

**Western Queens Power for the People Campaign**  
**47-01 Greenpoint Ave., #174**  
**Sunnyside, NY 11104 • (718) 512-5442**  
**powerforthepeople2006@hotmail.com**  
**www.powerforthepeople.info**

REPLY COMMENTS TO ACTIVE PARTY COMMENTS  
ON THE *DEPARTMENT OF PUBLIC SERVICE STAFF REPORT*  
*ON ITS INVESTIGATION OF THE JULY 2006 EQUIPMENT*  
*FAILURES AND POWER OUTAGES IN*  
*CON EDISON'S LONG ISLAND CITY NETWORK IN*  
*QUEENS COUNTY, NEW YORK*

## I. INTRODUCTION

As the investigation into the case of the July 2006 Con Edison power outage in the Long Island City network comes to a close, and the Public Service Commission (PSC) begins to reflect on the information gathered, Western Queens Power for the People (PFP) would like to take this opportunity to focus all the active parties on the simple human values that we hope will inform all future efforts related to this case going forward.

Often the “rightness” of a decision is best judged by the outcome it produces. Residents imprisoned in oven-like apartments and small businesses forced into bankruptcy because of a lack of power, which happened during the Western Queens power outage, are *unacceptable outcomes under any circumstance, no matter what the cause.*

The PSC staff survey found that at least 174,000 people were deprived of a basic necessity of life through no fault of their own for as many as nine days. The sad fact is that the July 2006 outage in Queens was preventable. This outage was not caused by storms, excessive heat, or other outside factors. Rather, it was caused by an absolute failure to maintain and administer an electrical network that is Con Edison’s public trust. These failures were caused by Con Edison’s corporate actions and are to blame for the events of July 2006.

Con Edison’s failures before and after the nine-day outage were compounded by bad decision-making during the crisis, a complete failure to understand the extent and impact of its poor decision-making, and a public relations policy that failed to inform elected leaders and members of the public of the problem. Independently, each of these is reason enough to find for a prudence hearing.

Not surprisingly, Con Edison exerts a major effort in its Comments on the Department of Public Service (DPS) Staff Report arguing against a prudence hearing, which was recommended by the Public Service Commission staff. Con Edison’s arguments fall into two general categories: 1) the choice was between turning off or not turning off the network, and 2) a prudence hearing is not forward-looking, and such an examination would cause the company financial trouble.

Con Edison asserts that its decision to operate the network in the face of massive equipment failures was the “right” one. However, even if the Board of the Public Service Commission finds that Con Edison was correct in its judgment to keep the network running, the 2006 Queens power outage itself was caused and compounded by Con Edison’s negligence. The failure to repair and maintain the network led to a spiral of events that are all Con Ed management’s responsibility. Those events were foreseeable, and the people who live and work in Western Queens clearly suffered from Con Edison’s negligence.

Con Ed claims that a prudence hearing would be backward-looking and suggests what it calls a forward-looking approach. However, the New York State Legislature specifically empowered the Public Service Commission to conduct prudence hearings as part of its oversight powers. PFP simply asks: If a prudence hearing is not appropriate here, then when is it ever appropriate?

The July 2006 Queens power outage was a national news story (see, for example, “Tempers Flare as 100,000 Queens Residents Remain Without Power,” *Charlotte Observer*, 22 July 2006). The outage set records in terms of the number of persons affected by an outage of this kind and the length of time they were affected. Indeed, Con Edison’s own engineers admitted on the record that the July 2006 outage in Queens was the worst local network outage in the past 40 years for this sort of underground network.

Con Edison takes pains to imply that a prudence hearing may harm the Company financially, and even notes that it could harm the Company’s bond rating (p. 40). Con Edison’s financial concerns should not be a concern of the Commission. If the Company management falters, then its shareholders may choose to replace its leadership, or another company will buy Con Edison and replace its incompetent managers, or it could be taken over and run as a genuine public utility. New York City residents will be best served by a company that can cheaply and efficiently deliver electrical power and gas service. The events of the July 2006 outage suggest that Con Edison may not be the best company for this job.

