectfully requests that the Commission find there to be no reasonable basis for initiating any investigation regarding the quality, reliability or safety of the service currently being provided by Con Edison to its electric, gas and steam customers, or regarding the rates charged for such service. The Commission should therefore deny in its entirety, the relief requested by the Union and PULP.

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New York, New York

Respectfully submitted,



Marc Richter  
Anna Chacko  
Martin F. Heslin  
Attorneys for  
Consolidated Edison Company  
of New York, Inc.  
4 Irving Place, Room 1815-S  
New York, NY 10003  
(212) 460-4615  
[richterm@coned.com](mailto:richterm@coned.com)

## **APPENDIX A**

### **SAFETY, RELIABILITY, AND SERVICE QUALITY PERFORMANCE MECHANISMS**

The Company continues to perform the activities needed to comply with its safety, reliability, and service quality performance metrics during the work stoppage. The performance mechanisms applicable to Electric Operations, Gas Operations, and Steam Operations, and Customer Operations, are as follows.

#### **Electric Reliability Performance Mechanism**

Con Edison's Reliability Performance Mechanism ("RPM") consists of "performance metrics" that measure Company performance from January 1 through December 31 each year.

The RPM performance metrics are as follows:

1. Threshold Standards consisting of measures of service outage frequency [System Average Interruption Frequency Index ("SAIFI")] and duration [Customer Average Interruption Duration Index ("CAIDI")] on Con Edison's non-network ("radial") distribution system, and measures of service outage frequency (number of outages per 1,000 customers and feeder open-automatics during summertime) and average outage duration (CAIDI) on Con Edison's network distribution system
2. Major Outage metric
3. Repairs to damaged poles metric
4. Removal of shunts metric
5. Repair of no current street lights and traffic signals metric
6. Replacement of over-duty circuit breakers metric
7. Remote monitoring system metric

#### **Outage Frequency and Duration Metrics**

The outage frequency and duration metrics require that the Company keep service interruptions to a minimum and respond quickly to the interruptions that occur to restore service

promptly. Through July 15, the non-network average outage duration is 1.85 hours and is better than the 2.04 hours performance target. The network average outage duration is 3.99 hours and is better than the 4.90 hours performance target. Through July 15, the non-network customer interruption rate is .163 and is better than the .495 performance target. The network outage per 1,000 customer rate is 1.0 and is better than the 2.5 performance target.

The total number of network feeder “open-automatics” (feeder failures) (“OAs”) is a measure of reliability because multiple simultaneous OA’s in a network jeopardize service continuity and can cause an outage in part or all of a network. The number of OAs during the summer period (June, July and August) may not exceed 510. The total OAs for halfway through this summer (July 15) is 139.

#### **Major Outage Metric**

A major outage is an area outage to 15% of a network’s customers lasting more than three hours. (Con Edison has 64 networks.) This metric provides the Company an incentive to promptly repair equipment to avoid a cascade of equipment failures that could cause an area outage. The Company has experienced no major outages during the period of the work stoppage.

#### **Repairs to Street Lights**

This performance measure promotes public safety. The Company must make repairs to at least 80% of street light service outages within 45 days during summer periods (no more that 20% of repairs over 45 days) and 90% of street light service outages within 90 days during winter periods (no more that 10% of repairs over 90 days). During the work stoppage, the Company is making street light service repairs both at high priority locations and on outages that are approaching the 45 day and 90 day periods. Performance through July 15 is within the

performance target; 1.6% of summer period repairs are aged more than 45 days and 2.7% of winter period repairs are aged more than 90 days.

#### **Repairs to Damaged Poles Metric**

This performance measure promotes public safety. The Company must repair 90% of damaged poles within 30 days. The Company is responding to and repairing damaged poles during the work stoppage. The Company is performing better than the performance target for this metric. As of July 15, 91.2% of damaged poles had been repaired within 30 days.

#### **Removal of Shunts Metric**

This performance measure promotes public safety. The Company must remove publicly accessible shunts and make permanent equipment repairs within 60 days for at least 90% of shunts installed in summer months and within 90 days for at least 90% of shunts installed in winter months. The Company continues to remove publicly accessible shunts and make equipment repairs during the work stoppage. Performance through July 15 is within the performance target; 96% of summer period shunts have been removed within 60 days, and 94% of winter period shunts have been removed within 90 days.

#### **Over-Duty Circuit Breaker**

This performance measure promotes the reliability of area substations. The Company is required to replace at least 60 substation circuit breakers each year. The Company has replaced 72 circuit breakers so far this year. This work is not normally performed during the summer, and is expected to resume later this year.

