Public Utility Law Project of New York, Inc.

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July 13, 2012

VIA EMAIL

Hon. Jaclyn A. Brilling
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, AFL-CIO, Local 1-2, Utility Workers Union of America, New York Central Labor Council and New York State AFL-CIO, for Investigation Regarding Consolidated Edison's Lockout of 8,500 Employees and for Interim Relief.

Dear Secretary Brilling:

The Public Utility Law Project of New York, Inc., ("PULP"), requests intervention and active party status in this proceeding. PULP, a not for profit organization, seeks to protect and advance the interests of residential consumers in energy and utility matters, with emphases upon affordability of service for persons with low and fixed incomes, customer protection, and universal service. The Consolidated Edison Company of New York ("Con Edison") lockout of 8,500 of its employees on or about July 1, 2012, the attendant reduction in services and maintenance, the closing of customer service walk-in centers, and the cessation of most meter reading (with apparent reliance on estimated bills), all militate for close scrutiny by the Commission whether the utility is violating its basic duty to serve its customers and the public, and for prompt interim relief to protect customers.

PULP has participated as an active party in prior proceedings of the Public Service Commission involving Con Edison and its rates, terms and conditions of service, including a prior proceeding which culminated in an Order of the Commission requiring Con Edison to reopen and to maintain offices for in-person customer service. PULP's participation in this proceeding will not prejudice any other party, and will contribute to the development of a more complete record upon which the Commission will make its decisions, and is in the public interest.

The Petition alleges that Con Edison halted most meter reading, may be presenting many estimated bills to customers, and closed its walk-in customer service centers. Petition, 6 - 7. In addition, the Petition notes that "both using estimated bills (which may be much too high) and closing the Company's walk-in centers, *are likely to disproportionately affect the Company's most vulnerable, low-income customers*." Petition at 8, fn. 7. (*Emphasis added*). PULP agrees that the reduction or cessation of these and perhaps other services will particularly harm customers with low and fixed incomes, whose access to utility services may be denied, delayed or restricted due to the utility's actions.

In addition to safety and reliability concerns stemming from the lockout of 8,500 workers, the Petition identifies statutory violations stemming from the deliberate cessation of meter reading and the closure of customer service offices. See Petition, 6-7. In addition to violation of the general statutory provision governing closing of any utility customer service offices, cited by Petitioners, the closure by Con Edison of its customer services offices is a matter of major concern previously addressed by the Commission in 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*, ORDER APPROVING JOINT PROPOSAL, (Issued and Effective March 27, 2001). The Order prohibits Con Edison from closing its current walk in customer service centers, unless suitable alternate locations are established prior to any planned closings. In its Order approving the settlement, the Commission considered the important functions of walk in customer service offices:

> In February 2001, Con Edison, Staff and the other parties agreed to a new Joint Proposal which provides that ***Con Edison will maintain a full service Walk-in Center in each New York City Borough and Westchester County, for a total of six centers***.[*Footnote omitted*]
>
> ***Each Walk-in Center will have sufficient staffing and resources to allow customers to transact any and all normal business with the company promptly and efficiently. Customers will be able to speak with a Con Edison representative in person. The centers will have bilingual representatives as required by the community served.*** All outreach and education materials typically and historically made available at Customer Service Centers will continue to be made available. The same level of service formerly provided by the Customer Service Centers will continue to be provided at the Walk-in Centers, and ***customers will be able to place service orders, discuss billing disputes, negotiate payment arrangements, make bill payments, and transact other business*** in the same manner as they always have. Regardless of whether Con Edison employees or Primary Agents accept payments from customers, customers will not be required to pay any fee for

> this service. [*Footnote omitted*].
>
> The Joint Proposal provides that the company may close its existing Customer Service Centers, provided that for each Customer Service Center closed, a replacement Walk-in Center is established and operating prior to the closing. In addition, ***the company will be required to open Walk-in Centers on Staten Island and in Westchester County***.
>
> The Joint Proposal also contains a provision establishing an Energy Fund to assist qualifying customer in paying their bills. Con Edison will make an initial $250,000 contribution to the Fund, and thereafter will match customer contributions up to $300,000 annually.
>
> Other provisions include the creation of an immigrant assistance program to assist immigrants in obtaining service, the expansion of internet access for making payments and obtaining account and other information; and coordination with social services agencies for expedited processing of payments for public assistance recipients.

