

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
BUREAU OF CONSUMER FRAUDS AND PROTECTION

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In the Matter of  
Investigation by LETITIA JAMES,  
Attorney General of the State of New York, of

Assurance No. 21 - 037

CON EDISON OF NEW YORK, INC.,

Respondent.

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“NYAG”) commenced an investigation pursuant to Executive Law § 63(12) into the payment by Con Edison of New York, Inc. (“Con Edison”) of claims for food and medicine spoilage as the result of loss of power caused by Tropical Storm Isaias. This Assurance of Discontinuance (“Assurance”) contains the findings of the NYAG’s investigation and the relief agreed to by the NYAG and Respondent Con Edison, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the “Parties”).

**NYAG’s FINDINGS**

1. Con Edison provides electrical service to New York to its customers, who are consumers throughout of New York City, and Westchester County.
2. On Tuesday, August 4, 2020, Tropical Storm Isaias (“Isaias”) inflicted significant damage on Con Edison’s service territory. Wind gusts of up to 70 miles per hour in New York City and 59 miles per hour in Westchester County caused thousands of trees to fall. Because of Isaias, nearly 330,000 of Con Edison’s customers lost power. Although Con Edison worked to restore power to consumers, it was not able to do so for all of its customers until August 12, 2020. The outages in many cases lasted for more than 48 hours and in some cases for a week or

more. As a result, many of Con Edison's customers suffered food or prescription medicine spoilage from a lack of refrigeration.

3. In light of these circumstances, Con Edison offered to reimburse consumers for the value of food and prescription medicine that had spoiled because of a lack of refrigeration caused by an electrical power outage lasting more than 48 consecutive hours caused by Isaias. As explained more fully below, the cost of the prescription medicine that had spoiled because of the 48 or more hours of no power for refrigeration would be paid without a cap on the amount subject to proof of actual loss and expense, and the spoiled food would be reimbursed up to \$540 subject to proof of spoilage and cost of the spoiled food.

4. The claim forms that Con Edison made available to consumers, a copy of which is attached hereto as Exhibit A, set forth examples of the information and documents consumers needed to submit as "proof of loss" with their filled-out claim form to substantiate their claims. It further provided that request for reimbursement must be filed on or before September 9, 2020.

5. In particular, with respect to food spoilage, Con Edison's claim forms stated that consumers needed to submit an itemized list of foods that had spoiled as a result of the outages caused by Isaias regardless of the amount of their claim. For purposes of itemization, the claim form provided space for the consumer to fill in (1) the type of food, (2) the quantity, and (3) the cost for each item. In addition, for claims of more than \$235, Con Edison instructed consumers to also provide "proof of loss". The claim form provided examples that could be used to prove the loss, namely "cash register tapes, store or credit card receipts, cancelled checks, or photographs of spoiled items." In other words, a consumer who suffered spoiled food and met the outage requirements could claim reimbursement for up to \$235 by listing the spoiled food items, the quantities, and their respective costs without any further proof required. But a

consumer seeking reimbursement for spoiled food that cost the customer in excess of \$235 required the consumer to provide an itemized list of the spoiled items and their respective costs, plus provide some proof of loss as specified in the claim form.

6. With respect to prescription medicine, Con Edison's claim forms stated that consumers needed to submit an itemized list, identifying the spoiled prescription medicine, the quantity spoiled, and the cost of the item, plus proof of loss of prescription medicines. The claim form provided examples that could be used to prove the loss, namely, "pharmacy prescription labels or pharmacy receipts identifying the medicine".

7. Numerous consumers who filed claims for more than \$235 for food spoilage submitted both an itemized list of spoiled food and a proof of loss as specified in the claim form. Nevertheless, Con Edison paid many of these consumers only \$235. Con Edison paid other consumers who filed claims for more than \$235 for food spoilage more than \$235 but less than they had claimed and for which they had submitted proofs of claim in accordance with Con Edison's claim form.