#### **Remote Monitoring System**

This performance measure promotes the reliability of the electric distribution system by requiring that the transformer monitoring system in each of the 64 network is operating at a high

level. The metric requires that at least 90% of the monitoring units in each network be operating. As of July 15, none of the 64 networks are performing at less than 90%, and 44 networks are performing above 95%.

### **Gas Safety Performance Mechanism**

Con Edison's Gas Safety Performance Mechanism consists of performance metrics that measure Company performance from January 1, through December 31 each year. The performance metrics are as follows:

#### **Emergency Response**

This performance metric promotes public safety. The Company is required to respond to 75% of gas leak or odor calls within 30 minutes and respond to 90% of gas leak or odor calls within 45 minutes. Through July 15, the Company has respond to 90.6% of gas leak or odor calls within 30 minutes and responded to 99.4% of gas leak or odor calls within 45 minutes

#### **Gas Leak Backlog:**

This performance metric promotes public safety. The Company's year-end backlog workable leaks may not exceed 45. During the work stoppage through July 15, the workable leak backlog has decreased from 115 leaks to 80 leaks.

### **Steam Safety Performance Mechanism**

Con Edison's Steam Safety Performance Mechanism consists of "performance metrics" that measure Company performance from January 1, through December 31 each year. The performance metrics are as follows:

#### **Emergency Response:**

This performance metric promotes public safety. The Company is required to respond to 90% of steam leak/vapor calls within 45 minutes and respond to 95% of steam leak/vapor calls within 60 minutes. Since July 1, Steam distribution has received 11 steam leak/vapor calls from third parties. All calls have been responded to within 45 minutes.

**Steam Leak Backlog:**

This performance metric promotes public safety. The Company's average month-end leak backlog may not to exceed 24. The current backlog is 20. All leaks are inspected frequently to insure conditions remain safe pending repairs.

**Customer Operations Performance Mechanism**

The Customer Operations Performance Mechanism ("CSPM") consists of four measures of Con Edison's customer service performance: customer complaints to the Commission; customer satisfaction with electric emergency calls, Call Center calls, and visits to Service Centers; notifications during large service outages; and calls answered within 30 seconds during business hours.

Based on currently available data, the Company is meeting the performance targets for customer complaints and customer satisfaction. The customer complaint rate for the rate year to July 13, 2012 is 1.0 per 100,000 customers – better than the rate year-end CSPM target of 2.5 per 100,000. The most recent customer survey results produced customer satisfaction scores of 88.8%, 90.2%, and 90.1% for electric emergency calls, Call Center calls, and visits to Service Centers, respectively – better than the CSPM target scores of 79%, 82%, and 84%, respectively. The outage notification metric has not been triggered this rate year because no large electric service outages have occurred in 2012. The rate for calls answered within 30 seconds rate year

to date does not yet meet the rate year-end CSPM target of 56%. The rate year-to-date (July 16) rate of calls answered within 30 seconds is 50.6%. This rate typically increases over the year, and the Company has never missed the rate year-end target since this metric has been in place since the mid-1990s.

During the work stoppage, while Call Center representatives remain available for customer contact on all call-types during business hours, the Company is giving priority to customers who report emergencies. Emergency calls are being taken by representatives 24 hours a day, 7 days per week, and the Company continues to answer these calls rapidly with 73.9% of electric emergency calls, 97.5% of gas emergency calls and 97.3% of steam emergency calls answered within 30 seconds. The Company will be further augmenting Call Center staffing this week to improve the availability of representatives.



## **APPENDIX B**

### **Ongoing Operating and Customer Service Functions during the Work Stoppage**

#### **Electric Operations (Electric Distribution System)**<sup>33</sup>

- Operation of the Regional Distribution Control Centers for the safe and reliable operation of the Company's distribution system
- Public safety
  - Response to wires down / hit poles
  - Stray voltage monitoring and response
  - Underground events (manhole) response
- Heat and storm response
  - Contingency staff in key skill areas to meet heat and overhead storm plan staffing level
  - Customer outage restoration
  - Secondary system repairs
  - Feeder outage processing and restoration
  - 4 kV generator installation
- During favorable weather conditions
  - Higher priority service work
  - New business – commercial
  - Public improvement projects
  - Temporary service repairs (shunts and bridges)
  - Pole replacements
  - Underground inspection program

#### **System Operations**

- Operation of the Energy Control Center for the safe and reliable operation of the company's electric and steam systems

#### **Transmission Operations**<sup>34</sup>

- Responding to feeder failures and performing required repairs on the underground transmission system
- Responding to feeder pothead leaks and performing the required repairs
- Responding to feeder leaks by locating and clamping the leaks, and complete permanent repairs in the form of barrel installation
- Respond and perform all required pothead read and adjusts as scheduled and respond to all low pressure feeder alarms.

