

**NEW YORK STATE  
PUBLIC SERVICE COMMISSION**

-----X

Petition of the Public Utility Law Project of New  
York, Inc., To The Public Service Commission  
To Direct the Consolidated Edison Company of  
New York, Inc. To Forthwith Implement Appendix F  
To The Global Settlement Agreement Approved By  
The Public Service Commission in *Opinion and  
Order 00-14*.

CASE NO. 00-M-0095  
CASE NO. 96-E-0897  
CASE NO. 99-E-1020  
CASE NO. 00-E-1208  
CASE NO. 00-E-1461

-----X

**PETITION OF THE PUBLIC UTILITY LAW PROJECT  
OF NEW YORK, INC. TO IMPLEMENT APPENDIX F  
TO THE GLOBAL SETTLEMENT AGREEMENT**

PUBLIC UTILITY LAW PROJECT OF  
NEW YORK, INC.  
GERALD A. NORLANDER, ESQ.  
CHARLES J. BRENNAN, ESQ.  
BEN WILES, ESQ.  
Attorneys for Petitioners  
90 State Street, Suite 601  
Albany, New York 12207  
Tel: 518-449-3375

Dated: June 21, 2002

**NEW YORK STATE  
PUBLIC SERVICE COMMISSION**

-----X  
Petition of the Public Utility Law Project of New  
York, Inc., To The Public Service Commission  
To Direct the Consolidated Edison Company of                   CASE NO. 00-M-0095  
New York, Inc. To Forthwith Implement Appendix F           CASE NO. 96-E-0897  
To The Global Settlement Agreement Approved By CASE NO. 99-E-1020  
The Public Service Commission in *Opinion and*               CASE NO. 00-E-1208  
*Order 00-14.*   CASE NO. 00-E-1461  
-----X

**PETITION OF THE PUBLIC UTILITY LAW PROJECT  
OF NEW YORK, INC.**

The Public Utility Law Project of New York, Inc., for its petition pursuant to Section 3.6 of Volume 16 of the New York Codes, Rules and Regulations (“11 NYCRR § 3.6”), alleges as follows:

1. The Public Utility Law Project of New York, Inc. ("PULP") is a not-for-profit law firm which, since 1977, represents the utility, energy and telecommunications interests of low income New Yorkers. PULP’s offices are at 90 State Street, Suite 601, Albany, NY 12207. PULP is an active interested party in the above referenced proceedings and fully participated in the Public Service Commission meetings, negotiations and discussions which culminated in the Order which is the subject of this motion.

2. PULP seeks relief on behalf of low income, residential customers residing in the service territory of the Consolidated Edison Company of New York, Inc. (“Con Edison”)<sup>1</sup> who are eligible to

---

<sup>1</sup> Con Edison, a subsidiary of Consolidated Edison, Inc., is regulated by the New York State Public Service Commission pursuant to the Public Service Law.

receive the low income reduced rate plan established as an essential component of the Global Settlement Agreement executed by interested parties in the above proceedings, which was approved and its provisions ordered by the New York Public Service Commission (“PSC” or “Commission”) on November 30, 2000. The low income reduced rate constituted a significant element of the Global Settlement Agreement reached after extensive negotiations had occurred. PULP was an active participant in those negotiations and signed the Global Settlement Agreement relying upon implementation of the low income reduced rate program as specified in the Agreement.

3. Prior to the Global Settlement Agreement, Con Edison had no low income rate for any of its customers, except for approximately 20,000 public assistance recipients whose bills were being paid directly to Con Edison by the New York City Human Resources Administration (“HRA”).

#### Procedural Background

4. On January 11, 2000, Consolidated Edison, Inc. (“CEI”) and Northeast Utilities (“NU”) filed a Joint Petition with the New York State Public Service Commission requesting approval of CEI’s acquisition of NU. The Commission instituted a proceeding to consider the joint merger petition under PSC Case No. 00-M-0095.

5. Concurrently, the PSC was considering two other proceedings involving CEI’s wholly owned, regulated subsidiary, Con Edison, which provides gas and electric service to approximately 3 million customers throughout the metropolitan area including most of New York City and Westchester County.

6. The first of these, Case No. 96-E-0897, involved matters regarding the implementation of CEI’s rate/restructuring program pursuant to the Commission’s Order in 94-E-0952 and, in particular,

the specifics of the steps to be taken to introduce and execute the next phase of the transition to a fully executed program for multiple providers of competitive elements of retail electric service.

7. The other proceeding, Case No. 99-E-1020, sought to develop recommendations to the Commission regarding the distribution of the net proceeds from Con Edison's sale of non-nuclear electric generation facilities and the mechanisms which should be utilized to deliver those proceeds to the Company's customers, who had an interest in those funds under a prior agreement and Commission order.

