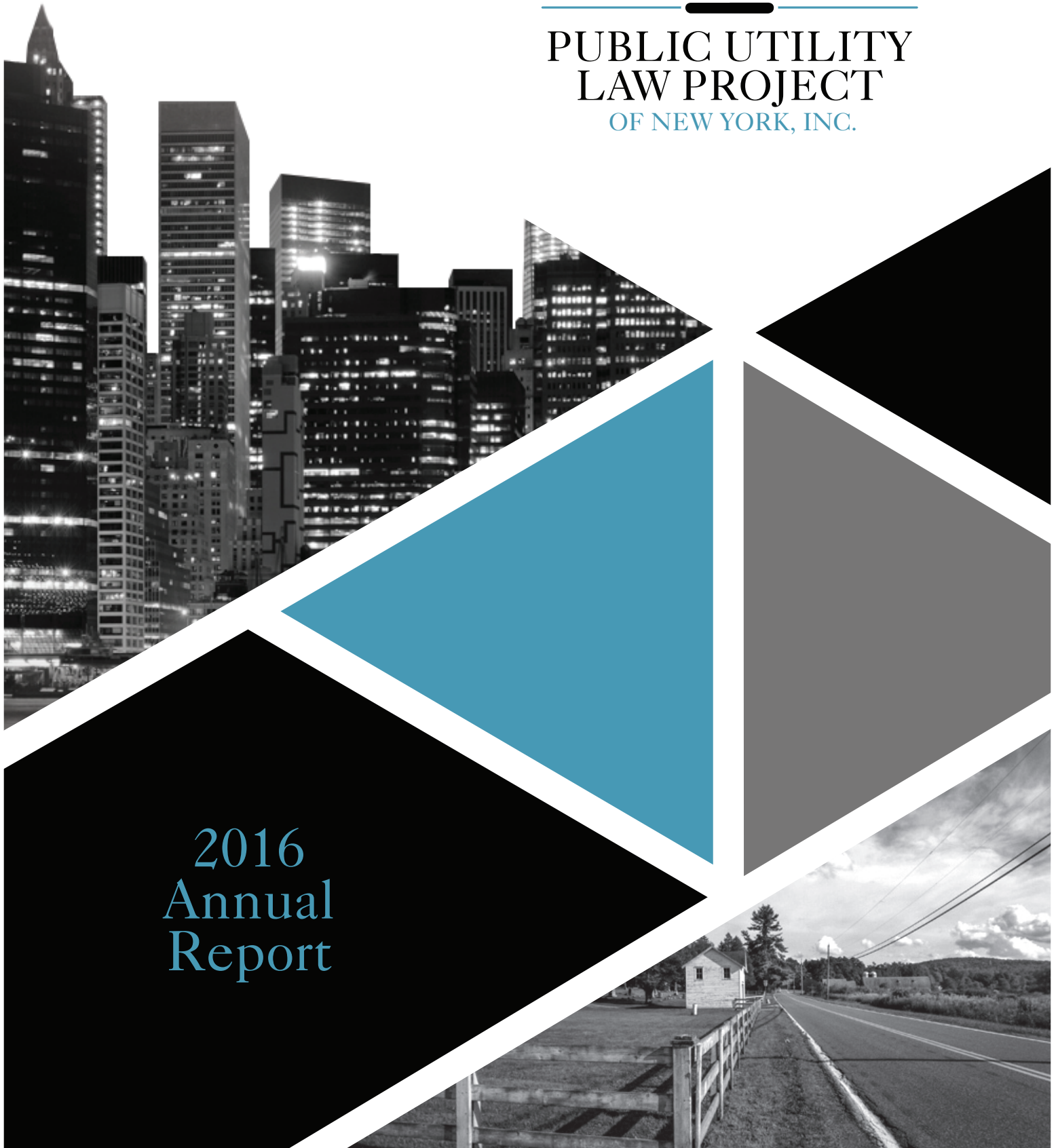


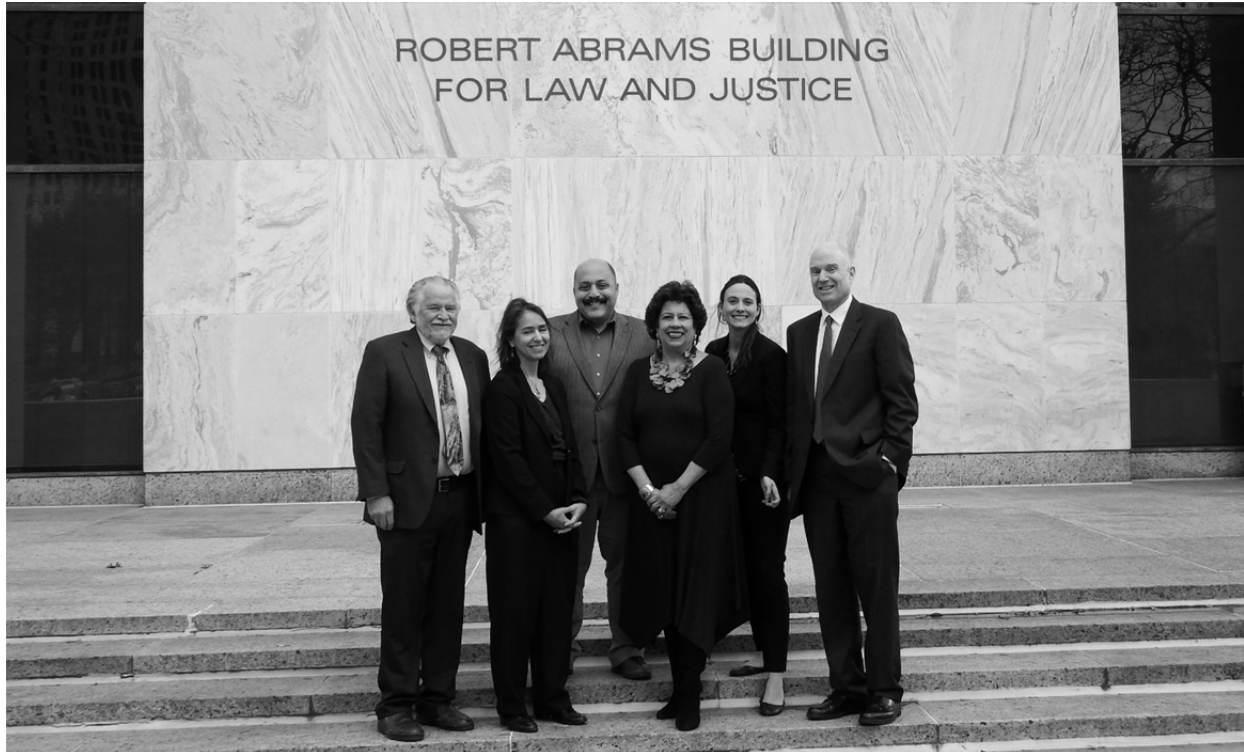


PUBLIC UTILITY
LAW PROJECT
OF NEW YORK, INC.



2016
Annual
Report

2016 ANNUAL REPORT OF
THE PUBLIC UTILITY LAW PROJECT OF NEW YORK



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Dear Members of the Board:

As you know, for many years the Public Utility Law Project of New York (PULP) issued an annual report to our Board. PULP also shared that report with our New York and national partners in low-income advocacy, New York’s public interest law firms, New York’s elected officials, and other participants in the field of public utility policy, law, and advocacy.

PULP ceased producing annual reports in 2008 due in no small part to PULP’s defunding in the austerity budgets of 2009–12 and its difficulty in reestablishing the organization after the legislative grant was restored by the Assembly in 2012. This report restores PULP’s previous practice but will not cover in detail the years from 2008 to 2014 other than through the enclosed letter of PULP’s previous Executive Director, Gerry Norlander.

When I became Executive Director in 2015, my initial two-year plan was three-fold: (1) leverage PULP’s strong name recognition among public utility “insiders” to raise name recognition broadly across the state, and particularly in New York City; (2) largely defer rate case activity to 2016 while focusing as powerfully as possible in 2015 on the unprecedented number of “generic” policy cases arising from or in addition to New York’s “utility of the future” transformation via the Reforming the Energy Vision (REV) proceeding; and (3) reinvigorate PULP’s fundraising activities while developing a working relationship with the Board to best utilize their resources and energies. This report is both a result of that three-part strategy and a reflection on PULP’s activities taken in furtherance of those goals.

