

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**Petition for Emergency Relief To Vulnerable
Utility Customers Arising From The COVID-19
Pandemic**

Case 20-M-_____

PETITION OF THE CITY OF NEW YORK

Dated: May 11, 2020

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PRELIMINARY STATEMENT

The COVID-19 pandemic has caused massive disruption to people's lives and to the economy. There are now more than 333,000 COVID-19 cases in New York, and over 177,000 cases in New York City.¹ Statewide, the death toll is higher than 21,000 persons; in New York City, it is more than 14,500 persons.² Unemployment is at record levels, and it is not known how long it will take the economy to recover and jobs to be restored. Certain communities, especially in New York City, have been disproportionately impacted.³ Despite the best efforts of the State and local governments, and millions of New Yorkers, the pandemic persists. While the number of new cases per day in New York City is declining, the number remains significant and it is not yet known when people will be able to safely leave their homes and congregate with others.

Complicating this situation, the summer season is starting, and many long-range forecasts are predicting above average temperatures in New York.⁴ In NYC, hundreds of residents are

¹ <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Map?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n> and <https://www1.nyc.gov/site/doh/covid/covid-19-data.page>.

² *Id.*

³ <https://www.governor.ny.gov/news/video-audio-photos-rush-transcript-amid-ongoing-covid-19-pandemic-governor-cuomo-announces-22>.

⁴ *See, e.g.*, National Weather Service forecast at https://www.cpc.ncep.noaa.gov/products/predictions/long_range/lead01/off01_temp.gif.

hospitalized, and more than 100 people die, due directly and indirectly to heat, and over 85% of heat-stroke deaths occurred in homes without a working air conditioner, or with an air conditioner that was not used.⁵ Prior to each summer, the City of New York (“City”), in coordination with State social service and public health agencies, takes a multi-faceted approach to protecting at-risk individuals, families, and communities from heat-related illnesses and deaths. This summer, the previous measures available in New York City will be more limited and there is a high likelihood that people will be directed or encouraged to remain at home. Accordingly, new measures will be needed to protect these New Yorkers.

The combination of COVID-19 prevention measures, particularly “stay at home” guidance, and heat could exacerbate the rate of illness and mortality in vulnerable communities. Multiple actions are needed to avoid another public health emergency in New York City, and the City respectfully requests that the Public Service Commission (“Commission”) assist in this effort by removing an impediment to vulnerable New Yorkers staying safe at home. That is, the Commission should take action to eliminate concerns these individuals and families have associated with operating air conditioning units during periods of hot weather. As discussed in this Petition, given the uncertainties arising from COVID-19, it is imperative the Commission take action immediately.

⁵ See, e.g., Centers for Disease Control and Prevention (“CDC”), “Heat Illness and Deaths—New York City, 2000–2011,” *Morbidity and Mortality Weekly Report* 2013;62:617-621 (August 9, 2013); available at <https://www.cdc.gov/mmwr/pdf/wk/mm6231.pdf>; Davis and Novicoff, “The Impact of Heat Waves on Emergency Department Admissions in Charlottesville, Virginia, U.S.A.,” *Int J Environ Res Public Health*. 2018 Jul; 15(7): 1436; available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6068980/>.

BACKGROUND

There is a correlation between heat and health impacts. This correlation was amply demonstrated in Chicago in the summer of 1995, when a three-day heat wave resulted in 739 deaths, mostly comprised of low income residents.⁶ It also is proven by data collected within New York City.⁷ It is well-established and beyond dispute that there is a correlation between income level, energy affordability,⁸ and health.⁹

Based on the Chicago event and a deeper understanding of heat-related impacts on vulnerable residents, the City undertakes a multi-faceted effort to protect its vulnerable residents. One facet of this effort is to provide access to cooling centers, public pools, and other public locations where people could go (and congregate) during periods of high temperatures to stay cool, safe, and healthy.¹⁰ Another facet is better planning and better preparation for heat waves – coordinating emergency management, electric utilities, first responders, care providers, hospitals,

⁶ See, e.g., <https://www.chicagomag.com/Chicago-Magazine/July-2015/1995-Chicago-heat-wave/>.

⁷ CDC, “Heat Illness and Deaths – New York City, 2000-2011,” *Morbidity and Mortality Weekly Report*, 2013;62:617-621 (August 9, 2013); available at <https://www.cdc.gov/mmwr/pdf/wk/mm6231.pdf>.