8. On April 10, 2000, CEI and NU issued a letter, pursuant to 16 NYCRR § 3.9, providing notice, as required by Commission regulations, to interested parties of impending settlement negotiations with regard to the merger, the rate/restructuring, and the distribution of net proceeds proceedings. The parties, including PULP and other low income representatives, met frequently over the next eight months and, eventually, drafted a "Global Settlement Agreement," which was signed by 15 participants in the global settlement negotiations. The proposed settlement was filed with the Commission on October 3, 2000.<sup>2</sup> A Press Release issued by the Department of Public Service Staff on the day of the filing reviewed the positive developments agreed upon by the parties as set forth in the Global Settlement Agreement and emphasized the benefits of the Settlement's low income program.

9. On November 30, 2000, the PSC issued an order approving the proposed Settlement

---

<sup>2</sup> Signatory parties included: CEI, NU, Con Edison, Con Edison Solutions, Orange and Rockland Utilities, Inc., the Department of Public Service Staff, the New York State Department of Economic Development, the New York State Consumer Protection Board, the New York Power Authority, the New York Energy Buyers Forum, the Owners Committee on Electricity Rates, Inc., the Public Utility Law Project, the Small Customer Marketer Coalition, Brooklyn Navy Yard Cogeneration Partners, L.P., and the Association for Energy Affordability, Inc.

Agreement, with minor adjustments.<sup>3</sup>

10. In *Opinion and Order No. 00-14*, approving the Global Settlement Agreement, the Commission noted that, *inter alia*, Con Edison's low income programs would be modified and greatly expanded and enhanced by Con Edison's new low income reduced rate. Customer eligibility for the rate was expanded to increase substantially the number of eligible customers beyond those on whose behalf the local department of social services made direct payment to Con Edison of public assistance benefits. It was enhanced by capping at \$5.00 per month the applicable customer charge that otherwise increases over the life of the agreement.<sup>4</sup> The specifics of these changes and other changes agreed to for Con Edison's low income program are set forth in Appendix F to the Global Settlement Agreement - the Low Income Program ("LIP").<sup>5</sup> A copy of Appendix F to the Global Settlement Agreement is annexed as Exhibit A.

#### THE LOW INCOME RATE DISCOUNT PROGRAM

11. Pursuant to the LIP, for eligible low income residential customers, the rate for the Customer Charge is set at \$5 per month and frozen at this amount through March 31, 2005. The monthly Customer Charge increases at a rate of \$0.57 per year for all residential customers who are

---

<sup>3</sup> Case 00-E-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.*, Opinion and Order Adopting Terms of Settlement, Subject to Modifications, Opinion No. 00-14. ("*Opinion No. 00-14*").

<sup>4</sup> *Id.*, p. 8.

<sup>5</sup> The LIP consists of four modules: "a reduced electric Customer Charge component and a reconnection charge waiver component; a low income customer aggregation program; a low income customer arrears avoidance program, and an energy efficiency program targeted to low income customers." (*Opinion and Order 00-14*, Settlement Agreement, Appendix F, p. 1.) This petition is concerned primarily with the reduced customer charge component of the LIP and, specifically, the on-going failure of Con Edison to timely implement the low income discount rate program and accompanying automatic enrollment methodologies.

not participating in the Low Income Reduced Rate Program.<sup>6</sup> Benefits to eligible participating customers are directly proportional to the length of time during which the customer is enrolled in the Low Income Reduced Rate Program. Currently, the annual benefit to an enrolled low income customer is \$42.84 for the rate year which ended March 31, 2002. In the final rate year of the Global Settlement Agreement which ends on March 31, 2005, the value of the low income reduced rate to an enrolled low income customer will be \$63.36.

12. The LIP defined eligible customers as

low-income customers served under the non-time-of-day rate of SC Nos. 1 and 7 who are enrolled in this program and are Direct Vendor customers (“DVCs”), or are receiving a benefit under the Supplemental Security Income (SSI), Temporary Assistance to Needy Persons, Safety Net Assistance, Medicaid, Food Stamps, Child Health Plus, Veteran’s Disability Pension (Non-service Disability), Veteran’s surviving Spouse Pension (Non-Service Disability) or have received a Home Energy Assistance Program (HEAP) grant in the preceding 12 months.<sup>7</sup>

13. In the Global Settlement Agreement, 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.<sup>8</sup> The Settlement Agreement requires that Con Edison, within one year of the Commission’s approval, i.e., by November 30, 2001, will develop and use, with input from the signatory parties, “a plan for automatic enrollment of customers through matching of the records of the New York City Human Resources

---

<sup>6</sup> Tariffs filed annually by Con Edison establish the Customer Charge for each rate year and set forth the terms of the frozen low income reduced customer charge approved by the Commission in *Opinion and Order 00-14*.

