



Public Utility Law Project of New York, Inc.

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July 19, 2012

VIA EMAIL

Hon. Jaclyn A. Brillong
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 12-M-0306, Petition of Utility Workers Union of America, et al., for Investigation., etc.

Dear Secretary Brillong:

The Public Utility Law Project of New York, Inc. (“PULP”) requests leave to make a limited reply to the Response of Consolidated Edison Company of New York (“Con Edison”) regarding the cessation of services at customer service walk-in centers. Leave is appropriate in light of facts regarding the suspension of customer services first brought to light in Con Ed's Response, filed July 17, 2012, and the novel arguments put forward in the Response regarding the force of the extant Commission Order requiring customer service walk-in centers to be open for full service.¹

Con Edison argues despite closing Walk-in Centers and reducing services, “its customers and applicants for service have substantially the same services as they had prior to the work stoppage [i.e., its lockout of union employees].” Response, p. 30. Con Edison's Response at page 55, footnote 39, admits services to customers are diminished:

1 *Order Approving Joint Proposal, Case 99-M-0851 - Joint Petition of the Public Utility Law Project of New York, Inc., Local 1-2 of the Utility Workers of America, A.F.L.-C.I.O., and Save Our Services for a Commission Order that Consolidated Edison Company of New York, Inc. Cease Closing Customer Service Offices and Re-Open Customer Service Offices Already Closed, (Issued and Effective March 27, 2001), available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={3681DB7D-DAAF-4861-8EF8-03B337CB6F33}>*

Customer Operations has suspended the following activities:

- ***Walk-in Centers in the Bronx and Manhattan are closed.*** The Walk-in Center in Staten Island is open. Walk-in Centers are open in Queens, Brooklyn and Westchester (Mount Vernon) ***but representatives are not available to handle customer inquiries except via courtesy phones available at Queens, Brooklyn and Mount Vernon centers.*** Signage in closed Walk-in Centers alerts customers to nearby authorized facilities for bill payment.
- Reading of residential and small commercial customer non-AMR meters is suspended, except in Staten Island.
- Customer-requested physical service turn-offs and meter reading appointments are suspended.

Thus, the customers in Staten Island still have walk-in service and meter reading, but customer service offices in Manhattan and the Bronx are closed, and customers in Brooklyn, Queens and Westchester receive only diminished access to walk-in customer service and metering at offices that are not fully staffed and which only have tellers present to receive payments and house telephones for the Call Center.²

Con Edison maintains that

withdrawal of its personnel from the Walk-in Center sites [Mount Vernon, Queens and Brooklyn] was done out of concern for the security of the on-site personnel and the potential that the presence of Company personnel at National Grid and Food Bazaar premises might have resulted in National Grid's and Food Bazaar's personnel and customers having to cross a Union picket line to enter for work or to transact business.

The security concern is spurious: if there is a valid concern for security, the company can employ security guards, as do many other businesses, and seek police assistance in the event of trouble. The hollowness of this excuse is illustrated by the fact that the company has live tellers in each of these offices to take payments from customers, and by the fact that the Staten Island office is fully staffed and remains open to provide full customer services as it was before July 1.

Con Edison's withdrawal of its staff from Mount Vernon, Brooklyn and Queens Walk-in Centers out of concern that a hypothetical picket line might inconvenience corporate neighbors who co-locate shared premises with Con Edison and *their* customers is likewise unconvincing. First, such hypothetical concerns should not be an excuse to abandon services required by Commission Order to be provided by Con Edison to *Con Edison customers* and the public.

Second, these neighbors and their lawyers surely weighed the risks of co-location with Con Edison, and probably have plans to use their own management employees or contract employees to provide interim services to their customers in the event their employees honor a picket line. If the shoe were on the other foot, and if locked out National Grid or Food Bazaar employees set up

2 "The Staten Island Walk-in Center is staffed and operating as it was before July 1" Response, p. 31

a picket line that was honored by non-striking Con Edison employees, Con Edison could continue services with its management employees, as it has shown it can do in Staten Island.

Con Edison says that “approximately one year before the expiration of the 2008 Collective Bargaining Agreement, the Company commenced its preparations for the possibility of a work stoppage on July 1, 2012.” In that entire year of planning for this situation, it appears that these detailed preparations did not include continuation of services to customers at the Walk-in offices. Nor in that entire year did Con Edison petition the Commission for modification of the Order or for permission temporarily to cease services (as it has done without authorization in Manhattan and the Bronx), or reduce services (as it has in Mount Vernon, Brooklyn, Queens), while continuing full services to customers in Staten Island. Despite a year of contingency planning for a July 1 lockout, Con Edison evidently failed to plan for continuation of walk-in services used by thousands of customers, suggesting a disregard for the often very vulnerable customers who use the offices and the Commission's Order, or both.