In my first two years as Executive Director, we have achieved a number of victories for the low- and fixed-income utility consumers who are the focus of our thirty-five-year-old mission. Additionally, 2015 and 2016’s activities have laid the foundations for powerful and effective advocacy in 2017, a time when low- and fixed-income New Yorkers are under unprecedented negative political and economic pressure. In 2017, PULP has joined as a party in two major rate cases and the evidentiary proceeding re-examining the energy service company (ESCO) industry, as we simultaneously continue building and/or strengthening partnerships to support our other litigation, policy, education, and advocacy activity.

This report is, like all of PULP’s work, a team project to which each staff member contributed several sections. And like all our team products, it benefits from the input of PULP’s intelligent, hardworking, and caring staff. In the past two years, PULP has also benefited from partnerships with nationally known consultants and with Saul Rigberg, an incredibly experienced and tenacious utility attorney who was convinced to delay his retirement from utility consumer protection advocacy for one year to work as a consultant and part-time Special Counsel in 2016. And of course, we benefited mightily from Gerry Norlander’s decision to delay his retirement and transition to consultant and expert witness until the end of 2016.

Thank you for your support in my first two years as Executive Director, and thank you for your commitment to PULP’s mission. Now more than ever, PULP is vital to the almost 50% of low-, fixed-, and moderate-income New Yorkers whose financial struggles are a daily challenge.