<sup>7</sup> *Id.*, Appendix F, p. 1.

<sup>8</sup> The New York Telephone (now *Verizon*) Automatic Enrollment Program and related tariffs and documents are described at [http://www.pulp.tc/html/automated\\_lifeline\\_enrollment.html](http://www.pulp.tc/html/automated_lifeline_enrollment.html).

Administration (HRA) and the Westchester Department of Social Services (DSS) with the Company's customer records (together with negative checkoff) ...."<sup>9</sup>

14. There was to be a one year interval between the approval and the implementation of the automatic enrollment system. Initial enrollments in the low income reduced rate plan could be accomplished with little or no effort since Con Edison, as it had done in administering its reduced rate for vendored public assistance recipients, would be able to identify and enroll LIP eligible customers in the low income reduced rate plan from its own records. Nevertheless, Con Edison's ability to enroll LIP eligible low income customers from its own records is limited because the Company's business records identify only three of the eligibility programs (HEAP, DVC, and guarantee public assistance recipients) established by *Order and Opinion 00-14*, and many, if not all, of those customers already receive service at the lower rate through enrollment in the pre-existing program. The automatic enrollment process, matching the names of recipients of the nine identified government benefit programs against the names of Con Edison customers, would greatly expand the data base resource for identifying and enrolling potentially eligible low income customers. 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 milestones established in the Global Settlement Agreement for participation.<sup>10</sup>

---

<sup>9</sup> *Id.*, Appendix F, p. 1 (emphasis added)

<sup>10</sup> 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. The Agreement provided: Assuming average customer participation in RYs 5-8 of 40,000, 75,000, 125,000 and 175,000 customers respectively and given incremental annual increases in the residential Customer charge of \$0.57 per month, the cost of the targeted rate program is estimated to be about \$1,714,000, \$3,726,000, \$7,065,000, and \$11,088,000 in the four respective years.

15. Following the Commission's approval of the Settlement Agreement and the issuance of *Opinion and Order 00-14*, PSC Staff announced and held a collaborative meeting of parties interested in the implementation of the LIP on January 11, 2001. A second meeting was held on January 26, 2001. The goal of these and subsequent meetings was the development and implementation of the Low Income Program set forth in Appendix F to the Global Settlement Agreement, including the creation of the plan, required by the Global Settlement Agreement and Commission *Opinion and Order 00-14*, for the automatic enrollment of eligible Con Edison customers in the low income reduced rate program.

16. These collaborative meetings were announced by PSC Staff and participating parties included PULP, the New York City Human Resources Administration ("HRA"), the Association for Energy Affordability ("AEA"), the New York State Consumer Protection Board ("CPB"), Westchester County ("Westchester") and Con Edison. HRA and Westchester, although interested parties and participants in the settlement negotiations, were not signatories to the approved Global Settlement Agreement.

17. At the close of these January, 2001 sessions it appeared, although numerous other issues remained, that the collaborative participants were agreed that initial enrollment in the low income reduced rate program would consist of those customers directly identified from Con Edison's records as eligible, i.e., direct vendored, and those whose account records reflect that Con Edison had received energy assistance payments from local social services districts on behalf of low income

---

These numbers would be used, in annual reports from Con Edison to the Commission to gauge the success of the program and to justify proposals to amend the program based on its results.  
*Opinion and Order 00-14*, Settlement Agreement, Appendix F, p. 2.

customers. (HEAP/131-s).<sup>11</sup>

18. At subsequent meetings and through continuing e-mail communications, participating parties attempted to build on this initial, narrow, stopgap enrollment measure, to define next issues, and to reach a consensus that would enable Con Edison and HRA and Westchester to implement the broader automatic enrollment program anticipated by the signatories to the Global Settlement Agreement. The mechanism of a computer matching program envisioned in Appendix F would permit the automatic enrollment of customers in receipt of benefits in all eligible categories, rather than just the small subset of customers in receipt of benefits in the three categories who could be identified through Con Edison's limited billing and collection records.

19. Ultimately, it became clear that final consensus could not be reached promptly on a number of substantive and peripheral issues, e.g., whether to prioritize eligible programs for the initial computer matching. In addition, it appeared that these unresolved issues were frustrating efforts to move forward. As a result, it was agreed that Con Edison would complete its enrollment of eligible low income customers for whom it had received energy assistance and thus could identify from their own customer lists. At the same time, Con Edison independently would explore methods and procedures to test a matching of HRA and Westchester recipient computer tapes with Con Edison customer tapes to accurately identify individual customers who qualify to participate in the low income reduced rate program.