⁸ A recent analysis conducted by the City found that more than 484,000 families, or more than one million New York City residents, have energy cost burdens in excess of the Commission’s target threshold. See Case 14-M-0565, Proceeding on Motion of the Commission to Examine Programs to Address Energy Affordability for Low Income Utility Customers, Petition of the City of New York to Re-Examine Statewide Utility Low Income Program Discounts (filed January 31, 2020) at 9.

⁹ See Diana Hernandez, *et al.*, “Energy Burden and the Need for Integrated Low-Income Housing and Energy Policy,” *Poverty Public Policy* (November 2010), available at www.ncbi.nlm.nih.gov/pmc/articles/PMC4819257/.

¹⁰ See, e.g., <https://www.chicagotribune.com/news/ct-chicago-heat-wave-20-years-later-met-20150715-story.html>.

aid centers, and others – to ensure that services and assistance are ready and available to at-risk individuals, families, and communities.

A third facet is encouraging people to use their air conditioners during periods of hot weather.¹¹ A fourth facet is comprised of programs – such as the Home Energy Assistance Program (“HEAP”) – that provide financial support to vulnerable, low income families to allow them to purchase air conditioners if cooling is not provided by the landlords. However, HEAP funds available for cooling assistance are limited, with only approximately \$500,000 split among 700 families.¹²

Pertinent to this Petition, studies have revealed that many vulnerable customers do not use their air conditioners out of concern that they won’t be able to afford their electric bills. More than one in seven New York City adults (15%) reported not using air conditioners during very hot weather, with 45% of those citing electricity usage and cost as reasons – 24% cited cost directly.¹³

¹¹ See <https://www1.nyc.gov/site/doh/health/emergency-preparedness/emergencies-extreme-weather-heat.page>. The CDC article cited in footnotes 5 and 10 noted “This investigation highlights risks to vulnerable persons living in NYC homes without air conditioning. Before and during heat waves, outreach to seniors and those with chronic physical and mental health conditions, as well as their caregivers, should emphasize protective measures to avoid heat illness. Susceptible persons should be encouraged to stay hydrated and use air conditioning, if available, during periods of extreme heat.”

¹² <https://otda.ny.gov/resources/caseload/2019/2019-09-stats.pdf> at Table 26.

¹³ Madrigano *et al.* “Awareness, Risk Perception, and Protective Behaviors for Extreme Heat and Climate Change in New York City.” *Int J Environ Res Public Health*. 2018 Jul; 15(7): 1433; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6069135/>.

COVID-19 morbidity and mortality studies mirror those of heat-related morbidity and mortality studies – both show correlations with poverty levels.^{14,15} This summer presents a unique public health threat as many of the same people who are heat-vulnerable are also at risk for serious COVID-19 illness. A severe heat wave during this pandemic could present a substantial risk to public health, increasing the incidence of heat-related illnesses and deaths, as well as heightening the potential for COVID-19 transmission.

DISCUSSION

POINT I

THERE IS A NEED FOR EMERGENCY RELIEF FROM HEAT EVENTS THIS SUMMER

As noted above, the COVID-19 pandemic and statewide measures to reduce transmission of the virus, particularly the New York on PAUSE Executive Order,¹⁶ present unique challenges

¹⁴ Pre-pandemic, there were approximately 130 heat-related deaths in New York City each summer. Matte, *et al.*, “Excess Mortality Attributable to Extreme Heat in New York City,” 1997-2013. *Health Secur.* 2016 Mar-Apr;14(2):64-70. doi: 10.1089/hs.2015.0059. There also were approximately 600 emergency room visits and hospitalizations due to heat-related illnesses and many more due to exacerbations of chronic conditions. CDC, “Heat illness and Death in NYC,” <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6231a1.htm>; Fletcher *et al.*, “Association of Summer Temperatures With Hospital Admissions for Renal Diseases in New York State: A Case-Crossover Study,” <https://academic.oup.com/aje/article/175/9/907/173224>; Lin *et al.*, “Extreme high temperatures and hospital admissions for respiratory and cardiovascular diseases,” *Epidemiology.* 2009 Sep;20(5):738-46. doi: 10.1097/EDE.0b013e3181ad5522. <https://www.ncbi.nlm.nih.gov/pubmed/19593155>.

¹⁵ Wadhwa, *et al.*, “Variation in COVID-19 Hospitalizations and Deaths Across New York City Boroughs,” *Journal of the American Medical Association*, doi:10.1001/jama.2020.7197 (April 29, 2020); available at <https://jamanetwork.com/journals/jama/fullarticle/2765524>.

