



Thomas DiNapoli
Comptroller of the State of New York
110 State Street
Albany, NY 12236

Jeffrey Pearlman
Director, Authorities Budget Office
240 State Street #2076
Albany, NY 12220

January 30, 2018

Re: Request for investigation of alleged manipulation of data related to NYC subway service delays

Dear Comptroller DiNapoli and Director Pearlman,

Our groups write to request that your offices investigate four questions related to recent media reports that allege that in 2017, officials at the MTA/New York City Transit were pressured to, and did, manipulate statistics about the number of subway service delays caused by power outages, especially outages caused by Con Edison.

- Did officials at MTA/New York City Transit manipulate, fabricate or otherwise mischaracterize statistics on the number of subway service delays caused by power outages as media reports suggest?
- Were staff analysts at NYCT pressured by their own managers or directly or indirectly by the Governor's Office to produce misleading or false numbers about subway problems caused by power outages so as to blame Con Edison for subway service problems?
- Was false or misleading data generated by the NYCT used as a justification for Governor Cuomo to instruct the Public Service Commission (PSC) to order Con Edison, a private company, to perform historically unprecedented repairs on subway electrical systems that have never been Con Edison's responsibility? These repairs have been estimated to cost Con Edison in excess of \$100 million and are likely to be passed onto the general public on their power bills.
- Has NYCT been pressured by the governor's office, or their own senior management, to produce other misleading performance statistics? Are measures in place to prevent data from being fabricated or distorted?

At the January 25, 2018 Joint Legislative Budget Hearing on Transportation, numerous legislators raised essentially the same questions we are here, and commented that this episode has damaged public trust in MTA performance reporting.

Based on the answers to these questions, we ask your offices to recommend to the MTA measures to ensure that MTA performance reporting is solely based on facts and not on internal or external political pressure. We note that the Office of the State Comptroller has the constitutional authority to conduct compliance and performance audits and the law creating the ABO called for it to cooperate with the Comptroller's Office.

Our request is spurred by a January 21, 2018 story by transit reporter Dan Rivoli in the NY Daily News. Rivoli's piece, *MTA brass pushed link between subway delays and power problems, causing Cuomo to blame Con Edison*, is based on emails between the Governor's Office and senior managers at MTA/NYC Transit ("Transit") and between those managers and a Transit Subway Performance Analyst.

Timeline and summary of Key Emails Reported by NY Daily News

July 25, 2017 Chief of Staff MTA/NYCT to NYCT Staff

Do you have a "higher delay number for power. Need ASAP."

July 25, 2017 Senior Subways Analyst to Chief of Staff of MTA/NYCT

It would be possible to "expand the definition of power incidents," but "I can't think of a way to make ConEd/External power figures higher."

July 26, 2017 Governor's Press Office to Chief of Staff (MTA/NYCT)

"Do we have total real number of power-related delays over the last 12 months? Higher than the 8k."

July 26, 2017 Chief of Staff (MTA/NYCT) to Governor's Press

"8k is the real number of power-only incidents. However, incidents coded as signal can also be power-related."

July 26, 2017 Governor's Press to Chief of Staff (MTA/NYCT)

"What would be the grand total and how would you massage that language? Could we say 'power-related issues caused more than 32,000 delays?'"

July 26, 2017 Chief of Staff of MTA/NYCT to Governor's Press Office

"I would say caused or contributed to."

July 27, 2017 The Governor before the Association for Better New York

"Over the last 12 months, 32,000 delays because of power related issues," "They can either be a power surge or power shortage, but 32,000 delays. The MTA doesn't control the power, Con Edison does."

August 9, 2017 Chief of Staff of MTA/NYCT to Senior Subways Analyst
“Can you please tell me what the 32,000 number refers to?”

August 9, 2017 Senior Subways Analyst to Chief of Staff of MTA/NYCT
“ I don’t know the source of the 32,000 figure, though I remember discussing it.”