20. It was anticipated that a test of the methodology would demonstrate the effectiveness of

---

<sup>11</sup> Approximately 21,000 direct vendored customers already received a low income reduced rate prior to the Global Settlement Agreement. The agreement increased the amount of the reduction and greatly expanded the size of the eligible customer pool.

the computer cross matching of customer lists against recipient lists. This would also provide participants in the collaborative process with a quantification of the number of qualifying customers by eligibility category. Con Edison felt it could complete this phase of the plan development on or about August 30, 2001 and could issue, shortly thereafter, a report, circulated to all parties. Armed with the information and data provided by this approach, new meetings would be called and, as mandated by the Global Settlement Agreement, the plan for the actual automatic enrollment of low income customers would be developed in a timely manner, and finalized by Con Edison in consultation with the signatory parties.

21. In mid-August, 2001, PULP was informally advised that efforts by the Company to develop the automatic enrollment plan pursuant to the Settlement Agreement had been more difficult than anticipated. Nevertheless, Con Edison still expected to test the system that had been devised, and would provide a preliminary indication as to the number of program eligible customers on Con Edison's records. It was anticipated that this initial sampling would take place before the end of August, 2001.

22. On or about September 18, 2001, having had no further input regarding the anticipated computer matching and concerned about the approaching one year deadline for the implementation of the automatic enrollment program, PULP requested information from PSC Staff regarding the progress, if any, being made toward the implementation of the Low Income Reduced Rate Program. PULP's letter requested, *inter alia*, specific data regarding enrollments for the program, the revenue impact of the program (i.e., the benefits provided to customers enrolled in the Low Income Reduced Rate Program), and copies of relevant documents such as communications among parties and application forms for applicants to complete when applying for the reduced rate. Copies of this letter were sent to

AEA, HRA, Con Edison, Westchester, and Jerrold Oppenheim, a consultant to PULP. A copy of the letter is annexed as Exhibit B.

23. On October 11, 2001 PULP sent a second letter, annexing a copy of the original communication, and renewing our request for information. A copy of this letter is annexed as Exhibit C.

24. On October 25, 2001 PULP received a reply from PSC Staff which contained responses to the inquiries contained in the letter of September 18, 2001.<sup>12</sup> Con Edison made no independent attempt to respond to PULP's letters of inquiry. The Staff forwarded a copy of its October, 2001 letter to Con Edison but not to any of the other collaborative members who had been provided with copies of PULP's letters of inquiry. A copy of Staff's letter is annexed as Exhibit D.

25. The letter indicates that enrollment in the low income reduced rate program (achieved solely based on Con Edison's ability to identify eligible customers from the Company's records) stood at approximately 40,000 on August 31, 2001. Yet, the revenue impact for the first year of the low income reduced rate program appeared to be far below anticipated levels (\$550,000 compared to \$1.7 million); no effort was being made to open enrollment to additional low income customers; there is no application or method for an eligible customer to apply to receive the reduced rate; no outreach or awareness programs were instituted; and "a plan for the automatic enrollment effort [is] expected within the next two months."<sup>13</sup>

26. Despite the assertion that "the program appears to be performing as the Commission

---

<sup>12</sup> The Commission's letter suggested that Con Edison was required by *Opinion and Order 00-14* to file a report with the PSC within 60 days of the end of each rate year. Thus, the first report was not due until May 30, 2002. The responses contained in the letter were based on information "informally provided by Con Edison."

<sup>13</sup> Exhibit D, pp. 2-3.

intended ...,”<sup>14</sup> Staff’s October 25, 2001 letter confirmed the essential and fundamental failure of Con Edison to comply with either the spirit or the letter of the Global Settlement Agreement adopted and approved by the PSC in *Opinion and Order 00-14*. Any plan for automatic enrollment is being developed with little or no input from signatories despite the requirement of *Opinion and Order 00-14*. In addition, PSC staff ignores the language of *Opinion and Order 00-14* regarding additional enrollment strategies and professes no need to develop an application form for manual enrollment of customers who may not be reached by automatic enrollment.<sup>15</sup>

27. By letter dated November 27, 2001, PULP requested that Staff “immediately convene a meeting of the interested signatory parties of the Global Settlement Agreement to receive reports and updates from appropriate parties regarding the implementation of the Low Income Reduced Rate Program, to review progress to date, and to discuss and determine future steps.” A copy of this letter is annexed as Exhibit E.