Con Edison has breached a public compact that gifts upon the Company a restricted market and tariff system. It is the responsibility of the Public Service Commission to defend this public trust and to ensure that Con Edison shareholders bear the full cost of any actions that have harmed the public. A prudence hearing is an appropriate forum to consider the actual cost of Con Edison’s negligence and to begin to repair the public trust.

Equally unacceptable is the Company’s plan to request a “substantial rate increase”<sup>1</sup> to pay for what the Department of Public Service (DPS) Staff Report cites as a “failure to confront and resolve a multitude of issues associated with its operation, maintenance, and oversight of the network.”<sup>2</sup>

“What can you say about a company that shuts you down for seven days, makes you lose [money] and then they raise the rates?” —Small business owner from Astoria<sup>3</sup>

On a positive note, PFP would like to take this opportunity to call attention to points of commonality among comments submitted by various parties:

1. The outage was caused primarily by inappropriate care, maintenance, and/or preparation by Con Edison.
2. The terms of the reimbursement tariff need to be redefined. Points to consider include but are not limited to:
  - adjustments for inflation;

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<sup>1</sup> Bill Sanderson, “Shocking! Con Ed in Bid to Boost Charges,” *New York Post* (March 7, 2007).

<sup>2</sup> *Department of Public Service Staff Report on Its Investigation of the July 2006 Equipment Failures and Power Outages in Con Edison’s Long Island City Network in Queens County, New York*, Case 06-E-0894 (New York State Department of Public Service, February 2007), 6.

<sup>3</sup> Sanderson, “Shocking!” (See note 1 above.)

- adjustments for duration of an outage;
  - reimbursements for damaged electrical equipment; and
  - reimbursements for other damages such as generator costs, medical expenses, lost revenues, lost wages, loss of livable residential space for the duration of the outage, restaurant expenses, etc. (see Appendix D of DPS Staff Report).
3. Different methods are needed to assess the number of both customers and populations affected by an outage. Proper population assessments are essential for appropriate and adequate mobilization of emergency response services. Improved methods should include counts for:
    - customers without service;
    - customers with low voltage; and
    - combined estimates for populations without service or with low voltage.
  4. “Quality of service” needs to be redefined. This concept is particularly stressed by the Consumer Protection Board, and PFP thanks them for this key contribution. Narrow definitions of both “customers” and “outage” allowed the Company to be simultaneously accurate and misleading in its communications and were a primary factor in the mismanagement of response efforts.
  5. Finally, PFP reiterates its support for a prudence hearing, which is warranted by Con Edison’s actions or lack of action before and during the outage as outlined in the DPS Staff Report:
    - The outage itself happened because of Con Ed’s disinvestment in the system, not outside factors, and the public that lives and works in Western Queens, which the PSC is charged with protecting, suffered as a result.
    - Con Ed management should have known there was a problem once the outage began (and should have responded accordingly) because of the preponderance of manhole fires and other indicators.
    - Con Ed management failed to identify how bad the problem was and failed to communicate this information to the public.

## **II. PFP’S SPECIFIC REPLIES TO ACTIVE PARTIES’ COMMENTS**

### **A. PFP Reply to Con Edison’s Comments**

PFP feels particularly compelled to respond to specific comments made by Con Edison. In addition to employing (in many instances) specious, illogical, and/or irrelevant arguments, Con Edison’s misrepresentations in these comments are shocking in their audacity and serve only to further demonstrate the corporate mismanagement that led to the July 2006 Queens power outage.

Sadly, these comments perpetuate a pattern first evidenced during the July 2006 Queens outage, when the Company chose to misinform rather than work with the community and the Public

Service Commission staff. The executive summary of the DPS Staff Report has noted “failures by the Company with regard to its communications with consumers, public officials, and the media, resulting in extreme hardships for affected consumers.” PFP encourages the Commission to keep this back-story in mind as it reads Con Edison’s Comments on the DPS Staff Report.

PFP calls your attention to the following portions of Con Edison’s comments.