Id., at 2 - 3 (*Emphasis added*). In the Joint Proposal approved by the Commission and incorporated into its Order, the role of the Con Edison walk-in center is defined as follows:

> Walk-in Center: A location where customers may transact business with a Customer Care Professional, including, but not limited to: paying bills, applying for service, obtaining duplicate bills, making payments to avoid disconnection, requesting that service be terminated, negotiating a deferred payment agreement, discussing a deposit, requesting an extension of time to make payments, discussing arrearages, ascertaining account balances and obtaining literature about Con Edison's services and programs. Each such Center will generally continue the functions and activities of Customer Service Centers as they are currently provided through face-to-face and courtesy telephone contacts. Walk-in Centers may include or be located within premises where payments for Con Edison services are accepted by Primary Agents. In locations where Primary Agents accept payments from customers, Customer Care Professionals will not do so.

The decretal paragraphs of its Order approving the Joint Proposal in Case 99-M-0851 include a mandate that:

> 2. ***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.
>
> 3. Consolidated Edison Company of New York, Inc. shall implement and comply with all other provisions of the Joint Proposal as if fully set forth in this Order.

Id., at 5 (*Emphasis added*). Accordingly, unless the Commission's *Order Approving Joint Proposal*, (Issued and Effective March 27, 2001) has been superseded, which our research has not indicated, Con Edison appears not only to have violated the general statute barring closure of customer service offices without notice and a hearing, but appears also to be in direct violation of a specific order of the Commission requiring the reopening and continued maintenance and operation of customer service offices where customers can obtain a full range of services directly from company employees.[1]

PULP is concerned that with any diminution of customer services and the closure of the offices, consumers seeking to obtain or reinstate service or negotiate payment plans are not obtaining service, and that the provision of service is being delayed in violation of HEFPA, PSL §§ 30, *et seq*. The utility has many public service obligations under HEFPA, including the duty to provide service promptly upon request. PSL § 31.

The investigation of the reduction of customer services due to the drastic reduction in the work force due to the lockout, and the closure of customer service centers should examine closely whether HEFPA protections are being denied, or possibly circumvented, by limiting the ability of consumers to lodge applications or negotiate payment plans needed to restore service.

Con Edison shuts off service to thousands of its customers every month as a bill collection measure, which places great strain on households seeking to restore service or negotiate payment plans. Utility staff must respond to requests to resume service, when payment is made or satisfactory payment plans are negotiated. Also, utility staff is needed to coordinate with public

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1 Public Service Law § 25 provides:"1. Every public utility company, corporation or person and the officers, agents and employees thereof shall obey and comply with every provision of this chapter *and every order or regulation adopted under authority of this chapter so long as the same shall be in force*. 2. Any public utility company, corporation or person and the officers, agents and employees thereof that knowingly fails or neglects to obey or comply with a provision of this chapter or an order adopted under authority of this chapter so long as the same shall be in force, shall forfeit to the people of the state of New York a sum not exceeding one hundred thousand dollars constituting a civil penalty for each and every offense and, in the case of a continuing violation, each day shall be deemed a separate and distinct offense." (*Emphasis added*). In the event that serious injuries or death are due to violations, the penalties are more severe.

assistance agencies for customers eligible for assistance to restore service under Social Services Law 131-s.

Time is of the essence to restore service when utility service is not being provided. When utility service is off, people often resort to less safe methods to meet their energy needs, which can have tragic, calamitous, and unnecessary adverse health and safety consequences affecting the general public. See PULP Network, *Candle Fires: A Symptom of "Rolling Blackouts" Affecting Low-Income Households, available at* http://pulpnetwork.blogspot.com/2006/09/candle-fires-symptom-of-rolling.html (citing an example of a child who died in a candle fire while Con Edison was in the process of restoring service after a shutoff for bill collection purposes).

The Commission should investigate whether access to customer services needed to obtain or restore service is being limited, because many customers may now be at risk of going without service. Con Edison's collection activity report for June 2011 indicates there were 6,436 terminations of service to residential customers, and that in the same month, there were 5,087 reconnections. Similarly, in July 2011, there were 6,353 disconnections and 4,447 reconnections. The same reports indicate that in June 2011, there were 34,366 deferred payment agreements made, and in July 2011 there were 31,763 agreements made. Copies of these reports are attached. The Commission should investigate closely whether Con Edison is addressing the vital customer service obligations to negotiate reasonable payment plans and reconnect service to previously shut off customers. If access to make applications, obtain new service, restore previously shut off service, negotiate payment plans, and coordinate public assistance needed to avert termination or to restore service is being diminished, the Commission needs to take action now to protect consumers and the general public.

Commission action is needed because the utility may have little or no tort liability for harm to customers caused by deterioration of its service, and may be economically efficient and advantageous for Con Edison to breach existing customer service quality performance standards because rare or mild potential sanctions may be far outweighed by its cost savings from the lockout. Also, delaying service to customers carries a potential sanction of only $25 per day payable to customers under PSL § 31, making it economically efficient to breach the statutory obligation to provide timely service to applicants.