28. By letter, dated November 30, 2001, Con Edison notified the Commission that efforts to develop an automatic enrollment plan had been unsuccessful. The letter fails to explain why the requirement of Appendix F of the Settlement Agreement adopted and approved by the PSC in *Opinion and Order 00-14* that a plan for the automatic enrollment of eligible Con Edison customers had not been developed and used. Strangely, Con Edison then commits to meet with the parties again

---

<sup>14</sup> *Ibid*, p. 3.

<sup>15</sup> “[N]o application form exists. Please bear in mind that the Commission ordered that the program be designed to provide automatic enrollment. It is therefore unclear why an application form would be needed.” *Ibid*, p. 2. Such casual disregard of Appendix F’s provision at page 2 that “[o]ther enrollment strategies will be developed jointly by con Edison with the signatory parties” reflects either inexperience or denial.

“after the matching process has been completed with a view to developing the automatic enrollment plan. The Company will report to the Commission when this task has been accomplished *or the parties have agreed upon an alternative strategy for identifying eligible participants and enrolling them in the program.*” A copy of this letter is annexed hereto as Exhibit F.

29. Despite PULP’s request, upon information and belief, no meeting of interested signatory parties or of participants in the low income collaborative was initiated, and no motion has been made by any signatory or collaborative party to amend the requirements of Appendix F of the Global Settlement Agreement approved by the Commission on November 30, 2000 in *Opinion and Order 00-14*.

30. More than sixteen months have elapsed since the Commission approved the Settlement Agreement and, contrary to Staff’s expectation in October, 2001 that an automatic enrollment plan would be in place in two months, no plan as required by Appendix F of the Global Settlement Agreement for the automatic enrollment of low income residential customers through computer matching has been developed, with or without input from signatory parties.

31. Upon information and belief, Con Edison has developed no alternative strategies, with or without input from signatory parties, for enrolling eligible Con Edison customers in the low income reduced rate program.

32. Thus, although Con Edison’s tariffs and press releases announce that reduced rates are available for qualified customers, no method has been created by Con Edison which an eligible person may use to access this reduced rate unless previously identified by the Company as eligible.

WHEREFORE, petitioners respectfully request that the Commission issue an Order herein:

A. Determining that Con Edison has failed to abide by the requirements contained in

Appendix F to the Global Settlement Agreement as approved by the Commission in *Opinion and Order 00-14*;

- B. Determining that Con Edison is in violation of *Opinion and Order 00-14* for failing to implement Appendix F to the Global Settlement Agreement as approved by the Commission in *Opinion and Order 00-14*;
- C. Determining, pursuant to Public Service Law § 25(2), that Con Edison, in failing to implement Appendix F to the Global Settlement Agreement as approved by the Commission in *Opinion and Order 00-14*, knowingly failed or neglected to comply with an authorized order of the Commission;
- D. Directing the Department of Public Service, pursuant to Public Service Law § 24, to commence and prosecute to final judgment in a court of competent jurisdiction an action to recover penalties against Con Edison in an amount of up to \$100,000 per day for each and every day, commencing December 1, 2001, during which Con Edison has failed to implement an automatic enrollment process as ordered by the Commission;
- E. Directing Con Edison, in consultation with signatory parties, to forthwith develop and implement a plan for the automatic enrollment of eligible low income customers by computer cross matching Company customer tapes with HRA and DSS recipient tapes within 60 days from the issuance of an Order herein;
- F. Directing Con Edison, in consultation with signatory parties, to forthwith develop and implement a plan for education and outreach to low income customers regarding the low income reduced rate plan and create an application form to enroll eligible low

income customers manually;

- G. Direct Con Edison to: i) identify the point when it will be able to meet the enrollment targets set forth in the Settlement Agreement based on information contained in the Company's records;
- ii) determine the additional revenue available to it based on under enrollment and partial enrollment of low income customers during RY 5 and in each of the remaining years of the Settlement Agreement if automatic enrollment methodologies are not implemented; and
- iii) propose a plan which would direct the additional revenue associated with under-enrollment in the low income discount rate program which Con Edison retains to the enrolled low income discount rate program customers; and
- H. Grant such other and further relief as the Commission deems just and reasonable.

Respectfully submitted,

PUBLIC UTILITY LAW PROJECT OF  
NEW YORK, INC.

GERALD A. NORLANDER, ESQ.

CHARLES J. BRENNAN, ESQ.

BEN WILES, ESQ.

Attorneys for:

Public Utility Law Project of New York, Inc.

90 State Street

Albany, New York 12207

518-449-3375

BY \_\_\_\_\_  
CHARLES J. BRENNAN

Dated: June 21, 2002  
Albany, New York