¹⁶ Executive Order No. 202.8, “Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency” (issued March 20, 2020). The “Pause” has been extended multiple times through a series of additional Executive Orders (Nos. 202.9 - 202.28). Presently, it has been extended through June 6, 2020 (Executive Order No. 202.28, issued May 7, 2020).

and require changes to New York’s response to heat events. The State, the City, and public and private emergency managers are planning the manner in which they can provide assistance to preserve public health and safety during the COVID-19 pandemic. While we cannot predict what will happen on or around June 6, 2020, there is a reasonable potential that the New York on PAUSE Executive Order could be further extended within New York City. As the pandemic will be ongoing throughout the summer, it is very likely that many New Yorkers – especially those who are more at risk from COVID-19 – will continue to stay home.¹⁷

Indeed, the New York City Department of Health and Mental Hygiene recommends that New Yorkers with high COVID-19 complication risk stay at home as much as possible even as physical distancing measures are gradually lifted.¹⁸ As discussed above, analysis reveals that COVID-19 has disproportionately impacted the same vulnerable, mostly low income communities that historically have been disproportionately impacted by periods of high temperatures. Also as discussed above, the City is very concerned that this summer, the combination of COVID-19 prevention measures during a heat event and heat will create a new public health crisis, exacerbating the rate of illness and mortality in these communities.

In prior summers, options for people without air conditioning to stay safe during heat events included cooling centers, community facilities, pools, beaches, parks, and other similar facilities.¹⁹ However, this summer, once New York begins to re-open, the State’s guidelines

¹⁷ Cf. “Matilda’s Law,” guidelines announced by Governor Cuomo to protect the most vulnerable New Yorkers, including staying at home and limiting home visitations. See <https://www.governor.ny.gov/news/governor-cuomo-signs-new-york-state-pause-executive-order>.

¹⁸ <https://www1.nyc.gov/site/doh/covid/covid-19-prevention-and-care.page>.

¹⁹ Some people tend to congregate in restaurants, stores, and other locations that have air conditioning but which are not considered designated cooling centers. Access to these gathering points is likely to be limited this summer as well.

require continued social distancing and reducing the density of congregations of people.²⁰ Because of these guidelines, access to the aforementioned facilities is expected to be limited. For these reasons, the City already has begun to develop alternative aspects to its heat mitigation plan for this summer.

Many at-risk people will remain at home during the summer. It has been documented that indoor temperatures can be up to 20 degrees hotter than ambient temperatures, and the elevated indoor temperatures can persist for a day or more after ambient temperatures have declined.²¹ Because of this reason, and to preserve their health and safety, it is critical that vulnerable residents who stay at home use their air conditioners when there are periods of high temperatures. Accordingly, the impediments to using air conditioning – fear of the inability to pay electric bills, or being forced to choose between paying for electricity, medicine, food, and rent²² – need to be removed.

²⁰ <https://www.governor.ny.gov/new-york-forward/regional-guidelines-re-opening-new-york#phased-plan-to-re-open-new-york>.

²¹ White-Newsome JL, Sanchez BN, Jolliet O, *et al.*, “Climate change and health: indoor heat exposure in vulnerable populations,”. *Environ Res* 2012;112:20–7; Vant Hull *et al.*, “The Harlem Heat Project: A unique media-community collaboration to study heat waves,” *Bulletin of the American Meteorological Society*, 2018; available at <https://journals.ametsoc.org/doi/pdf/10.1175/BAMS-D-16-0280.1>.

²² While Consolidated Edison Company of New York, Inc. (“Con Edison”) has decided for now not to pursue terminations due to non-payment, that action in and of itself does not ensure that vulnerable residents will run their air conditioners. In addition to being forced to choose among critical expenses, these customers are concerned about the risk of having their electric service shut-off, or incurring large debts to the utility, both of which can be serious deterrents to using air conditioners.

POINT II

FINANCIAL SUPPORT FOR THE AT-RISK POPULATION IS THE APPROPRIATE FORM OF EMERGENCY RELIEF

The risks of staying home and not using air conditioning have been well-studied. For example, research has revealed that 85% of heat-stroke deaths in New York City occurred in homes where no air conditioner was used.²³ After consulting with its own social services experts and others, the City has determined that emergency financial support is critical to offset the electricity expense of operating air conditioning for the entire at-risk population who are electric customers enrolled in Con Edison's low income program.²⁴

To determine the amount of support needed, the City has developed assumptions regarding the size of a room air conditioner needed to cool an average New York City apartment and the approximate run-time each day. The working assumptions are that most units have a capacity of 8,000 Btu to 9,300 Btu, and that they will be used at least 6.5 hours per day. The latter assumption is based on an expectation that air conditioners would not be needed every day, and when used, would not be used continuously for extended periods other than during a heat wave.

