

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on February 16, 2017

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

CASE 14-G-0201 - In the Matter of the Investigation Relating to the Explosion and Collapse of the Buildings at 1644 and 1646 Park Avenue, New York, New York in the Service Territory of Consolidated Edison Company of New York, Inc. on March 12, 2014.

CASE 14-G-0212 - Proceeding on Motion of the Commission to Investigate the Practices of Qualifying Persons to Perform Plastic Fusions on Natural Gas Facilities.

ORDER APPROVING SETTLEMENT AGREEMENT

(Issued and Effective February 16, 2017)

BY THE COMMISSION:

BACKGROUND

On March 12, 2014, an explosion and subsequent structural fire involving natural gas facilities occurred at 1644 and 1646 Park Avenue, East Harlem, New York City, within the gas service territory of Consolidated Edison Company of New York, Inc. (Con Edison) ("Incident"). The incident resulted in eight fatalities and approximately 48 reported injuries to nearby residents and pedestrians. Both of the 1644 and 1646 Park Avenue structures collapsed and all contents were destroyed; significant damage from an explosion wave, shrapnel,

and fire occurred to adjacent buildings as well as structures across the street.

On June 27, 2014, the Commission issued an Order¹ directing Con Edison to take steps to address its non-compliance with the 16 NYCRR Part 255 safety regulations for qualification and requalification of persons who perform plastic fusions and to explain how Con Edison planned to comply with the safety regulations in the future. On May 15, 2015, the Commission issued an additional Order² directing Con Edison to conduct a risk assessment and submit a remediation plan related to plastic fusions. Finally, on November 19, 2015, the Commission issued an Order to Show Cause³ directing Con Edison to show cause as to why the Commission should not pursue three avenues of redress for alleged Con Edison actions and inactions related to the Incident: (1) a civil penalty action pursuant to Public Service Law §25 in State Supreme Court; (2) an administrative penalty action pursuant to Public Service Law §25-a; and (3) a prudence proceeding to disallow in Con Edison's rates costs incurred as a result of Con Edison's actions that appear to have contributed to the Incident.

On December 21, 2015, Con Edison filed a response to the Order to Show Cause, stating that the Commission should not institute either a civil or administrative penalty action or a

¹ Case 14-G-0212, Qualifying Persons to Perform Plastic Fusions on Natural Gas Facilities, Order Instituting Proceeding to Investigate Consolidated Edison Company of New York, Inc.'s Practices and Obtain Information Concerning Plastic Fusions on Natural Gas Facilities (issued June 27, 2014).

² Case 14-G-0212, supra, Order Requiring Local Distribution Companies to follow and Complete Remediation Plans as Modified by this Order and to Implement New Inspection Protocols (issued May 15, 2015).

³ Case 14-G-0201, Investigation Relating to the Explosion and Collapse of the Buildings at 1644 and 1646 Park Avenue - Con Edison, Order to Show Cause (issued November 19, 2015).

prudence proceeding.⁴ Con Edison stated that none of its actions or inactions cited in the Order to Show Cause was the cause of the Incident, and that none of such actions or inactions establish the criteria under the Public Service Law necessary for either a court to impose civil penalties, or for the Commission to impose administrative penalties or make an imprudence finding. Con Edison filed its plastic fusion remediation plan⁵ on October 3, 2016, and is now in the process of implementing that plan.

SUMMARY OF SETTLEMENT

Prior to further Commission steps to pursue a civil penalty action or a prudence proceeding, settlement discussions took place. In the attached settlement, Con Edison commits that in lieu of potential remedies that could have been sought by the Commission in a civil penalty action or a prudence proceeding, Con Edison has or will perform actions at a cost to Con Edison of \$153,333,591. Con Edison further agrees to implement certain Staff recommendations and Con Edison is in the process of implementing its plastic fusion remediation plan. The cost consists of Con Edison's establishment of a separate regulatory liability account of \$25,052,000, subject to carrying costs, for the benefit of its gas customers; \$125,460,591 that Con Edison has spent on leak response-related activities that is incremental to what was reflected in Con Edison's gas delivery revenue requirements; \$668,000 that Con Edison spent for a gas safety public education program in 2014, which costs were not reflected in Con Edison's gas delivery revenue requirements and

⁴ Case 14-G-0212, supra, Response of Consolidated Edison Company of New York, Inc. to Order to Show Cause (December 21, 2015).