1. Pages 1, 39, 41, *passim*: Con Ed states that a prudence proceeding to review its actions will hurt its customers, asserting that such a proceeding “will detract from the work that is being undertaken by Con Edison and the Staff as a result of the Long Island City outages” (p. 1). It also states that, “we do not believe the institution of such a proceeding is otherwise in the public interest” (p. 39) and that a proceeding would have a “potentially long-term adverse impact on customers” (p. 41). Con Ed urges the PSC to refrain from moving forward with such a proceeding.

*PFP Reply*: Seven months of Staff investigation have led to the conclusion that a prudence hearing is recommended. The investigation has taken place and a prima facie case has been established that Con Edison was grossly negligent and, because of this negligence, it should face the statutory requirements of a prudence hearing.

Con Edison’s statements to the contrary are disingenuous at best. PFP asks: How, exactly, will a prudence proceeding “detract” from work that is wholly unrelated to it and requires very different resources? Are Con Edison’s attorneys involved in the restoration and repair effort? Moreover, even if Con Edison could demonstrate that such a “detraction” were a real possibility, one that would jeopardize its restoration work—and PFP does not believe that it can or should—PFP submits that that is something the Company should have considered before embarking on the journey of clear neglect and mismanagement that led to the outage in the first place.

PFP posits that Con Edison’s senior management has demonstrated through its gross negligence and deliberate misrepresentation of the facts—both in these comments and elsewhere—that it never was, and continues not to be, concerned with “the public interest.” PFP asks further whether the “potentially long-term adverse impact on customers” to which Con Ed refers constitutes some sort of threat or attempt at intimidation. Finally, PFP cautions that, if a prudence proceeding is held, Con Edison must not be permitted to use such a proceeding as an excuse for failing to protect its customers from another outage or for passing on additional costs to them.

2. Page 3: Con Ed states that, “While there is no doubt that we let down a large number of customers in a portion of this network and caused them significant hardship, Con Edison’s record of continuous, dependable, reliable service is unmatched in the state and in the country. . . the LIC network is in the top quartile of Con Edison’s 57 networks, and its reliability was more than 400 times better than the average customer experience in New York State.”

*PFP Reply*: First, Con Ed’s assertion that the LIC network is more reliable than 57 other networks is disingenuous at best, as the majority of those networks are not, like the LIC network,

underground and thus are subject to storms, which are the typical cause of power outages. Second, Con Ed's past performance, whatever it was, does not change the facts or circumstances of the July 2006 outage. Third, statements of comparative reliability are meaningless in the absence of knowledge about the "average customer experience" against which Con Ed compares its own performance—something that Con Ed makes no attempt to demonstrate.

3. Page 4: Con Ed states that, "the Company's investigation of this event has been substantial and has resulted in numerous recommendations . . ."

*PFPP Reply*: PFPP notes that no company can reliably or objectively investigate itself, and any conclusions drawn from such "self-investigations" are questionable at best. At the most basic level, the Company failed to estimate the actual number of persons, or even customers, who were affected by the outage.

Con Edison's failure to provide an accurate estimate of the number of persons affected by the outage, even at this late stage, demonstrates that its own investigation have led nowhere. The Company simply does not understand, or refuses to acknowledge, the extent of the problem it has caused; a prudence hearing may emphasize this to them.

4. Page 9: In defending its decision to keep the LIC network up and running, Con Ed states that, had it shut down the network entirely, "All 115,000 customers would have been out of service." Elsewhere, Con Edison asserts that a majority of LIC network customers were not affected.

*PFPP Reply*: PFPP asks, for how long would those "115,000" customers have been out of service? An hour? A day? Two days? Con Ed does not say. The customers who lost power were more than a majority of Con Edison's customers in the network. Moreover, the entire neighborhood was affected by the nine-day outage. In some buildings, power was lost in some apartments and not others, and/or major services—like elevators, which are the only way to access the garbage disposal and laundry room in some cases—were non-functioning; in addition, some residents who did not lose power opened their homes to neighbors and relatives seeking relief from their overheated apartments.