The City identified the period of need as June 1 to September 30. While most high temperatures occur in July and August, the highest temperature in New York City in 2014 and

²³ <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6231a1.htm>.

²⁴ A part of this population lives in public housing served by the New York Power Authority, and another portion is served by PSEG Long Island; the City is limiting the request for relief in this Petition to the utility subject to its jurisdiction – Con Edison – and to the direct customers of Con Edison, consistent with the parameters of its low income program eligibility requirements. The City has engaged in discussions with PSEG Long Island regarding providing similar relief to its at-risk customers and is still assessing how to provide assistance to the remaining at-risk population.

2015 was in September.²⁵ Moreover, the maximum recorded temperatures for each day of June, and for each day of September except September 28, 29, and 30, have reached or exceeded 90 degrees.²⁶

As explained above, the heat mitigation plan targets the City's vulnerable residents, who have been disproportionately impacted by COVID-19 and continue to be at significant risk from the pandemic as we move into the summer months. To facilitate and expedite implementation of the relief requested in this Petition, the City proposes to leverage information and processes already in place regarding the identities of low income individuals and families who are Con Edison customers. As provided in Con Edison's rate plan, the Company matches its customer records with the client lists maintained by the City's Human Resources Administration and Westchester County Department of Social Services four times per year.²⁷ This information can be utilized to identify the Con Edison customers to whom the emergency relief will be provided.²⁸

According to Con Edison's most recent Low Income Report, this matching effort has identified 441,138 customers who would be eligible for the emergency relief sought herein.²⁹ The

²⁵ <https://www.currentresults.com/Yearly-Weather/USA/NY/New-York-City/extreme-annual-new-york-city-high-temperature.php>.

²⁶ <https://www.weather.gov/media/okx/Climate/Almanacs/nyc/nycjun.pdf> and <https://www.weather.gov/media/okx/Climate/Almanacs/nyc/nycsep.pdf>.

²⁷ Cases 19-E-0065, *et al.*, Consolidated Edison Company of New York, Inc. – Electric and Gas Rates, Order Adopting Terms of a Joint Proposal Establishing Electric and Gas Rate Plan (issued January 16, 2020), Attachment A, Section N.1.

²⁸ The matching program identifies the City's most economically vulnerable families – people who receive any of multiple types of public assistance, including Supplemental Nutrition Assistance Program, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, and HEAP.

²⁹ Cases 19-E-0065, *et al.*, *supra*, Con Edison Electric and Gas Low Income Program Report, filed April 30, 2020. This number includes customers in New York City and Westchester County. While the City has focused on the needs of its residents, for public health reasons it

next matching cycle is in progress and should be completed sometime for implementation by July 1, 2020. It is likely that the match will identify additional customers who are in financial distress because of COVID-19 and would qualify for emergency relief. Because the match is not completed and the data is in flux, the City does not know the increase in the number of eligible customers.

Con Edison already has its low income program participants coded in its computer systems, and adding new participants involves a pre-established, pre-programmed process. Therefore, there should only be a minimal additional administrative effort needed to provide the requested assistance. Given the short period of time until hot weather periods could commence, and the potential adverse health impacts arising from not using air conditioning during periods of high temperatures, it is important that this relief be easily implementable, and implemented by June 1, 2020. Using systems and data already in place will allow for expeditious implementation and best address this public health need.

Using the above information, the City estimated the incremental amount of energy customers would use each month to operate their air conditioners. This increment was then multiplied by Con Edison's current delivery and commodity rates. The result is an estimated incremental cost of \$40 per customer per month. This translates to an estimated cost of \$17.6 million per month, or \$70.5 million over the four month period. The City's request in this Petition is that all qualifying customers receive relief. It is important to note that if the results of the ongoing matching process identify additional qualifying customers, their inclusion should not

would be appropriate for the relief it seeks to apply to similarly situated customers in Westchester County.

cause a materially greater impact; an increase of 50,000 qualifying individuals would add approximately \$6 million to the total cost.³⁰

In these unprecedented times, it is imperative that attention is given to all segments of the economy, and all customers. While this request for emergency support may seem extraordinary, we have never experienced similar circumstances or conditions. The federal and State governments already have taken other extraordinary measures to address COVID-19; this request should be viewed in that context and as an exacerbation of the ongoing public health crisis caused by heat, rather than in the context of ordinary circumstances.