⁵ Case 14-G-0212, supra, Con Edison Plastic Fusion Remediation Plan (October 3, 2016).

for which Con Edison has not sought recovery; \$233,000 that Con Edison has spent for emergency payments to residents and businesses immediately following the Incident for which Con Edison has not sought recovery; and \$1,920,000 that Con Edison is estimated to spend on its plastic fusion remediation program, which costs are not reflected in Con Edison's gas delivery revenue requirements.

DISCUSSION

Ratepayers have already benefited from the leak response-related activities, gas safety public education program, and emergency payments to residents and businesses immediately following the Incident, and now pursuant to the settlement agreement will receive substantial financial benefits by the significant scope of costs for these activities that Con Edison will absorb. The plastic fusion remediation plan that Con Edison will fund also directly relates to the issues arising from the Incident and will provide additional gas safety benefits. Finally, the substantial regulatory liability account of Settlement Funds to be established will be put to the benefit of Con Edison's gas customers in a manner deemed appropriate by the Commission after Con Edison has conducted outreach to gas customers and Staff regarding the best use of the funds.

The Commission orders:

1. The attached Settlement Agreement is approved.
2. Case 14-G-0201 is closed pending compliance.
3. Case 14-G-0212 is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

In the Matter of the Investigation Relating to	:	
the Explosion and Collapse of the Buildings at	:	
1644 and 1646 Park Avenue, New York,	:	
New York in the Service Territory of	:	Case 14-G-0201
Consolidated Edison Company of New York,	:	
Inc. on March 12, 2014.	:	
	:	
Proceeding on Motion of the Commission to	:	
Investigate the Practices of Qualifying Persons to	:	Case 14-G-0212
Perform Plastic Fusions on Natural Gas Facilities.	:	

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”), dated as of the 10th day of February 2017, is by and among the New York State Department of Public Service ("Department"), New York State Public Service Commission (“Commission”) and Consolidated Edison Company of New York, Inc. (“Con Edison”) (collectively "the Parties").

BACKGROUND

On March 12, 2014, an explosion and subsequent structural fire involving natural gas facilities occurred at 1644 and 1646 Park Avenue, East Harlem, New York City, within the natural gas service territory of Con Edison (“Incident”).

On June 27, 2014, in Case 14-G-0212, the Commission issued the Order Instituting Proceeding to Investigate Consolidated Edison Company of New York, Inc.’s Practices and Obtain Information Concerning Plastic Fusions on Natural Gas Facilities, directing Con Edison to take steps to address its non-compliance with the 16 NYCRR Part 255 safety regulations for qualification and requalification of persons who perform plastic fusions and to explain how Con

Edison planned to comply with the safety regulations in the future.

On May 15, 2015, in Case 14-G-0212, the Commission issued the Order Requiring Local Distribution Companies to Follow and Complete Remediation Plans as Modified by this Order and to Implement New Inspection Protocols (“Plastic Fusion Order”), directing Con Edison to conduct a risk assessment and submit a remediation plan related to plastic fusions. Following consultation with Staff of the Department of Public Service (“Staff”), Con Edison filed its plastic fusion remediation plan in Case 14-G-0212 on October 3, 2016, and is now in the process of implementing that plan.

On November 19, 2015, in Case 14-G-0201, Staff posted to the Commission’s website its Final Report on the Incident, entitled “Investigation of Natural Gas Explosion and Collapse of the Buildings 1644 and 1646 Park Avenue, New York, NY, March 12, 2014, Consolidated Edison Company of New York, Inc.” (“Incident Report”). The Incident Report contains Staff recommendations for actions to be undertaken by Con Edison and other entities as a result of the Incident.

On November 19, 2015, in Case 14-G-0201, the Commission issued the Order to Show Cause directing Con Edison to show cause as to why the Commission should not pursue three avenues of redress for alleged Con Edison actions and inactions related to the Incident: (1) a civil penalty action pursuant to Public Service Law §25 in State Supreme Court; (2) an administrative penalty action pursuant to Public Service Law §25-a; and (3) a prudence proceeding to disallow in Con Edison’s rates costs incurred as a result of Con Edison’s actions that appear to have contributed to the Incident.

On December 21, 2015, in Case 14-G-0201, Con Edison filed a response to the Order to Show Cause, stating that the Commission should not institute either a civil or administrative

penalty action or a prudence proceeding. Con Edison stated that none of its actions or inactions cited in the Order to Show Cause was the cause of the Incident, and that none of such actions or inactions establish the criteria under the Public Service Law necessary for either a court to impose civil penalties, or for the Commission to impose administrative penalties or make an imprudence finding.