5. Pages 9–10: Again, in defending its decision to keep the LIC network running, Con Ed states that it followed specification EO-4095, which indicates when "a network shutdown is appropriate" and which is intended "to prevent a disaster in which, as a result of damage to equipment, an entire network is without power for an extended period of time in the order of weeks or even months."

*PFPP Reply*: PFPP is flabbergasted at Con Ed's employment of this information as a defense for its decision, since the July 2006 power outage extended beyond the initial nine-day crisis, given the number of buildings that were on generators for extended periods. Clearly, the criteria for making a decision to shut down a network are wrong and need review.

6. Page 10: Con Ed states further that specification EO-4095 "calls for a network shutdown when there is evident damage to equipment in a substation, . . . extensive primary feeder overloads,

extensive transformer overloads, or cascading manhole fires (which demonstrates extensive damage to the secondary network is taking place). None of these conditions were present during the Long Island City event . . .” [emphasis added].

*PFPP Reply:* PFP is frankly mystified by this statement and notes that it is not based in the reality of the outage as directly experienced in the community, articulated by the Con Ed line workers, or documented in the DPS Staff Report. The DPS Staff Report states clearly that “cascading system damage”<sup>4</sup> and “concurrent manhole events”<sup>5</sup> did occur. The DPS Staff Report also states that the Company was slow in comprehending “the level of damage to the secondary network.”<sup>6</sup> And, PFP contends that a tenth contingency power failure—that is, failure of 10 primary feeder cables out of 22—must reasonably fall within the definition of “primary feeder overload.” If anything, the Western Queens experience shows that when a plurality of the feeders is out or damaged (10 of 22), the plurality of the people in a network will be without power or browned out.

7. Page 13: Con Ed also defends its decision to keep the LIC network running in its statement that, “restart and restoration following a network shutdown is a complex and substantial undertaking . . .”

*PFPP Reply:* PFP observes that Con Ed uses the phrasing “complex and substantial undertaking” (or similar phrasing) repeatedly to justify its actions or non-actions—leading us to wonder whether Con Ed is incapable of performing a “complex and substantial undertaking” when it is clearly required.

8. Page 14: Con Ed demurs that a network shutdown would have caused “social upheaval.”

*PFPP Reply:* PFP notes that there is no evidence of “social upheaval” as a result of the massive 2003 outage that affected states east of Ohio. PFP notes further that the July 2006 power outage in Western Queens caused considerable “social upheaval” in the affected communities—upheaval to which Con Ed was apparently either blind or indifferent—and questions whether the Company wasn’t in fact more concerned about the “political upheaval” that a network shutdown would have caused, even if it meant sacrificing the people of Western Queens.

9. Pages 17ff.: Con Ed refers to “the many positive findings and comments contained in Staff’s Report concerning the Company’s performance.”

*PFPP Reply:* This statement is an insult to the PSC staff, the other active parties to this investigation, and the public at large, as anyone who has read the DPS Staff Report knows that it was overwhelmingly critical of Con Ed’s performance, to such an extent that it recommended a prudence proceeding to review the Company’s actions.

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<sup>4</sup> *DPS Staff Report*, 6.

<sup>5</sup> *Ibid.*, 13.

<sup>6</sup> *Ibid.*, 22ff.

In this entire section (Section VI), Con Ed again employs irrelevant, irrational, or simply misrepresentative arguments to defend its actions. The fact remains that a seven-month DPS Staff investigation has led to the conclusion that prudence hearings are warranted. Based on this investigation, a prima facie case has been made that Con Ed management was grossly negligent, and because of this negligence it should face the statutory requirements.

10. Page 40: Con Ed states that, “The Company’s existing rate plan . . . reflects agreement . . . on the potential penalties to which the Company could be subject for departure from stipulated performance levels, including during events such as the LIC outage. [Emphasis added.] The imposition of penalties in addition to the substantial penalties specified in the Company’s current rate plan is not appropriate.”

