

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on December 18, 2002

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman¹
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal N. Galvin

CASE 00-M-0095 - Joint Petition of Consolidated Edison, Inc. and
Northeast Utilities for Approval of a
Certificate of Merger, with All Assets Being
Owned by a Single Holding Company.

ORDER DENYING PETITION

(Issued and Effective February 7, 2003)

BY THE COMMISSION:

INTRODUCTION

In a petition dated June 24, 2002 (Petition), Public
Utility Law Project, Inc. (PULP) states that Consolidated Edison
Company of New York, Inc. (Con Edison) failed to develop and
implement a plan for the automatic enrollment of eligible low
income customers in its rate discount program. PULP requests
that the Commission seek a penalty against Con Edison, and that
the Commission direct Con Edison to develop a plan for automatic
enrollment in the rate discount program. For the reasons stated
below, PULP's petition is not granted.

¹ Chairman Helmer served as Chairman until January 31, 2003.

BACKGROUND

On November 30, 2000, the Commission accepted the terms and conditions of a joint proposal establishing a rate plan for Con Edison that covers the four year period from April 1, 2001 through March 31, 2005.² The rate plan includes, among other things, an expansion of a previously existing low-income rate discount program. Under the rate discount program, the monthly customer charge for qualified low-income customers remains fixed at \$5. The higher monthly customer charge for other residential customers increases by 57 cents in each year of the rate plan (the current monthly customer charge is \$9.14). Eligibility for the rate discount was expanded to include customers qualified to receive any of nine different public benefit programs. The rate plan anticipates, due to enrollment activities to be undertaken by Con Edison, that customer participation in the rate discount will average 40,000, 75,000, 125,000 and 175,000 customers respectively in each of the rate plan's four years. Given the incremental annual increases in the amount of the discount and the number of participating customers, the cost of the program is estimated to be \$1,714,000, \$3,726,000, \$7,065,000, and \$11,088,000 in each of the four respective years, a total cost of \$23.6 million over the rate plan's term.

² Cases 00-M-0095, et al., Consolidated Edison, Inc. and Northeast Utilities, Opinion No. 00-14 (issued November 30, 2000). Parties signing the joint proposal included: Con Edison; Staff; PULP; Association for Energy Affordability; New York Energy Buyers Forum; New York State Consumer Protection Board; New York State Department of Economic Development; Small Customer Marketer Coalition; Owners Committee on Electric Rates, Inc.; Brooklyn Navy Yard Cogeneration Partners, L.P.; New York Power Authority; Consolidated Edison Solutions, Inc.; Orange and Rockland Utilities, Inc.; and Northeast Utilities.

To expand participation in the rate discount program, the rate plan requires Con Edison to develop a process to automatically enroll qualified customers by matching company records with records from the New York City Human Resources Administration (HRA) and the Westchester County Department of Social Services (DSS). Specifically, the terms state:

Within one year of the Commission's approval [of the joint proposal], a plan for automatic enrollment of customers through matching of the records of [HRA] and [DSS] with the Company's customer records (together with negative checkoff) will be developed by Con Edison with input from the signatory parties and used to the greatest extent practicable subject to the maximum enrollment and expenditure levels stated herein. . . . Other enrollment strategies will be developed jointly by Con Edison with the signatory parties. By the end of RY8, it is anticipated that 175,000 customers will be participating in this rate program.³

Following approval, a series of meetings of interested parties was held to develop a plan for the various low-income initiatives outlined in the rate plan, including a plan for automatic enrollment in the rate discount. These meetings led to the filing of a low-income program plan by Con Edison on April 30, 2001.

The low-income program plan reflects the parties' suggestion that those customers whom Con Edison could immediately identify as eligible recipients be enrolled in the rate discount program as soon as practicable. Such customers included direct vouchered customers (i.e., those for whom utility bills are paid directly to the utility), Home Energy Assistance Program (HEAP) recipients, and customers on whose

³ Ibid., Attachment A (Joint Proposal), Appendix F at pp. 1-2.

behalf the applicable social services agency had provided a "utility guarantee" under Social Services Law. Enrollment of these customers was expected to achieve the target participation level of 40,000 customers in the first year. The parties further agreed to meet again after Con Edison, working with HRA and DSS, had completed a match of all eligible customer categories, to discuss how subsequent enrollments would be accomplished.

Con Edison thereafter made a copy of its database available to HRA and DSS. HRA matched the records. DSS did not complete its work because some of the benefits paid to its recipients are administered through the New York State Office of Temporary and Disability Assistance (OTDA). OTDA's cooperation was required in order to perform a matching of records for DSS, and this process was slowed due to OTDA's concerns for recipients' privacy. In addition, OTDA officials advised HRA not to disclose to Con Edison the identity of customers that were recipients of assistance that were not otherwise known to Con Edison without the consent of the customers.

On May 29, 2002, Con Edison filed the first of a series of annual reports required under the rate plan on the rate discount program. The report indicates that during the first year of the rate plan, from April 1, 2001 to March 31, 2002, Con Edison enrolled 54,352 customers in the program, exceeding the first expected target level of 40,000 customers.

In the second (and current) rate year, Con Edison added to the above categories of participants, customers who are receiving SSI, Temporary Assistance to Needy Families and Safety Net Assistance. These customers also are eligible to receive the rate discount, and are identifiable to Con Edison without further assistance from HRA, DSS or OTDA. The addition of these customers has brought the current total number of rate discount

participants to approximately 83,000 customers, exceeding the second expected target level of 75,000 customers.