TERMS OF THE SETTLEMENT

The Parties have agreed to settle these matters at a cost to Con Edison of \$153,333,591 and Con Edison further agrees to implement Staff's recommendations in the Incident Report as described below. The cost consists of Con Edison's establishment of a separate regulatory liability account of \$25,052,000, subject to carrying costs as defined below, for the benefit of its gas customers; \$125,460,591 that Con Edison has spent on leak response-related activities that is incremental to what was reflected in Con Edison's gas delivery revenue requirements; \$668,000 that Con Edison spent for a gas safety public education program in 2014, which costs were not reflected in Con Edison's gas delivery revenue requirements and for which Con Edison has not sought recovery; \$233,000 that Con Edison has spent for emergency payments to residents and businesses immediately following the Incident for which Con Edison has not sought recovery; and \$1,920,000 that Con Edison is estimated to spend on its plastic fusion remediation program, which costs are not reflected in Con Edison's gas delivery revenue requirements.

1. Con Edison will credit to gas customers \$25,052,000 in an interest bearing account (the carrying costs to be applied at the Other Customer-Provided Capital Rate) ("Settlement Funds") to be used for the benefit of its gas customers. The Commission will determine the disposition of such credit in a future proceeding to be commenced upon petition of

Con Edison after Con Edison has conducted outreach to gas customers and Staff regarding the best use of the funds.

2. Con Edison has made significant expenditures in order to respond to the material increase in gas odor calls beginning in 2014 and continuing thereafter and to perform the necessary leak response-related activities. Con Edison will not recover, or seek recovery of, the costs associated with these activities from customers. The amount of such costs was calculated as set forth below.

On September 14, 2015, and February 17, 2016, Con Edison filed petitions to address incremental costs incurred in calendar years 2014 (“2015 Petition”) and 2015 (“2016 Petition”), respectively, resulting from unforeseen and unprecedented increases in leak response, repair and replacement and related activities, in response to an unprecedented increase in gas odor calls.

The 2015 Petition explained that Con Edison incurred \$29,800,000 of leak response-related costs in calendar year 2014 that were incremental to the amounts reflected in base delivery rates.¹ As of the expected date of the ratification of this Agreement (February 16, 2017), the total unreimbursed incremental cost incurred by Con Edison for calendar year 2014, including interest at the Commission’s Other Customer-Provided Capital Rate, is \$31,103,669.

The 2016 Petition explained that Con Edison incurred \$55,100,000 of leak response-related costs in calendar year 2015 that were incremental to the amounts reflected in base delivery rates. As of the expected date of the ratification of this Agreement (February 16, 2017), the total unreimbursed incremental cost incurred by Con Edison for calendar year 2015, including interest at the Commission’s Other Customer-Provided Capital Rate, is \$56,563,612.

¹ The Parties hereto are recognizing the full actual unreimbursed incremental leak response-related costs incurred by Con Edison in calendar years 2014 - 2016 even though some portion of those costs, although actually incurred, are in excess of current Commission policy limits on deferrals.

The 2015 and 2016 Petitions indicated that Con Edison would file an additional petition in 2017 for leak response-related costs incurred in calendar year 2016. As of the date of this Agreement, Con Edison has not filed such a petition. Had such a petition been filed, it would have indicated that Con Edison incurred \$37,300,000 of incremental leak response-related costs in calendar year 2016. As of the expected date of the ratification of this Agreement (February 16, 2017), the total unreimbursed incremental cost incurred by Con Edison for calendar year 2016, including interest at the Commission's Other Customer-Provided Capital Rate, is \$37,793,310.

Accordingly, the total amount of leak response-related costs for calendar years 2014, 2015 and 2016 that are incremental to the amounts of leak response-related costs reflected in rates is \$125,460,591. Following execution of this Agreement by all the Parties, and the Commission order ratifying or approving the terms of this Agreement, Con Edison will formally withdraw the 2015 and 2016 Petitions and will not file a petition for recovery of calendar year 2016 costs. In the event that Con Edison receives reimbursement for all or part of the \$125,460,591 that Con Edison has spent for leak response-related costs as described above, the reimbursement funds so received will be added to the "Settlement Funds" account to be used for the benefit of Con Edison's gas customers.

3. In the event that Con Edison receives reimbursement for all or part of the \$668,000 that Con Edison has spent for a gas safety public education program, the reimbursement funds so received will be added to the "Settlement Funds" account to be used for the benefit of Con Edison's gas customers.