*PFPP Reply*: PFP notes that on p. 27 of its comments, the Company states that, “network systems rarely have large outages.” PFP questions whether events of the magnitude of the LIC outage are in fact reflected in prior agreements, since Con Ed repeatedly insists that the event was unpredictable.

11. Page 40: Con Ed states, “The application of predictable, reasonable and non-punitive [emphasis added] regulatory policies, including at times when the regulatory system is tested by unusual events, is essential . . .”

*PFPP Reply*: PFP observes that Con Ed’s statement is tantamount to insisting on carte blanche to mismanage its operations and cause hundreds of thousands of people to suffer in the extreme—with no consequences.

12. Page 41: Con Ed notes that in prior situations that resulted “in the interruption of service to customers, the Commission has investigated a utility’s handling of an outage without commencing a prudence proceeding” and cites this factor as a rationale for rejecting a prudence proceeding in this case.

*PFPP Reply*: PFP notes that this statement represents yet another irrelevant argument on Con Ed’s part, and notes further that it is the very severity and uniqueness of this particular case that led the PSC to recommend a prudence proceeding in the first place. In other words, the PSC’s recommendation in this regard is itself reflective of the extreme nature of the July 2006 outage and Con Ed’s related mismanagement of it.

Overall, Con Edison’s comments on the PSC Staff Report indicate that, to this day, the Company’s senior management remains unwilling or unable to acknowledge both the magnitude of and its own culpability in the disaster that struck Western Queens in July 2006. The Company’s comments further indicate that senior management is ready and willing to hide behind the public to prevent a prudence proceeding from taking place, by pretending that the Company is concerned about the customers’ “best interest” (p. 41)—a claim that PFP challenges and asserts is contradicted by Con Edison’s actions before, during, and after the outage.

## **B. PFP Reply to the City of New York (“the City”) Comments**

1. Page 3: The City states, “From the onset, the City was heavily involved in maintaining public safety, providing human resource services to affected residents, and assisting Con Edison in its recovery efforts.”

*PFP Reply*: PFP and the residents of Western Queens with whom its members spoke saw no evidence of the City’s presence until several days after the outage began, and then that presence was extremely light. Street lights and traffic lights were non-functioning for days, creating dangerous conditions for residents and particularly for children trying to cross the street. When a police presence finally arrived, it was inadequate, covering only sporadic intersections. As residents of Western Queens who actually lived through the outage—and as reported to us anecdotally by other area residents—we saw no heavy (or any) involvement in maintaining public safety, providing human services, or assisting Con Ed “from the onset” on the City’s part.

2. Page 3: The City states that it has focused “on identifying improvements to Con Edison’s system and its operating procedures to reduce the likelihood of such an event happening again.”

*PFP Reply*: PFP would like it noted in the record that “reduc[ing] the likelihood of such an event happening again” is insufficient, and that instead the goal should be to prevent such an event from happening again.

3. Page 6: The City states that “the scope and duration of the LIC outage could have been reduced by better preparation and responsiveness by Con Edison” and that, if the recommendations that grew out of the 1999 Washington Heights outage had been implemented, “the LIC outages might have been less severe . . .”

*PFP Reply*: PFP asserts that if Con Edison had done a better job of preparing and responding, and if the Washington Heights recommendations had been implemented, the LIC outage might have been prevented altogether.

4. Page 28: The City states that the Company will absorb “all expenses and claims payments” and offers this statement as one reason to reject a prudence proceeding.

*PFP Reply*: PFP disagrees. The DPS Staff report states clearly that, “Absent a finding of imprudence by the Commission, customers will bear the full cost of all capital additions made to the Long Island City network as a result of the incident” (p. 141). Not only has the community not been fully reimbursed for millions of dollars in damages and losses from the outage (see Appendix D of DPS Staff report), but without a prudence proceeding could end up absorbing the substantial capital costs as well.

5. Pages 28–29: The City states its concern that “a prudence proceeding at this time could distract Con Edison from completing the numerous, critical improvements that the City, Staff and others have recommended for immediate action prior to this summer.”

