

Testimony of Gerald A. Norlander  
Executive Director  
Public Utility Law Project of New York, Inc.

On

DRAFT NEW YORK STATE PLAN  
FOR THE 2007 - 2008  
LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

Before the

New York State Office of Temporary and Disability Assistance

July 30, 2007

Albany, NY

**Testimony of Gerald A. Norlander**  
**Executive Director, Public Utility Law Project of New York, Inc.**  
**On The Draft New York State Plan For the 2007 - 2008**  
**Low Income Home Energy Assistance Program**  
**July 30, 2007**

I am Gerald Norlander, Executive Director of the Public Utility Law Project of New York, Inc., "PULP". PULP advocates on behalf of low income New Yorkers in matters affecting energy and utility services, with emphasis upon matters affecting universal service, affordability and consumer protection. I thank the Office of Temporary and Disability Assistance - OTDA - for this opportunity to discuss the OTDA Draft Plan for the 2007-2008 Home Energy Assistance Program ("HEAP").

Lack of access to safe, affordable energy

- jeopardizes health and the safety of families and communities
- interferes with education, work, and social opportunities
- often precedes episodes of eviction and homelessness, and
- entrenches poverty.

When heat, power or telephone services are off, it is difficult to imagine how social services can be effectively provided to households in need.

New York has long recognized the importance of a safety net for households living in energy poverty. New York's energy safety net has many elements, including the Home Energy Fair Practices Act (HEFPA) under which the Public Service Commission regulates termination of utility service, the SSL § 131-s utility emergency assistance program under which OTDA and local social services districts provide financial assistance, the Weatherization program under

which eligible households receive services that can lower their bills through efficiency measures, utility low income programs that may include low income rate reductions, and, of course, the HEAP program, the focus of today's hearing.

New York's HEAP plan is designed to qualify for funding under the federal Low Income Home Energy Assistance Act of 1981 or LIHEAA. LIHEAA funding for low-income New Yorkers has stagnated at levels which have led to reductions in the value of HEAP benefits available to households. Taking inflation into account, the real base federal funding for LIHEAA has been reduced by 39.1% since 1982.<sup>1</sup> At times, additional federal funds are appropriated or released to address particular emergency situations caused by cold spells, heat waves, natural disasters or price spikes. Usually these episodic federal supplements arrive well after irreparable economic damage to vulnerable households has begun.

Unlike some other states, the New York legislature generally has not appropriated a state supplement to the HEAP program to enable it to continue operating after federal funds have been expended. As a result, the regular and emergency HEAP programs typically close in springtime, even though customers may still be terminated from utility service for unpaid heating bills accrued during the winter. Indeed, some utilities may accelerate termination activity as warmer weather arrives. Because of the inability of the HEAP program to meet heat related needs of eligible households, New York's plan continues not to include a cooling component, in the

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<sup>1</sup> "In 1982, appropriations for regular LIHEAP formula funds totaled \$1.752 billion. Congress appropriated \$1.98 billion for fiscal 2007, but because of inflation, the amount of household energy that could be purchased with the regular LIHEAP formula funds for fiscal 2007 was the same as the amount of energy that \$1.067 billion could buy in 1982. *Consequently the real purchasing power of the LIHEAP appropriations, adjusted for inflation, declined by \$685 million, or 39.1 percent, from 1982 to 2007. A fiscal 2007 appropriation of \$3.250 billion would have been needed in order to account for inflation in the energy sector and keep LIHEAP even with its 1982 amount for regular LIHEAP formula funds.*" Northeast - Midwest Institute (2007) [http://www.nemw.org/LIHEAPchart\\_PurchasePowerCurrent82.pdf](http://www.nemw.org/LIHEAPchart_PurchasePowerCurrent82.pdf)

absence of federal funds targeted for cooling assistance.

Even as the real value of federal assistance has stagnated, the New York PSC and the utilities have ushered in a new era of not only higher but also much more volatile utility energy prices. The added volatility can impose sudden price shocks for low income households. Because these households typically lack a savings cushion, these price shocks cannot readily be absorbed without hardship.