8. In many of the cases where consumers sought more than \$235 for food spoilage related to Isaias, consumers provided photographs of spoiled food but no receipts as Con Edison had instructed in its claim form. In many of these cases, however, Con Edison sent the consumer a check for less than the amount sought, together with a letter stating that the consumer needed to provide receipts, contrary to the instructions in its claim form, which did not make a receipt required proof. Moreover, Con Edison stated in these letters that cashing of the enclosed check would constitute a release of any claim they had against Con Ed for Isaias-related losses. See a copy of such a letter that Con Edison sent to a consumer, attached hereto as Exhibit B.

9. In other cases, Con Edison said that it would accept photographs as an acceptable proof of loss for food spoilage claims over \$235, but added two new requirements: (a) the food had to have been purchased within 30 days prior to the outage on August 4, 2020; and (b) the photographs of the spoiled food had to show the price paid for the items. Con Edison asserts that it was attempting to balance ease of filing and flexibility with the need for reasonable proof of the loss amounts requested in excess of \$235. Neither of these conditions, however, were disclosed in Con Edison's claim forms available to consumers. See a copy of such a letter Con Ed sent to a consumer, attached hereto as Exhibit C.

10. NYAG finds that Respondent's failure to pay claims in accordance with the instructions it had provided to consumers who had food spoilage as a result of loss of power caused by Tropical Storm Isaias are in violation of Executive Law § 63(12) and General Business Law § 349.

11. Respondent neither admits nor denies the NYAG's Findings, paragraphs 2 – 9 above. Con Edison cooperated with the investigation to resolve concerns raised by the NYAG.

12. The NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest.

THEREFORE, the NYAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12) and General Business Law § 349.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

**RELIEF**

13. This Assurance shall apply to Con Edison and its officers, directors, servants, agents, employees, and any other individual, subsidiary, division, and affiliate, who are within

the State of New York, as well as any successor in interest or other business persons or business entities whose acts, practices, policies are directed, formulated or controlled by Respondent. The relief set forth below applies to consumers in New York State.

**General Injunctive Relief**

14. Con Edison shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to Executive Law § 63(12) and General Business Law § 349.

15. Whenever Con Edison offers compensation to consumers for food or medical spoilage resulting from a loss of power, Con Edison shall disclose all material terms and conditions in its initial disclosures to consumers and shall adhere to those terms and conditions in administering its compensation. Con Edison shall not add material terms and conditions not initially disclosed.

**Review of Claims**

16. No later than June 4, 2021, Con Edison shall conduct a review of all of the food spoilage Isaias-related claims it received from consumers who requested more than \$235 but who were reimbursed less than \$540 to determine for each such consumer whether the consumer had submitted cash register tapes, store or credit card receipts, cancelled checks, or photographs of the spoiled food items. For each such consumer that Con Edison finds provided such evidence, Con Edison will pay the consumer the differential between what the consumer requested and supported per this paragraph, and what Con Edison had previously paid. All food spoilage claims will be subject to the cap of \$540.

17. Con Edison shall provide the NYAG with a report detailing its compliance with the requirements set forth in this Assurance no later than August 30, 2021. This report shall be in

writing and include a spreadsheet of consumers receiving payment pursuant to paragraph 16 and shall set forth the manner and form of compliance with this Assurance and the Review of Clams.

This report shall be signed by the Respondent

**Costs and Penalties**

18. Upon execution of this Assurance, Con Edison, shall pay to the State of New York \$20,000.00, as costs and penalties. Such payment shall be made by attorney check, corporate or certified check, or bank draft, which shall be made payable to the "State of New York", and shall reference Assurance No. 21 - 037. Payment shall be addressed to the attention of Melvin L. Goldberg, State of New York, Office of the Attorney General, Consumer Frauds and Protection Bureau, Bureau, 28 Liberty Street, New York, NY 10005.

**MISCELLANEOUS**

19. The NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to the NYAG by the Respondent and their counsel and the NYAG's own factual investigation as set forth in Findings, paragraphs 1 - 9 above. The Respondent represents and warrants that neither it nor its counsel has made any material NY representations to the NYAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the NYAG in its sole discretion.

20. If this Assurance is violated, voided or breached, Respondent agrees that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event the Assurance is violated, voided or breached, Respondent expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude NYAG from

commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against Respondent, or from using in any way any statements, documents or other materials produced or provided by Respondent prior to or after the date of this Assurance. Any action or proceeding must be adjudicated by the courts of the State of New York, and Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.

21. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondent in agreeing to this Assurance.

22. The Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved and execution of this Assurance is duly authorized. Nothing in this paragraph affects Con Edison's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceeding to which the NYAG is not a party.

23. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

24. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the NYAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the NYAG.

25. Nothing in this Agreement shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

26. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the NYAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

27. To the extent not already provided under this Assurance, Respondent shall, upon request by the NYAG, provide all documentation and information necessary for the NYAG to verify compliance with this Assurance.

28. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 21 - 037, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondent, to:

Michael Moriello  
Associate Counsel  
Consolidated Edison Company of New York, Inc.  
Law Department  
4 Irving Place  
New York, NY 10003  
MORIELLOM@coned.com

or in his absence, to the person holding the title of Associate General Counsel, Legal Services for Con Edison Company of New York, Inc.

If to the NYAG, to:

Office of the New York State Attorney General  
Bureau of Consumer Frauds and Protection  
28 Liberty Street, 20<sup>th</sup> Floor  
New York, New York 10005  
Melvin L. Goldberg  
Assistant Attorney General



or in his/her absence, to the person holding the title of Bureau Chief, Bureau of Consumer Frauds and Protection.

29. Acceptance of this Assurance by the NYAG is not an approval or endorsement by NYAG of any of Respondent's policies practices or procedures, and the Respondent or the NYAG shall make no representation to the contrary.

30. Pursuant to Executive Law § 63(15), evidence of a violation of this Assurance , shall constitute prima facie proof of a violation of the applicable law in any action or proceeding thereafter commenced by the NYAG against Respondent.

31. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent shall pay to the NYAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

32. Any failure by the NYAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the NYAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondent.


33. Nothing contained herein shall be construed to limit the remedies available to the NYAG in the event that the Respondent violates the Assurance after its effective date.

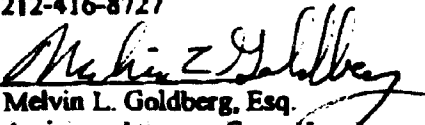
34. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

35. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

36. This Assurance is not intended for use by any third party in any other proceeding.
37. Respondent acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.
38. Respondent shall provide written notice to the NYAG of any change in address within ten business days of such change.
39. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.
40. The effective date of this Assurance shall be June 8, 2021.

LETITIA JAMES  
Attorney General of the State of New York  
28 Liberty Street  
New York, NY 10005

By   
Jane M. Azia  
Bureau Chief  
Bureau of Consumer Frauds and Protection  
212-416-8727

By   
Melvin L. Goldberg, Esq.  
Assistant Attorney General  
Bureau of Consumer Frauds and Protection  
212-416-8296





## 2020 Tropical Storm Isaias Residential Reimbursement for Food and Prescription Medicine Spoilage

If you experienced a power outage that lasted for more than 48 consecutive hours due to the storm event starting August 4, 2020, you may file a reimbursement request:

- For actual losses of food spoiled due to lack of refrigeration up to a maximum of \$540.
  - Food spoilage up to \$235 must include an itemized list.
  - Food spoilage over \$235 must include an itemized list and proof of loss (for example: cash register tapes, store or credit card receipts, cancelled checks, or photographs of spoiled items).
- In addition, you may file a reimbursement request for actual losses of prescription medicine spoiled due to lack of refrigeration.
  - You must include an itemized list and proof of loss for prescription medicine (for example: pharmacy prescription label or pharmacy receipt identifying the medicine).
  - We may also request authorization to enable Con Edison to verify the loss of prescription medicine.
  - Reimbursement for prescription medicine is not included in the \$540 maximum for food spoilage.

Reimbursement is limited to spoiled food and medicine ONLY.

Requests for reimbursement must be filed on or before 9/8/20.