*PFP Reply:* PFP has already noted its objections to and concerns about this line of reasoning in its reply to Con Edison's comments. PFP would also like to call attention to the fact that the City's language is suspiciously similar to Con Edison's language. Given the explicit bias of Mayor Bloomberg in support of Con Edison and his outspoken defense of the Company, PFP questions whether the City is truly neutral in this case and whether its involvement represents a conflict of interest.

### **C. PFP Reply to Utility Workers Local 1-2 Comments**

1. Technical and Safety Recommendations. PFP supports the technical and safety-related comments of Local 1-2, particularly those comments about items appearing in Appendix A of the DPS Staff Report.

During and after the outage, we have seen and talked with Local 1-2 members working in our Western Queens communities—sometimes under stressful and potentially dangerous conditions. These experienced Con Ed workers brought us back on line after the outage, continue to make upgrades and repairs throughout the area, and have the most direct, hands-on knowledge of what is needed on the ground—and underground—to ensure a safe and efficient operation of the Long Island City network.

Unlike Con Ed's upper management, the Local 1-2 members really *are* “on it,” and we urge the PSC to take their recommendations seriously.

2. Advanced Metering Concerns. PFP reiterates its concern that in any evaluation of advanced metering, the jobs of Con Ed utility workers be protected. Local 1-2 states in its comments on advanced metering (p. 6) that:

“All infrastructure elements of LIC network must be considered, including but not limited to the rapidity of technological change and benefits of a meter reader observing, reporting and correcting hazardous conditions as the meter reader would proceed through the meter reading route.” [Emphasis added.]

This supports what PFP raised in its initial comments about the importance of having experienced utility workers on the ground in our communities on an ongoing basis to ensure our safety—both preventively and in the event of an outage or similar electrical/gas utility emergency.

3. Call Center Staffing/Improvements. Local 1-2 also recommends increasing staff in Con Ed's Customer Service operation (p. 7). The union notes that workers at call centers were put on “physically and emotionally demanding mandatory 16-hour shifts” during the July 2006 outage, supervisors were abusive to call-center workers during the crisis, and these problems were “compounded by the fact that the Organization is understaffed and undertrained.”

In PFP's opinion, such an environment in Con Ed's Customer Service operation is not conducive to relaying adequate information to the public and undoubtedly contributed to long delays and other communication problems callers experienced during the outage.

Local 1-2 notes that, "Fresh workers do a much better job than workers that are physically and emotionally drained" (p. 7). PFP concurs with this and with Local 1-2 proposals on achieving an adequately staffed, smoother running Con Ed call center to handle the community's regular and emergency calls.

#### **D. PFP Reply to PULP and OAG Comments**

1. Prudence Proceeding and Outage-Related Costs. PFP strongly supports the comments of the Public Utility Law Project (PULP) and the Office of the Attorney General (OAG), in particular the OAG's comments in Sections VII and VIII, as follows:

**Section VII:** "[T]he Commission should institute a proceeding immediately to make a finding of gross negligence, to examine the types of individual damages suffered by residents and businesses, to take testimony, and to achieve a result whereby Con Edison pays appropriate damages for economic losses suffered in excess of the amounts and types of recovery in Con Edison's existing tariffs. These amounts should be provided retroactively, to cover the losses suffered as a result of the LIC outages. Residents and businesses should not suffer economic losses while the Company which caused them and its shareholders reap large earnings" (p. 30).

**Section VIII:** "Because of Con Edison's scandalously deficient performance, the ratepayers should not bear any of the cost [that] Con Edison has incurred and is continuing to incur to repair the damage it caused to its network, nor should the ratepayers bear the capital cost of upgrades to replace damaged equipment. The Commission should begin a prudence proceeding immediately to ensure this result. Pending the outcome of a prudence proceeding, the Commission should ensure that Con Edison does not receive rate increases in its next rate case.

" . . . The cost of replacing and repairing the network could grow greater in the months and years to come . . . None of this cost should be borne by the ratepayers" (pp. 30-31).