The Daily News reports that NYCT’s Senior Subway Analyst explains in a subsequent email that the real number of power related delays was 8,000, of which Con Edison was at fault for 3,422.

We also direct your attention to the list of sources listed below below.

Thank you in advance for acting on our request. Please feel free to contact John Kaehny at Reinvent Albany 917-388-9040 or info@reinventalbany.org with any questions.

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Executive Director
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Sources

NY Daily News, January 21, 2018

FOIled emails between Governor and MTA/NYCT staff.

<http://www.nydailynews.com/new-york/mta-brass-pushed-link-subway-delays-power-problems-article-1.3769202>

2nd Avenue Sagas, January 21, 2018

Key excerpts from FOIled emails

<http://secondavenuesagas.com/2018/01/21/power-isnt-daily-news-report-sheds-light-mtas-con-edison-power-play/>

Politico, November 11, 2017

Public Service Commission orders Con Ed to do subway repairs.

<https://www.politico.com/states/new-york/albany/story/2017/11/17/con-ed-takes-over-work-contracts-and-costs-on-mta-electrical-repairs-118775>

Governor’s Website, July 27, 2017

Appearance before the Association for Better New York

<https://www.governor.ny.gov/news/video-audio-rush-transcript-governor-cuomo-delivers-remarks-association-better-new-york>

“Over the last 12 months, 32,000 delays because of power related issues,” “and they can either be a power surge or power shortage, but 32,000 delays. The MTA doesn’t control the power, Con Edison does. Con Edison has a duty to safely,

prudently and effectively provide electricity that powers the subway system. Con Ed is a regulated utility under the state's Public Service Commission. April 21 after the last outage I ordered an investigation of the Con Ed infrastructure after a particularly devastating failure. The investigation goes on but PSC has already found that Con Ed must make immediate and significant improvements in this system because the reliability depends on it."

PLAYING WITH NUMBERS

JULY 25, 6:03 A.M.: NYC Transit chief of staff Naomi Renek writes to six transit staffers, including NYC Transit Executive Vice President Tim Mulligan, that she is “Looking for a higher delay number for power. Need asap.”

JULY 25, 6:24 A.M.: Senior subways performance analyst Kyle Kirschling responds that, “By expanding the definition” of power incidents, he can report 23,686 delays, “but I’m not sure if that’s what you’re interested in. Track circuit failures are related to power, but I don’t think power is usually the root cause. I can’t think of a way to make the ConEd/External power figures higher.”

JULY 25, 7:28 A.M.: Kirschling emails a chart showing a dozen different categories used to boost the delay figure, such as power removed, rail condition and loss of train car motor power.

JULY 26, 11:20 A.M.: Maxwell Morgan, Gov. Cuomo’s deputy press secretary, emails Renek, asking, “Naomi, do we have the total real number of power-related delays over last 12 months? Higher than the 8k?”

JULY 26, 11:44 A.M.: Renek responds to Morgan and a second press aide, Maria Michalos, that “The 8k is the real number of power-only

incidents. However, incidents coded as signal can also be power-related. We can safely say that track circuit incidents are power-related, although power is not the root cause.”

JULY 26, 12:15 P.M.: Morgan writes to Renek, “So what would be the grand total and how would you massage that language? Could we say ‘power-related issues caused more than 32,000 delays?’ ”

JULY 26, 1:19 P.M.: Renek responds, “I would say ‘caused or contributed to.’ ”

AUG. 9, 3:20 P.M.: Renek asks Kirschling, “Kyle, can you please tell me what the 32,000 number refers to?”

AUG. 9, 3:38 P.M.: Kirschling responds, “I don’t know the source of the 32,000 figure, though I remember discussing it.” In two emails that afternoon, he lays out to Renek and Paul Camera, the agency’s chief electrical officer, how 4,925 delays from NYC Transit equipment were double-counted and that there were 8,347 delays in his “original and more modest” definition of power-related delays, compared to the “expanded definition.”

The MTA email exchange ran from July 25 to Aug. 9.

(NEW YORK DAILY NEWS)