Sometimes we hear that customers can avoid these bill shocks with budget billing. Not so. In recent years, we have seen extreme spikes in both natural gas and electric bills for all customers, including those with budget billing. The budget billing program is designed to even out consumption variances, and does not protect customers from sudden price changes, which have become the norm with some utilities.<sup>2</sup> A recent analysis of the effect of unanticipated home energy cost changes concluded that "households do not do a good job of buffering the unanticipated, yet relatively small, variation arising from weather and fuel price extremes."<sup>3</sup> Accordingly, during the 2007 - 2008 OTDA needs assessment process, PULP urged OTDA to revise the relative portions of HEAP funding allocated to "Crisis" and "Regular" HEAP payments, so that 20% would be reserved to meet crisis needs, with about 55% to the "Regular" HEAP program. This is not unprecedented. In past years, New York's HEAP plans have allocated as much as 20% for crisis assistance.<sup>4</sup> Enlarging the emergency HEAP component would permit the

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<sup>2</sup> PULP Petition for Rehearing, Cases 05-E-0934 and 05-G-0935, Central Hudson Gas & Electric Corporation – Electric and Gas Rates ("The Commission's Reliance on Budget Billing to Provide a Fixed Price Opportunity for Customers Is Completely Misplaced") [http://www.pulp.tc/PULP\\_rehearing\\_brief.091306.pdf](http://www.pulp.tc/PULP_rehearing_brief.091306.pdf)

<sup>3</sup> Univ. of Calif. Energy Institute, *Evidence from Anticipated and Unanticipated Variation in Home Energy Costs*, April 2005. <http://www.pulp.tc/VolatilityHouseholdImpact.pdf>

<sup>4</sup> See HEAP Plan Archive, at <http://www.otda.state.ny.us/otda/heap/archive/default.htm>

program to serve more households in crisis. It could also extend the duration of the crisis program to help those whose high, unpaid winter bills lead to threatened springtime terminations, such as those which occurred this year after the program closed on May 15, 2007.<sup>5</sup> The Draft Plan, however, would allocate only 15% to the crisis assistance program in 2007 - 2008.

In the needs assessment process, PULP also urged simplification of the “energy burden” methodology for setting the Regular HEAP benefit levels, to reduce the number of classifications and to redirect benefits more to households with higher energy burdens. This is in harmony with the statutory provision which requires states to “provide, in a timely manner, that the highest level of assistance will be furnished to those households which have the lowest incomes and the highest energy costs or needs in relation to income, taking into account family size. . . .”<sup>6</sup> We continue to urge OTDA to consider this simplification and retargeting.

The Draft Plan at page 9 provides for use of a portion of HEAP funds for weatherization and grants of up to \$6,000 to replace inoperative or unsafe furnaces in the home of eligible households. The furnace replacement program element is important because it can address otherwise intractable household energy crises, prevent hardship and loss of life from inoperative or unsafe equipment, forestall future crises, and lessen future low income household energy burdens. In addition, replacement of inefficient old furnaces with Energy Smart units is likely to have significant environmental benefits.

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<sup>5</sup> See letter notifying local Commissioners of May 15 closing date.  
<http://www.pulp.tc/06-07HEAP.CLOSE..pdf>

<sup>6</sup> The state HEAP Program must “(1) not later than 48 hours after a household applies for energy crisis benefits, provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits; (2) not later than 18 hours after a household applies for crisis benefits, provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits and is in a life-threatening situation. . . .” 42 USCS § 8624(b)(5).

Under the current and proposed HEAP plans, 58 local social services districts (New York City HRA and departments of social services in each county outside New York City) administer the HEAP furnace replacement program in accordance with OTDA guidelines. PULP has recommended to OTDA that it specify that only equipment with Energy Star certification may be installed. While the initial cost of Energy Smart equipment may be slightly higher, a more efficient furnace will consume less fuel and reduce future household energy burdens significantly, and provide additional environmental benefits that will pay back the incremental cost of an Energy Smart unit within a short time. This is in harmony with the spirit of state Executive Order 111, issued June 10, 2001. That order states:

**Procurement of Energy-Efficient Products.**

Effective immediately, State agencies and other affected entities shall select ENERGY STAR energy-efficient products when acquiring new energy-using products or replacing existing equipment. NYSERDA shall adopt guidelines designating target energy efficiency levels for those products for which ENERGY STAR labels are not yet available.