4. In the event that Con Edison receives reimbursement for all or part of the \$233,000 that Con Edison has spent for emergency payments to residents and businesses

immediately following the Incident, the reimbursement funds so received will be added to the “Settlement Funds” account to be used for the benefit of Con Edison’s gas customers.

5. As noted above, Con Edison filed its three-year plastic fusion remediation plan with the Commission on October 3, 2016. The estimated cost of the planned activities, which are set forth in the plastic fusion remediation plan, is \$1,920,000. The estimated costs of the planned activities are not reflected in Con Edison's gas delivery revenue requirements. In the event that Con Edison does not spend the total \$1,920,000 on its plastic fusion remediation plan, the unspent funds will be added to the “Settlement Funds” account to be used for the benefit of Con Edison’s gas customers.

6. With respect to the Incident Report, Con Edison has implemented Staff recommendations 6, 10, 11 and 13. Recommendation 12 is being implemented through Case 16-G-0061. Con Edison will continue to implement and report to Staff on recommendations 2, 4, 5, 7, 8 and 9, which include research and development and pilot programs. The completion of the recommendations that Con Edison will continue to implement will be determined by the Chief of Pipeline Safety. Staff recommendation 1, which applied to New York City, is subsumed into recommendation 2. Recommendation 3 need not be implemented because Con Edison’s main replacement prioritization model for replacements of leak prone pipe does not distinguish between wrought iron pipe and cast iron pipe.

GENERAL PROVISIONS

1. This Agreement fully and finally resolves all the issues and concerns raised and/or asserted, or that could properly have been raised and/or asserted, in Case 14-G-0201 including, but not limited to, the issues raised in the Order to Show Cause and the Incident Report, recognizing that the Company must complete the Staff recommendations in the Incident Report

as contemplated in Paragraph 6 of the Terms of the Settlement set forth above. This Agreement fully and finally resolves all the issues and concerns raised and/or asserted, or that could properly have been raised and/or asserted, with respect to Con Edison in Case 14-G-0212 including, but not limited to, the issues raised in the orders issued in that proceeding, and the need to conduct a risk assessment and to implement a remediation plan, recognizing that the Company is required to complete the plastic fusion remediation plan filed on October 3, 2016. Accordingly, in consideration for the Settlement Funds, Con Edison's expenditures for leak response-related activities in calendar years 2014 through 2016, Con Edison's expenditures for the gas safety public education program, Con Edison's expenditures for emergency payments to residents and businesses, Con Edison's expenditures for its plastic fusion remediation plan, Con Edison's implementation of Staff recommendations in the Incident Report, and Con Edison's implementation of the plastic fusion remediation plan filed on October 3, 2016,

- (a) the Commission and the Department will not institute or cause to be instituted against Con Edison, its directors, officers, employees or agents, or shareholders or affiliates, a penalty action under the Public Service Law, or under any other statute or regulation or Commission order, with respect to Con Edison's actions, inactions or practices, directly or indirectly related to the Incident, nor shall the Commission entertain a request by another person seeking penalties or other administrative remedies against Con Edison with respect to Con Edison's actions, inactions or practices, directly or indirectly related to the Incident under the Public Service Law or under any other statute or regulation or Commission order;
- (b) the Commission and the Department will not institute or cause to be instituted against Con Edison, its directors, officers, employees or agents, or shareholders or affiliates a

penalty action under the Public Service Law, or under any other statute or regulation or Commission order, directly or indirectly related to Con Edison's qualification or requalification of its employees or contractors to perform plastic fusions prior to the date of this Agreement, except the Commission and the Department could institute or cause to be instituted such a penalty action directly or indirectly related to such qualification or requalification of the employee(s) or contractor(s) involved in instances of specific plastic fusion(s) performed prior to the date of this Agreement that cause or constitute a contributing factor in bringing about a death, or personal injury, or damage to real property in excess of \$50,000 after the date of this Agreement; nor shall the Commission entertain a request by another person seeking penalties or other administrative remedies against Con Edison with respect to Con Edison's actions, inactions or practices, directly or indirectly related to qualification or requalification of its employees or contractors to perform plastic fusions under the Public Service Law or under any other statute or regulation or Commission order;

- (c) the Commission and the Department will not institute or cause to be instituted against Con Edison a prudence proceeding, or raise or entertain a claim of imprudence in these proceedings or any other Commission proceedings, with respect to Con Edison's actions, inactions or practices prior to the date of this Agreement, directly or indirectly related to the Incident, and Con Edison is hereby released and discharged from all claims that its capital and/or O&M and/or other expenditures were imprudent, or otherwise unjust and unreasonable, that were raised and/or asserted, or that could properly have been raised and/or asserted in Cases 14-G-0201 and 14-G-0212 directly or indirectly related to the Incident; and