The overall cost to the general body of Con Edison's customers will be minimal. We estimate that residential customers would see a bill impact of less than one dollar per month, small commercial customers would see a bill impact of a little more than one dollar per month, and large commercial customers would see a bill impact of a little more than \$13 per month.³¹ Even though these impacts are minimal, the economic impacts of the pandemic are affecting all customers, large and small. Accordingly, the recovery should occur once the crisis has abated to further minimize the impacts on ratepayers. The City respectfully recommends that the Commission therefore allow Con Edison to defer these costs for later recovery, as determined by subsequent action of the Commission, such as when the economy has recovered.

The Commission has previously held that “[e]nsuring adequate [energy] access for those who face financial difficulties is a public concern, because the utility and societal cost of leaving

³⁰ The matching process will be completed by July 1, 2020 to ensure that this program is implemented for the typically hottest months (*i.e.*, July, August, and September). The above estimate assumes that the additional customers would start receiving emergency relief by July 1, after the match process is completed.

³¹ These estimates assume that the costs of providing the emergency relief are spread over a 12-month period.

the economically disadvantaged without such access can be much greater than the cost of maintaining utility service for these customers.”³² This request for emergency relief is a clear affirmative step toward addressing the disparity affecting vulnerable New Yorkers who face another potential health crisis this summer, and it should be part of the solution taken by the State.

The City respectfully urges the Commission to act quickly to provide needed support for this vulnerable population and take strong affirmative action to prevent the Chicago experience from 1995 from occurring in New York City this summer. Commission action will help to ensure that customers staying home because of COVID-19 will remain safe during periods of high temperatures this summer.

POINT III

THE PSC CAN TAKE EXPEDITED ACTION UNDER THE STATE ADMINISTRATIVE PROCEDURE ACT

As the Commission is aware, Section 202(6)(a) of the State Administrative Procedure Act (“SAPA”) authorizes it to take action on an emergency basis and without the need for a notice of proposed rulemaking and public comment period where “an agency finds that the immediate adoption of a rule is necessary for the preservation of the public health, safety or general welfare and that compliance with the requirements of subdivision one of this section would be contrary to the public interest.” Indeed, the Commission has recently relied on this statute for a series of COVID-related actions as “necessary for the preservation of the public health, safety or general welfare” of customers.³³ The City respectfully submits that, for the reasons set forth above, the

³² Case 14-M-0565, Proceeding on Motion of the Commission to Examine programs to Address Energy Affordability for Low Income Utility Customers, Order Adopting Low Income Program Modifications and Directing Utility Filings (issued May 20, 2016) at 45.

³³ See, e.g., Cases 17-E-0238, *et al.*, Niagara Mohawk Power Corporation d/b/a National Grid - Electric and Gas Rates and The Brooklyn Union Gas Company d/b/a National Grid NY – Gas

relief requested herein is needed for the preservation of public health and safety, and that delaying consideration of this request until expiration of a statutory public comment period would be too late to provide the support this vulnerable population needs in June and July.

While emergency action in this matter is permissible under SAPA, the City recognizes that this request for relief is significant. To provide the Commission the benefit of multiple perspectives on this matter, the City suggests that the Commission provide a brief opportunity of seven to ten days for interested parties to submit comments on it. A comment period of this length would allow the Commission to take action, and Con Edison to take the steps necessary to implement the relief, prior to June 1.

Rates, Order Postponing Approved Electric and Gas Delivery Rate Increases and Updated Reduction to the Low Income Discount Credit and Temporarily Waiving Certain Tariff Fees (issued March 25, 2020); Case 20-E-0155, In the Matter of Interconnection Deadline Modifications, Order Suspending Certain Interconnection Payment Deadlines (issued April 6, 2020; Cases 20-G-0140, *et al.*, In the Matter of Gas Corporations Response to COVID-19 State of Emergency, Order Granting Extension of Time to Complete Gas Service Line Inspections and Leakage Surveys (issued April 15, 2020).

CONCLUSION

For the foregoing reasons, providing emergency support to protect vulnerable New York City residents' health is appropriate and consistent with the Commission's statutory mandate under Public Service Law 65(1) to provide safe and adequate service at just and reasonable rates. The City respectfully urges the Commission to act expeditiously in approving the relief requested herein.

Respectfully submitted,

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