Name: [REDACTED]  
 (PLEASE PRINT CLEARLY)

Address: [REDACTED] Apt.: \_\_\_\_\_

City: [REDACTED] State: NY Zip Code: [REDACTED]

Daytime Phone: [REDACTED] E-mail: [REDACTED]

Con Edison Account Number: [REDACTED]  
 (15 DIGIT NUMBER LISTED ON YOUR BILL - NOT APPLICABLE IF YOU DO NOT RECEIVE A CON EDISON BILL)

Dates of your outage: From: August 4, 2020 To: August 8, 2020

	TYPE OF FOOD / MEDICINE	QUANTITY	COST
1	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]
4	[REDACTED]	[REDACTED]	[REDACTED]

(CONTINUE ON A SEPARATE SHEET IF NECESSARY)

Total Amount of Loss: 410.36

Please allow at least 30 days for review and processing of your request for reimbursement.

All of the information provided on this form is true and accurate to the best of my knowledge and represents my actual losses.

[REDACTED]  
 \_\_\_\_\_  
 (SIGNATURE — UNSIGNED FORMS WILL NOT BE PROCESSED)

8/15/2020  
 \_\_\_\_\_  
 (DATE)

**SIGN AND RETURN FORM TO ONE OF THE FOLLOWING:**

EMAIL [OutageClaims@coned.com](mailto:OutageClaims@coned.com)

FAX (212) 979-1278

MAIL CON EDISON  
 CLAIMS DEPARTMENT  
 PO BOX 801  
 NEW YORK, NY 10276

EX. A




Customer Operations

Consolidated Edison Company  
of New York, Inc.  
Cooper Station P.O. Box 138  
New York NY 10276-0138

September 16, 2020

Account: 

  
Dear Customer:

We have completed our investigation of your claim. You will be receiving a check in the amount of \$ 235.00 shortly.

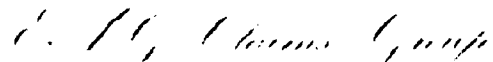
By cashing the check it constitutes the acceptance of the following release:  
hereby releases and discharges Con Edison and accepts the amount of this check in full payment and satisfaction of every claim or cause of action of property damage only arising out of the accident or claim which occurred on or about August 04, 2020.

Receipts are needed to request reimbursement for spoilage over \$225. You can email your receipts with a copy of this letter to ([Outageclaims@coned.com](mailto:Outageclaims@coned.com)), fax them to (212) 979-1778 or mail them to:

CON EDISON  
CLAIMS DEPARTMENT  
PO BOX 801  
NEW YORK, NY 10276

We sincerely regret any inconvenience this matter has caused you. Please be assured we will continue to make every effort to provide all our customers with reliable and efficient services.

Sincerely,



EAG Claims Group

**EX. B**



Executive Action Group

Consolidated Edison Company  
of New York, Inc m  
4 Irving Place  
New York NY 10003

November 17, 2020

[REDACTED]  
[REDACTED]  
[REDACTED]

Re: [REDACTED]

Dear [REDACTED]:

Your letter addressed to the President of Con Edison, Mr. Timothy Cawley, has been referred to me as the Section Manager of the Executive Action Group.

I deeply apologize for the hardship and distress caused by your recent outage due to Storm Isaias. I was informed that Ms. Hughes of my staff spoke to you regarding your concerns; however, I would like to address them as well.

An investigation into your claim found that you were entitled to a higher amount that you received, but due to a technical error, we only sent you a check for \$225. A check for the balance in the amount of \$10 will be sent to you shortly. In addition, since you requested \$540 for food spoilage, this required receipts or photos. We carefully reviewed the photos you submitted but could not determine the cost of the food items shown. Due to this, we regret to inform you that we must deny your claim. However, if you have receipts, credit card statements or bank statements for food items purchased within 30 days prior to the event which occurred on August 4<sup>th</sup>, please submit them and we will re-evaluate our decision.

Once again, I apologize for the inconvenience this matter has caused you. Any power loss can be incredibly difficult, whether it lasts for minutes, hours, or days. We are committed to providing safe and reliable service to all of our customers and are doing all we can to prevent it from happening again.

If you have any concerns or we can assist you in any other way, please contact Ms. Hughes at (212) 780-3672 or by email at [Sensitivecommunicationgroup@coned.com](mailto:Sensitivecommunicationgroup@coned.com).

Sincerely,

Doris Castro  
Section Manager

**EX. C**