(d) the Commission and the Department will not institute or cause to be instituted against Con Edison a prudence proceeding, or raise or entertain a claim of imprudence in these proceedings or any other Commission proceedings, with respect to Con Edison's actions, inactions or practices prior to the date of this Agreement, directly or indirectly related to Con Edison's qualification or requalification of its employees or contractors to perform plastic fusions, and Con Edison is hereby released and discharged from all claims that its capital and/or O&M and/or other expenditures were imprudent, or otherwise unjust and unreasonable, that were raised and/or asserted, or that could properly have been raised and/or asserted in Cases 14-G-0201 and 14-G-0212 with respect to Con Edison's actions, inactions or practices prior to the date of this Agreement, directly or indirectly related to Con Edison's qualification or requalification of its employees or contractors to perform plastic fusions.

2. Upon the ratification or approval of the terms of this Agreement by the Commission, the investigative examinations by the Department and/or Department Staff initiated in Cases 14-G-0201 and 14-G-0212 are deemed completed; however, Staff will continue to exercise oversight over the implementation of its recommendations in the Incident Report as contemplated by this Agreement. In addition, as described in paragraph 5 of the Terms of Settlement, Con Edison is implementing its plastic fusion remediation plan with Staff's involvement as described in the plan.

3. The Parties entered into a Tolling Agreement effective as of November 19, 2014, that tolled for one year the operation of any provisions of limitations of time under the Civil Practice Law and Rules for the Commission to commence an action or proceeding under Sections 24 and 25 of the Public Service Law with respect to issues

raised, or that could be raised, in Cases 14-G-0201 and 14-G-0212. The Tolling Agreement was extended one year in November 2015 and then extended an additional year in December 2016. Upon execution of this Agreement by the Parties, the Commission and Department covenant that they will not pursue any of the actions or proceedings preserved by the Tolling Agreement, as amended.

4. All charges against earnings required by this Settlement or made in anticipation of the resolution of issues addressed by this Settlement shall be excluded from the computation of shared earnings set forth in the Gas Rate Plan approved by the Commission in its Order Approving Electric and Gas Rate Plans, issued January 25, 2017, in Cases 16-G-0061, et al.

5. The execution, delivery and performance of this Agreement by each Party hereto is within its corporate or statutory powers, as appropriate, has been duly authorized by all necessary corporate or statutory action, and does not and will not (i) require any governing or governmental consent or approval except as required in Paragraph 8 below, (ii) contravene its organizational documents or enabling legislation, or (iii) violate applicable law.

6. This Agreement has been entered into voluntarily by the Parties. The Parties have determined the Agreement constitutes a fair and reasonable resolution of all outstanding issues relating to Cases 14-G-0201 and 14-G-0212, recognizing that Con Edison will implement the plastic fusion remediation plan and Staff recommendations in the Incident Report noted above, and avoids litigation. This Agreement is not, and should in no way be construed as, a Commission finding or an admission by Con Edison of a violation of any law or regulation or order; or a Commission finding or an admission by

Con Edison that Con Edison actions or inactions caused or constituted a contributing factor to the Incident; or a Commission finding or an admission by Con Edison that these events are amenable to suit under Sections 24 and 25 of the Public Service Law, a penalty action under Section 25-a of the Public Service Law, or a disallowance of costs for imprudence. In addition, this Agreement is not and should not be construed as an assessment of a fine or penalty.

7. This Agreement may be executed by original, facsimile or electronic signature, each of which shall be equally binding.

8. This Agreement is subject to ratification or approval by the Commission and will have no effect in the absence thereof. If the Commission does not approve this Agreement in its entirety, without modification, Con Edison may withdraw its acceptance of this Agreement by serving written notice on the Commission, and shall be free to pursue its position without prejudice. If the Commission approves this Agreement or modifies it in a manner acceptable to Con Edison, the parties intend that this Agreement thereafter be implemented in accordance with its terms.

IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement as of the day and year first written above.

STATE OF NEW YORK PUBLIC SERVICE COMMISSION

By: Paul Agresta

PAUL AGRESTA
General Counsel

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

By: Paul Agresta

PAUL AGRESTA
General Counsel

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

By: Robert Hoglund
ROBERT HOGLUND