Possible willful breach of such obligations is not unthinkable. Indeed, in the past, Con Edison has claimed it has no inherent obligation to provide electric service to customers:

> Con Edison . . . . asserts that [it] had no absolute duty to supply electricity to its New York area customers. . . . We are unpersuaded by Con Edison's contentions
>
> **** Con Edison asserts . . . that it is liable for damages to its customers only from intentional wrongful cutoffs or accidental cutoffs when it has acted with gross negligence.

> * * * * *Con Edison had, if not an absolute, at least a manifest, duty to provide its customers with electricity.* See, e. g., Park Abbott Realty Co. v. Iroquois Natural Gas Co., 102 Misc. 266, 168 N.Y.S. 673 (Sup.Ct.1918) (utility must use best efforts), Aff'd 187 App.Div. 922, 174 N.Y.S. 914 (4th Dep't 1919). And as the district court found, based on the testimony of Con Edison's own officials, Con Edison has a general responsibility to provide electricity, one founded in its monopoly and the public service nature of its business. See Wolff Packing Co. v. Industrial Court, 262 U.S. 522, 535-36, 43 S.Ct. 630, 67 L.Ed. 1103 (1923); Munn v. Illinois, 94 U.S. 113, 124-30, 24 L.Ed. 77 (1876). Moreover, under the statutory law of New York Con Edison has a duty to "furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable. . . ." N.Y.Pub.Serv.Law § 65(1) (McKinney 1955). Distinguishing its general duty to provide service from an absolute legal duty to pay damages to individual customers in particular circumstances would be hypertechnical and would ignore Con Edison's overriding responsibilities to the public. See People ex rel. Cayuga Power Corp. v. Public Service Commission, 226 N.Y. 527, 532, 124 N.E. 105, 106 (1919) (Cardozo, J.) (emphasizing that "(t)he duty to serve the public goes hand in hand with the privilege of exercising a special franchise . . ..").

United States v. Consolidated Edison Company of New York, 580 F. 2d 1122 (2d Cir. 1978) (*Emphasis added*). Con Edison should bear a heavy burden of proof to show that it is providing all customer service and customer protections consistent with Home Energy Fair Practices Act ("HEFPA") requirements and that it is meeting its bedrock universal service obligations to provide safe and adequate service to the public.

As an interim measure, the Commission should, as it has in the past, take immediate action to assure that customers have access to service, including reopening of all customer service walk-in centers, which apparently were closed without prior notice and prior Commission approval. Such approval is necessary. As stated by Hon. Maureen Helmer, former Commission Chairman:

> RG&E's position that it was unnecessary to advise the Commission of its intentions is misplaced. *The Commission routinely examines matters involving the potential diminution of customer service quality, including the closure of customer service centers*. See, e.g., Case 99-M-0851, Public Utility Law Project of New York, Inc., et al. - Closing of Consolidated Edison's Customer Service Offices, Order Approving Joint Proposal (Issued March 27, 2001).

Case 02-M-1465 - Proceeding on Motion of the Commission to Investigate Rochester Gas and Electric Corporation's Proposal to Close its Customer Service Centers, *Order Directing Rochester Gas And Electric Corporation To Suspend Closure Of Its Customer Service Centers* (Issued and Effective December 3, 2002), p. 2, fn. 2 (*Emphasis added*). Chairman Helmer's one-Commissioner order was subsequently confirmed by the full Commission.

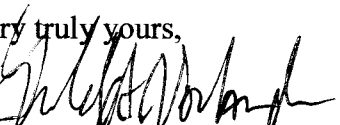
Similarly, In Case 03-M-0380, the need for immediate action was recognized by Hon. William M. Flynn, then Commission Chairman, who commenced an investigation and issued a one-Commissioner order directing NYSEG to halt its planned closure of customer service centers, stating:

> The closure of the Centers may be inconsistent with, and impair, NYSEG's obligation to provide safe and adequate service and customer service protections, as required by Articles 2 and 4 of the Public Service Law. Therefore, this proceeding is commenced to examine NYSEG's proposal, including, but not limited to, the impact, if any, of the proposed closures on customer service quality, the nature, scope and extent of notice provided to customers, and the quality of available alternatives. To ensure that NYSEG's customers are adequately protected until the investigation of this matter is completed, NYSEG is directed to continue the full operation of its Centers until the Commission issues a final order in this proceeding.

Id., *Order Instituting Proceeding And Directing New York State Electric & Gas Corporation To Suspend Closure Of Its Customer Service Centers,* (Issued and Effective March 24, 2003), at 3. Chairman Flynn's order was subsequently confirmed by the full Commission.

Accordingly, PULP supports the Petitioners' motion for an investigation of the impact of Con Edison's lockout of 8,500 unionized workers upon the provision of utility service to the public, supports their request for interim relief, requests that its motion to intervene be granted, and that the Commission grant such other and further relief as is just and reasonable under the circumstances.