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<sup>33</sup> Electric Operations is not performing the type of work that is ordinarily not performed during the summer which includes system re-enforcement projects, paper insulated lead cable (PILC) replacement program, and lower priority maintenance work.

<sup>34</sup> Transmission Operations has postponed all planned capital project and program work during the work stoppage.

- Provide normal Chief Construction Inspector oversight for all contractor related activities
- Performing ground patrols and prepared to respond to open autos on the overhead transmission system
- Performing vegetation management work for the overhead transmission system
- Performing monthly helicopter patrols on the overhead transmission system
- Prepared to perform conductor and insulator repairs on the overhead transmission system as needed

### Substations Operations<sup>35</sup>

- Feeder processing and equipment switching
- Responding to alarms
- Performing inspections on each shift and taking readings (such as pumphouse readings)
- Responding to equipment failures
- Performing essential corrective maintenance
- Maintaining scheduled preventative maintenance (tasks coming due often performed prior to June 30<sup>th</sup>).
- Maintaining essential power supplies such as batteries and diesel generators
- Performing regulatory required inspections such as fire detection and prevention and environmental equipment and systems
- Maintaining relay protection equipment
- Performing frequent security patrols of all substations

### Steam Distribution Operations<sup>36</sup>

- Performing turn on and turn off requests for customers
- Investigating reports of leaks and vapor conditions
- Excavating and abatement activities associated with leak investigations
- Scheduling and performing steam main outages to facilitate the repair of leaks
- Responding to remote alarms for traps, structures and pumps
- Repairing equipment failures
- Performing the frequency inspections for equipment components as prescribed by regulations
- Responding to customer calls and requests for meter station equipment investigations and repairs

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<sup>35</sup> Substation Operations has postponed all planned capital project and program work during the work stoppage.

<sup>36</sup> Steam Distribution advanced periodic inspections, calibrations and replacements due during July and August so as minimize such activities during that period. Included were:

- street trap inspections including cap inspections and annual replacements
- pump, slip joint, manhole, orifice plate, limitorque and control valve inspections
- telemetric, district pressure transmitter, pressure transmitter calibrations
- periodic meter and counter replacements and calibrations

Steam Distribution has suspended the physical reading of steam customer meters for a majority of customers. Remote metering technology is being used to obtain readings for approximately 60% of steam customers. Meter reading will resume for the month of August.

- Functional testing of customer traps
- Performing capital work associated with new business service requests
- Performing capital work associated with the performance of NYC Public improvement projects

#### Steam Distribution Operations Summary of Activities

- Completed 73 scheduled requests from customers to turn on or turn off service
- Performed 333 inspections on manholes, pumps, traps and slip joints
- Performed all inspections on the Steam system within the frequency requirements prescribed by the regulations
- Supported construction jobs related to new-service requests and NYC Public Improvement projects.

#### Electric and Steam Generating Stations<sup>37</sup>

- Staffing key critical operating posts in control rooms and field rovers to meet system electric and steam supply needs
- Performing all operational checks and inspections at all Generating Stations
- Responding to alarms and any abnormal conditions
- Following the lockout tagout process as warranted to make equipment repairs
- Making repairs to ensure plant equipment is available to meet system needs
- Performing compliance inspections as per required frequency such as monthly trap testing, fire protection checks etc.
- Continue to work on key capital projects such as Gas Addition at 59th Street and 74th street Stations, East River Fish Mitigation project, 74th street waste neutralization project.

#### Gas Operations<sup>38</sup>

- Emergency Leak Response
- Leak Repair
- 24 /7 Operation
  - Gas Emergency Response Center

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<sup>37</sup> Some capital work on non-regulatory required capital projects has been suspended at the Generating Stations.

<sup>38</sup> Gas Operations has suspended some work in the following categories:

- Main Replacement
- System Reinforcement
- Lower Priority Leak Repair
- Leakage Survey
- Meter Shop Operations

Prior to the work stoppage, Gas Operations completed the system-wide mobile (4,323 miles), the business district (41,683 services), and the June transmission main leak surveys. Leak survey work is scheduled to resume during the week of July 23. Gas Operations is on or ahead of schedule in the majority of safety related inspection work and expects complete all programs as planned by year end

- Gas Control
- Liquid Natural Gas Plant
- Security Patrols
  - Gate Stations
  - Tunnels
  - Transmission pipes
- PSC Mandated Work
  - Encroachments
  - Inspections
  - Leak Surveillance
  - Meter Exchanges
- Pressure Control & Tunnels
- Oil-to-Gas Conversions
- Gas Turn Off / On

