

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

www.dps.ny.gov

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July 25, 2012

TO: Howard Glaser, Director of State Operations
Mylan Denerstein, Counsel to the Governor

FROM: Garry Brown, Chairman

This memorandum is prepared in response to the Governor's Office's request for the Department of Public Service to examine the maximum legal authority and fullest extent of jurisdiction over disputes between regulated utilities and their labor unions. Recognizing that a motion on this issue is pending before the Commission and additional legal arguments have been requested, this analysis is offered to address what the Commission can do to maintain safe and reliable service for the benefit of a regulated utility's customers.

1. Federal Preemption

Federal labor law precludes any state entity, including the Public Service Commission, from ordering a private sector employer (a public utility) to end a labor-management dispute such as a strike or a lockout. Federal labor law protects the parties (that is, a labor union and a regulated utility) from state interference with their exercise of federally protected rights under the National Labor Relations Act. These federally protected rights include the union's right to strike and the utility's right to lockout. The Commission therefore does not have legal authority to directly intervene to order an end to a work stoppage, and the attempt to exercise such authority would not withstand legal challenge. Golden State Transit Corp. v. City of Los Angeles, 475 U.S. 608 (1986); Machinist v. Wisconsin Employment Relations Commission, 427 US 132 (1976); San Diego Bldg. Trades Council v. Garmon, 359 US 236 (1959); National Labor Relations Board v. State of New York, 436 F. Supp. 335 (EDNY, 1977).

2. Authority Over Regulated Utilities in a Work Stoppage or Lockout

The Public Service Commission has the legal responsibility to ensure the safety and reliability of utility service. There are ways the Commission can exert authority over regulated utilities consistent with our powers under the Public Service Law, which are focused on matters involving safety, reliability and rates. Prior to the current Con Ed lockout, Con Ed was required

to develop contingency plans for the provision of safe and reliable service, and the Department is monitoring the implementation of the contingency plans on-site on a daily basis. A failure of the contingency plan to prevent a severe event compromising safety or disrupting the provision of reliable service could expose the utility to a claim that it acted imprudently and trigger corrective action ordered by the Commission.

Past work stoppages or lockouts have not given rise to intervention by the Public Service Commission. For example, the last strikes affecting New York electric utilities were in 1984, involving LILCO, and in 1983, involving Con Ed. The Con Ed strike lasted 9 weeks and was settled without intervention by the Public Service Commission.

3. Authority Over Labor Unions

The Public Service Commission has no statutory authority over labor unions.