Very truly yours,



Gerald A. Norlander, Esq.
Executive Director

Attachments: June and July 2011 Con Edison Collection Activity Reports

MONTHLY COLLECTIONS REPORT

CON EDISON OF NY

RESIDENTIAL SERVICE MONTH OF: Jul-11

	ITEM DESCRIPTION		TOTALS Customer	TOTALS Dollars
1.	**Arrears Greater Than Sixty Days**		**255,199**	**$214,810,320**
2.	Final Termination Notices This Month		**244,672**	**$87,062,871**
3a.	Unresolved Arrears (FTN Expired)		10,570	2,740,201
3b.	Accounts Eligible For Field Action			NA
4a.	**Terminations For Non-Payment - All**		6,353	$6,362,000
4b.	Terminations For Non-Pmt - Heat Related			N/A
4c.	Terminations For Non-Pmt - Service Limiter		N/A	N/A
4d.	Term. Other Than Non-Pmt. or Cust. Request		N/A	N/A
5	Reconnections for Non-Pmt.		4,447	$3,148,000
5a.	Reconnects Due To HEAP or DSS		497	584,000
5b.	Reconnects Due To Deferred Payment Agrmt.	*C		
6a.	Active DPA's At The Beginning Of This Month		169,628	$93,305,378
6b.	Deferred Payment Agreements Made		31,763	$25,560,227
6c.	Deferred Payment Agreements Reinstated		38,782	$ 17,023,056
6d.	Deferred Payment Agreements Defaulted		15,004	$12,115,404
6e.	Deferred Payment Agreements Satisfied		22,965	$8,522,168
6f.	**Active DPA's At The End Of This Month**		164,450	$89,028,338
6g.	Percent Of DPA's In Arrears > 60 Days		64.4%	41.4%
7a.	**Uncollectibles This Month**		6,061	$4,543,128
7b.	Percent Of UCB's with Less Than 1 Year Service	*C	0.0%	
7c.	Resid. UCB Accounts with One or More DPA			
8.	**Residential Sales**		2,856,860	$426,248,144
9a.	Residential Bankruptcies		35	$20,291
9b.	Percent Of Bankruptcies Compared To All UCB's		0.58%	0.45%
10a.	Final Bills Issued This Month (Res & NonRes)		85,844	$26,756,172
10b.	Final Bills With Arrears This Month		51,452	$25,339,106
10c.	Final Bills With One or More DPA (last 12 months)			
11.	Deposits Received This Month		7,466	$ 658,216

MONTHLY COLLECTIONS REPORT

CON EDISON OF NY

RESIDENTIAL SERVICE | **MONTH OF:** Jun-11

	ITEM DESCRIPTION		TOTALS Customer	TOTALS Dollars
1.	**Arrears Greater Than Sixty Days**		258,072	[illegible]
2.	Final Termination Notices This Month		229,056	$77,508,459
3a.	Unresolved Arrears (FTN Expired)		11,479	5,648,537
3b.	Accounts Eligible For Field Action			NA
4a.	**Terminations For Non-Payment - All**		6,436	$7,271,000
4b.	Terminations For Non-Pmt - Heat Related			N/A
4c.	Terminations For Non-Pmt - Service Limiter		N/A	N/A
4d.	Term. Other Than Non-Pmt. or Cust. Request		N/A	N/A
5	Reconnections for Non-Pmt.		5,087	$3,861,000
5a.	Reconnects Due To HEAP or DSS		582	772,000
5b.	Reconnects Due To Deferred Payment Agrmt.	*C		
6a.	Active DPA's At The Beginning Of This Month		174,900	$96,204,978
6b.	Deferred Payment Agreements Made		34,366	$29,947,784
6c.	Deferred Payment Agreements Reinstated		40,325	$ 17,185,505
6d.	Deferred Payment Agreements Defaulted		17,549	$14,187,408
6e.	Deferred Payment Agreements Satisfied		25,235	$9,260,215
6f.	**Active DPA's At The End Of This Month**		169,628	$93,305,377
6g.	Percent Of DPA's In Arrears > 60 Days		65.7%	45.4%
7a.	**Uncollectibles This Month**		4,771	$3,369,128
7b.	Percent Of UCB's with Less Than 1 Year Service	*C	0.0%	
7c.	Resid. UCB Accounts with One or More DPA			
8.	**Residential Sales**		2,861,438	$337,275,208
9a.	Residential Bankruptcies		18	$84,163
9b.	Percent Of Bankruptcies Compared To All UCB's		0.38%	2.50%
10a.	Final Bills Issued This Month (Res & NonRes)		70,156	$27,223,974
10b.	Final Bills With Arrears This Month		44,924	$25,376,514
10c.	Final Bills With One or More DPA (last 12 months)			
11.	Deposits Received This Month		6,902	$ 643,180