Con Edison repeatedly touts its Call Center as a substitute for Walk-in Center services. This is obviously not the case in fact and it is a policy long rejected by the Commission. Customers with hearing, speaking, breathing or other physical or mental limitations that make telephones difficult or impossible for them to use cannot be served satisfactorily by a call center. Similarly, those who need a relative, friend or neighbor to accompany them in sorting out a dispute, negotiating a payment plan, or understanding a problem are not accommodated by presence of a teller whose job is only to take payments, or a payment kiosk, or a house phone to the Call Center.

Con Edison seems to argue that it is unnecessary for it to honor the Order when the utility deems it convenient to ignore it. The clear requirements of the Order – to which Con Edison agreed – are that full service by Con Edison professionals at Walk-in Centers must be maintained as follows:

Consolidated Edison Company of New York, Inc.
shall establish and maintain at least one facility in each of
the five boroughs of New York City and in the County of
Westchester, whether at an existing Customer Service Center, or
at a Walk-in Center to be established in the nearby vicinity of
a Customer Service Center to be closed. ***All Walk-in Centers
must be accessible by public transportation and must be open to
customers from no less time than 8:30 am to 5:00 pm, Monday
through Friday each week, holidays excluded. Each Walk-in
Center must provide, at a minimum, all of the services formerly
available to customers at the company's Customer Service
Centers. All such services shall be provided by Customer Care
Professionals employed by Consolidated Edison Company of New
York, Inc., except that the function of accepting payments may
be provided by tellers or cashiers employed by Primary Agents.***

Order Approving Joint Proposal, Case 99-M-0851, id. at 6. (Emphasis added).

Con Edison's diminution of Walk-in Center services is not due to any fire, flood, explosion or other like catastrophe. In contrast, the customer service reduction is fully under the utility's control. The discretionary nature of Con Edison's deviation from the Order is illustrated by its decision to continue full services at the Staten Island Walk-in Center but not elsewhere. Labeling this "temporary" does not alter the conclusion that Con Edison is deliberately flouting the plain wording of the Commission's Order requiring the centers to be open for full service to the public and customers every day.

Con Edison suggests that Department of Public Service Staff is working so closely with the utility that no formal Commission investigation proceeding is needed:

The Company has communicated with the Department of Public Service ("DPS") the development and implementation of the contingency plan *both before and during the work stoppage*. *DPS Staff has been actively monitoring the Company's performance during the work stoppage*. In light of this diligent and comprehensive effort undertaken by the Company both in advance of and during the work stoppage, *and DPS Staff's ongoing monitoring*, a special investigation by the Commission into the quality, reliability or safety of service currently being provided by the Company to its customers is unnecessary.

* * * *

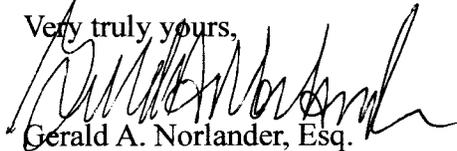
There are no circumstances here that would warrant a change in approach, even if the law were to allow it. *[footnote omitted]* Moreover, the Motion incorrectly presumes that the Commission is not already exercising oversight of the Company's operations, both before and during the work stoppage. *In fact, the Department of Public Service (the "Department") is actively monitoring the Company's operations on a daily basis, having established a Strike Contingency Coordinator and team of Staff technical experts who communicate daily with the Company regarding current operations, actively visit various Company work locations, and reach out to Company personnel for additional information in order to gain a better understanding of various elements of the Corporate Contingency Plan. Moreover, communications between Staff and the Company began well in advance of the work stoppage, in the planning stage. The Company is also proactively communicating with members of the Department at various levels on a daily basis in order to keep Department of Public Service Staff informed as to all material events and circumstances associated with Company operations.*

Response, p. 2, 36. Based on these assertions that DPS Staff is intimately involved in Con Edison's decision process before and during the lockout, it is imaginable that DPS Staff somehow have been

persuaded by Con Edison that it should be allowed to terminate or truncate Walk-in Center services to some of the utility's most vulnerable customers.

The Commission cannot be bound if its staff greenlights a utility's course of conduct that violates the Public Service Law or a Commission order, or is contrary to established Commission policy. The Commission is not only free to reach its own independent conclusions as to whether its Order is being violated, it is charged with the obligation to do so.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gerald A. Norlander". The signature is fluid and cursive, with a prominent initial "G".

Gerald A. Norlander, Esq.
Executive Director

cc: Parties on service list.