#### Gas Operations Summary of Activities

- Repair multiple leaks on a section of the gas transmission system in Greenburgh, and install new remotely operated valve and straddle connection to the regulator stations
- Construction continues for five (5) regulator stations
- Construction continues for the transmission supplies for the two steam generating stations
- Main replacement
- New Business services continue in all areas
- Leak repairs
- Transmission main patrols continue
- Odorometer readings continue as scheduled:
  - Six (6) locations performed daily
  - Three (3) locations performed every 8 hours
  - One (1) location performed every 4 hours
- Gate station patrols continue as scheduled:
  - Eight (8) locations performed a minimum of once per day
- Gas Engineering Design:
  - 67 layouts drawn and issued
  - 282 mains and services mapped
- Inspections performed since July 1<sup>st</sup>:
  - 753 inspections (main valves, building of public assembly, high pressure regulator, etc.)
  - 369 meter installations/replacements
  - 508 meter turn-ons
  - LNG Facility – 535 plant inspections

### Customer Operations<sup>39</sup>

- Call Center representatives remain available for customer contact on all call types (1-800-75-CONED)
  - Report emergencies<sup>40</sup>
  - Arrange deferred payment agreements
  - Other transactions, e.g., new and transferred accounts, during business hours<sup>41</sup>
- Customers' self service applications at the Call Center and at our website
- In-person bill payments at our Walk In Center locations in Staten Island, Brooklyn, Queens and Mt. Vernon and at authorized agent locations
- Courtesy phones at Walk In Centers that connect to Con Edison's Call Center
- Physical "turn ons" of service
- Meter Reading/Billing
  - Cycle meter reading in Staten Island
  - Cycle readings of about 960,000 automated meter reading (AMR) meters
  - Cycle meter readings on about 35,000 demand and high revenue accounts
  - Estimated bills with estimating algorithms adjusted for weather fluctuations and data obtained from AMR meters
  - Accept customer meter readings
- PSC Hotline calls, QRS's and SRS's, and PSC rebuttals, inquiries, and determinations.
- Shared Meter Case processing as required by the Shared Meter Law.
- Continue liaison with agencies providing Public Assistance to ensure that services are provided to at-risk customers

### Energy Services<sup>42</sup>

- Service determinations electric and gas
- Preparation of electric and gas layouts
- Final inspections for electric and gas new business jobs
- Prioritized service construction jobs

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<sup>39</sup> Customer Operations has suspended the following activities:

- Walk-in Centers in the Bronx and Manhattan are closed. The Walk-in Center in Staten Island is open. Walk-in Centers are open in Queens, Brooklyn and Westchester (Mount Vernon) but representatives are not available to handle customer inquiries except via courtesy phones available at Queens, Brooklyn and Mount Vernon centers. Signage in closed Walk-in Centers alerts customers to nearby authorized facilities for bill payment.
- Reading of residential and small commercial customer non-AMR meters is suspended, except in Staten Island.
- Customer-requested physical service turn-offs and meter reading appointments are suspended.
- Routine field investigations for personal service cases are suspended.

<sup>40</sup> The Company continues to respond to customer calls at its Call Center with priority given to customers who report having no service. Emergency calls are being taken by representatives 24 hours a day, 7 days per week, and the Company continues to answer these calls rapidly with 73.9% of electric emergency calls, 97.5% of gas emergency calls and 97.3% of steam emergency calls answered within 30 seconds.

<sup>41</sup> The Company will be further augmenting Call Center staffing this week to improve the availability of representatives.

<sup>42</sup> Energy Services has not suspended any services.

## Energy Services Summary of Activities

- Service determinations electric and gas: We typically complete 1400-1600 service determinations per month. June 2012 actual was 1423. We have completed 800 service determinations in July YTD. We also track percentage completed within 15 days. In July 2012 we completed 100% within 15 days. The Jan-June performance was 83% completed within 15 days.
- Layouts completed electric and gas: We typically complete 450-500 layouts per month. June 2012 actual was 505. We have completed 168 layouts July YTD.
- Final Inspection: We have assigned our experienced customer project managers in the field to perform inspections for electric and gas new business jobs. We have performed 1300 inspections in July YTD. All inspections are responded to in a timely manner and schedule based on customer's preference. There have been no delays in meeting customer's expectations in this area.
- Service Construction Jobs: We have prioritized service work based on safety and customer need. In addition, we have contacted customers with service dates due within the next two weeks. Most jobs are not ready due to pending customer's contractor work activity. We have changed the service dates on 214 of these jobs as a result. We have approximately 100 service jobs on a priority list and are fielding those jobs with service crews each day.