With Energy Star home heating system equipment readily available, the state HEAP Plan should not allow state - administered HEAP funds to be used by local districts to purchase non-Energy Star equipment that could not be purchased by OTDA if OTDA were buying the equipment directly. We understand that guidelines will be issued to assure that Energy Star certified equipment will be installed whenever practicable, even if it costs a modest amount more. PULP also suggests that the draft HEAP plan for 2007 - 2008 be modified to allow expenditure of up to \$250 more for Energy Star equipment and to include this requirement:

Whenever practicable, all furnace system replacements will be Energy Star certified and installed in accordance with the manufacturer's specifications, best practices, and applicable codes.<sup>7</sup>

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<sup>7</sup> In addition, OTDA should analyze the impact of energy efficient furnace replacements on subsequent household energy consumption and bills. This information is likely to show major benefits to

The draft plan at page 24 indicates that an element of the weatherization funding will be the provision of air conditioners “in situations where at least one member of an otherwise eligible household has an acute medical condition that is exacerbated by extreme heat and documented by a physician.” For the reasons previously discussed, OTDA should specify that any air conditioners installed in this program should have Energy Smart certification to help reduce future bills.

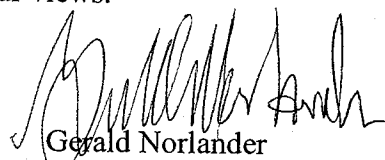
The Draft Plan at page 9 includes a restriction on furnace replacement and repair assistance that would deny aid to households who are buying their home under a contract for deed. Page 9 of the Draft Plan defines “applicant owned” as “holding the current deed or title to the premises, or having deeded life use of the premises.” This will operate to exclude eligible households who are legally responsible for the heating systems in their homes but lack funds to repair or replace them. Indeed, some of the neediest households may be those who are buying a home through a contract for deed because they cannot qualify for a mortgage. The cost of repair or replacement of essential heating equipment may be far beyond the means of these low income households. The risks to health and safety from unsafe or inoperable equipment are high. Energy is a necessity and when a main heating system is broken, costly emergency relocation may be necessary, or less safe substitutes may be employed. Denial of HEAP program assistance in these situations could lead to homelessness or tragedies. Prior state OTDA policy allowed furnace replacements for households with contracts for deeds, on a case by case basis. PULP believes there should be no exclusion of households with contracts for deeds, and that the draft plan should be changed to allow more flexible administration of the program.

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eligible households and the environment from this aspect of the HEAP program. This knowledge could stimulate further cooperative programs to leverage additional funds from other funding sources seeking to reduce pollution and carbon dioxide emissions with more efficient energy appliances.

Finally, the Draft Plan relies upon vendors to provide timely crisis assistance to eligible households. Some vendors may take the position that even when notified that a HEAP payment will be made to alleviate an emergency situation, they have discretion not to “acknowledge” the grant, and, for example, to insist upon additional payments.<sup>8</sup> OTDA should review its vendor agreements to include provisions which contractually bind the vendor to restore utility service or deliver fuel upon receiving notification that a payment is to be made on behalf of a HEAP household, without allowing any discretion on the part of the vendor to demand additional consideration or to refuse to acknowledge a proffered Emergency HEAP payment. This is needed in order to satisfy the federal statutory requirement that energy crises be resolved within 18 or 48 hours, depending on the degree of emergency.

Thank you again for the opportunity to present our views.



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<sup>8</sup> “Staff’s investigation into Velma Fordham’s death showed that Mrs. Fordham appears to have sought gas service from National Fuel after Erie County Department of Social Services discontinued her direct heating voucher. She had also been denied a continuation of her public assistance benefits. *While Erie County DSS provided Mrs. Fordham with a Home Energy Assistance Program (HEAP) grant, NFGDC refused to accept that grant as the sole basis for turning on gas service because of Mrs. Fordham’s past arrears.*” Case01-G-1223, Proceeding on Motion of the Commission Investigating the Death of an NFG Customer During the Winter of 2000-2001 and Whether National Fuel Gas Distribution Corporation Violated the Public Service Law and the Home Energy Fair Practices Act; Case 03-M-0903, Proceeding on Motion of the Commission to Investigate Alleged HEFPA Violations by National Fuel Gas occurring at 560 Spring Street, Buffalo, NY. ORDER APPROVING SETTLEMENT (Issued and Effective July 28, 2004). (*Emphasis added*).