Con Edison, HRA and DSS are currently drafting a letter for OTDA approval that would allow participants to voluntarily opt out of the disclosure of their information to Con Edison for the purpose of matching and enrollment. This effort is expected to address OTDA's privacy concerns, allowing the tape match to be completed and providing a basis for the enrollment of customers in the remaining two years of the rate plan.

THE PETITION

PULP states that it seeks relief on behalf of Con Edison's low-income customers who are eligible to receive the discount. PULP asserts that the parties agreed that a computer matching program, similar to that employed by Verizon New York Inc. in implementing its Telephone Lifeline program, would maximize outreach to eligible Con Edison customers and minimize administrative costs. According to PULP, it was anticipated that the automatic enrollment process would be an essential instrument to identify potential participants and would be the most efficient strategy available for achieving full enrollment of eligible customers as well as reaching the target milestones. PULP further states that there are no ceilings on funding or caps on participation. Instead, estimates as to the annual average revenue impact and annual average expected enrollment were established.

PULP alleges the essential and fundamental failure of Con Edison to comply with either the spirit or the letter of the rate plan terms regarding customer enrollments. PULP's petition expresses grave concern that the input of the signatory parties was not sufficiently solicited in designing either the automatic

enrollment or alternative enrollment strategies, contends that no plan for the automatic enrollment of low-income residential customers through computer matching has been developed, and that Con Edison has developed no alternative strategies as required by the rate plan. PULP requests various forms of relief, including:

- (a) determinations that Con Edison has failed to abide by the requirements adopted by the Commission, is in violation of the Commission's Order, and knowingly failed or neglected to comply;
- (b) a directive for Staff to seek a penalty action against Con Edison in court;
- (c) directives for Con Edison to implement a plan for automatic enrollment using computer cross matching, an outreach and education plan associated with the rate discount program, and an application form to enroll customers manually; and
- (d) a directive for Con Edison to identify when it will be able to meet the rate discount enrollment targets, determine any additional revenues available due to under-enrollments and propose a plan for directing such revenues to the benefit of enrolled rate discount customers.

SUMMARY OF PARTY COMMENTS

Notice of PULP's petition was published in the State Register on August 14, 2002. Comments were filed by PULP, Con Edison and jointly by State Senators Connor, Duane, Krueger, Lachman, Montgomery, Onorato, Oppenheimer, Sampson, Schneiderman, and Smith (the Senators). On October 3, 2002, PULP requested leave to file reply comments to the comments filed by Con Edison, and filed such comments along with its request.

The Senators express concern that the fourth year goal of 175,000 enrolled customers will not be met unless the

Commission directs Con Edison to implement a plan for the automatic enrollment of low-income customers as intended by the rate plan.

PULP restates its belief that the petition demonstrates that Con Edison has failed to obey and comply with the Commission's mandate, that development and implementation of a plan for the automatic enrollment of eligible customers is essential to the success of the low income rate discount program, and that Con Edison's failure to comply with and obey the mandate of the Commission constitutes an enforceable violation of Public Service Law.

In reply, Con Edison states that its implementation of the low-income rate discount program fully comports with the program's requirements. The issue, according to Con Edison, is that it has not enrolled participating customers in the manner expected or desired by PULP. It states that having tried to reach consensus on a process for enrolling customers up to the target levels, it was confronted by PULP's insistence that prioritizing enrollment of customers by benefit category is impermissible under the rate plan. While the rate plan provides for signatory parties to have input, Con Edison states that PULP errs in its belief that its views should drive program enrollment.

Con Edison notes that it has met the enrollment targets in the rate plan, and that the anticipated number of customers entitled to the rate discount are receiving it. Con Edison also contends that the enrollment form and outreach efforts called for by PULP are both unnecessary and contrary to the principal purpose of having automatic enrollment; i.e., to avoid enrollment and outreach costs. Con Edison also states its concern that the estimated \$23.6 million cost of the program would be exceeded by a change in Con Edison's methodology.

In its reply comments, PULP states that it is moving the Commission to enforce its own order. PULP is troubled that its input has not been solicited in drafting the customer letter that is intended to address OTDA's privacy concerns, and charges Con Edison with contumacy for not filing a petition to amend the requirements of the rate plan. PULP's position is not tempered by the fact that its vision for automatic enrollment would cause the program to exceed the \$23.6 million earmarked for the program. According to PULP, such a possibility was foreseen in the joint proposal, which allows various remedies, including an increase in funding.

DISCUSSION AND CONCLUSION

The best indicator of whether Con Edison has adequately implemented the rate discount program for low-income customers is the number of customers enrolled in the program. In that regard, Con Edison's efforts to date have resulted in enrollment levels that exceed the targets in both of the first two years of the four-year plan. To date, virtually all of the program's 83,000 participants have been automatically enrolled, as was intended, without having to individually apply for the rate discount. In addition, the pool of participating customers was identified as qualified by Con Edison through a matching of its records with those of an applicable social services agency. In the context of Con Edison's successful performance to date, it is reasonable to endure some delay in completing the computerized matching with HRA and DSS records so as to ensure that OTDA is satisfied that privacy concerns are met by the program, so long as Con Edison acts diligently in pursuing enough matches to meet the remaining customer targets in a timely manner. The Commission sees no ground at this time for the requested penalty action or a change in Con Edison's

pragmatic and successful approach. Con Edison, PULP and all other interested parties are encouraged to continue to work together on a cooperative and collaborative basis in the best interests of the program.

The Commission orders:

1. All requests for relief contained in the petition of Public Utility Law Project, Inc. in this proceeding, dated June 24, 2002, are not granted.
2. This proceeding is continued.

By the Commission,

(SIGNED)

JANET HAND DEIXLER
Secretary