Sincerely,

/s/

Richard Berkley, Esq.
Executive Director

Dear Fellow Board Members:

I am pleased to report that after a hiatus of eight years the Public Utility Law Project of New York (PULP) has prepared an annual report for the Board covering 2016 in detail and 2015 in summary. The report covers PULP’s advocacy, educational, and litigation activities on behalf of New York’s low- and fixed-income households.

As I am sure you agree, 2015 and 2016 have represented unusually active years on the part of the Public Service Commission, both in the policy and rate-making arenas. Among other major policy cases, the Reforming the Energy Vision (REV) proceeding has spawned approximately thirty sub-proceedings during the two years it has so far been in process. The year 2016 also contained the Low-Income Rate/Affordability proceeding, three ESCO proceedings, the Clean Energy Fund and Clean Energy Standard proceedings, as well as the Con Edison, National Grid–NY and –LI (KEDNY and KEDLI), National Fuel Gas, New York American Water, and Suez Water rate cases, and the Time Warner–Charter and Cablevision–Altice mergers. PULP was a zealous advocate for New York’s low- and fixed-income utility consumers in all those cases.

In addition to playing a key role in the cases I have cited so far, PULP has also restarted its utility rights and continuing legal education (CLE) trainings on a statewide basis, forged new relationships with New York City’s City Council and Public Advocate, and has directed investigatory journalists’ attention to several major utility issues—coverage that has driven change. PULP has also had success with obtaining grants in 2016 from the Berk Foundation, the Energy Foundation, and the Fertel Foundation, and it is continuing to seek funding for programmatic activities and for rebuilding the unrestricted funds drawn down when the elimination of its state funding forced PULP to temporarily close its operation. Finally, I wish to note that with low-income rate-reduction programs under discussion or development at New York’s two largest private water companies, as well as negotiated into the offerings of New York’s two largest cable companies, *PULP’s advocacy in 2016, in partnership with the Public Service Commission (PSC), has resulted in low-income programs being created or strengthened in every regulated public utility industry in New York for the first time in history.*

Overall, I believe that PULP is well positioned for an active and effective 2017. I ask that you, like I, continue to provide your insight, guidance, and energies in supporting PULP as it continues to advocate zealously for New York’s low- and fixed-income utility consumers.

Sincerely,

/s/

Richard Winsten, Esq.
Board Chairman

Dear Board Members:

It gives me great pleasure to communicate with you and PULP’s many partners through this annual report, seven years after PULP had to close its doors in 2010 during the Great Recession. The years between getting PULP back up and running in 2012 and 2016 went by quickly, but I’d like to touch upon a few milestones.

The lingering effects of the Great Recession exacerbated the problems of low-income customers facing unaffordable utility service and increased threats of service termination for nonpayment. A 2011 AARP report, “The Quiet Blackout,” showed that more than 40% of New Yorkers fifty and older had difficulty paying their utility bills, and that in 2010 the major New York utilities collectively terminated electric and natural gas service to 321,995 residential customers. In addition, the problem of unaffordability was exacerbated by higher bills and the questionable practices of ESCO providers. Consequently, as we revived PULP we advocated for making bills more affordable through low-income rates, for less reliance on service interruption as a bill-collection measure, and for measures to remedy ESCO overcharges and sharp practices.

In 2012, after PULP funding was restored, Bill Yates and I made important discoveries in National Grid–Upstate’s rate cases, 12-E-0201 and 12-G-0202. While we knew anecdotally that ESCO customers often paid more than if they had not switched, neither the ESCOs nor regulators maintained or divulged comprehensive data actually comparing bills of these customers to what they would have been charged by the traditional utilities. However, because the utilities purchase ESCO receivables, and earn revenue for collecting them, they have the data on what ESCO customers are billed—which could be compared with what the utility would have billed for full service. In response to discovery requests and litigation rejecting ESCO claims of confidentiality, National Grid provided two full years of data proving that ESCOs generally charge customers significantly more for energy than the utility. This discovery, Bill Yates’s testimony, and the consequent public exposure of ESCO overcharges led the PSC to start a generic proceeding Case 12-M-0476 in October 2012 to review ESCO pricing and business practices, which led advocates like PULP, the PSC, and others onto the path that has brought us to 2016’s ESCO Orders and the current ESCO evidentiary proceeding described in this annual report.

In 2012 and 2013, PULP was also enmeshed in the Central Hudson merger and rate cases, other major rate cases of Con Edison and National Fuel, and two telephone investigations. In the National Fuel Gas case, the utility was found to have been earning roughly \$10 million over its allowed return on equity, for a rate of return higher than 13%. PULP was the only party not to support the eventual settlement, due to concerns that the refunds were inadequate and would not be used appropriately to benefit customers.

In the world of telephone, in 2013 PULP opposed Verizon’s effort, after the Sandy storm, to replace landline phones with a wireless substitute. PULP also found that, even as Verizon’s service quality and physical plant continued to decline, the PSC was reducing the scope of service quality review, and so began working on a report on the state of New York’s telecommunications that was released in 2014. PULP also fought an attempt by Time Warner Cable, now one of New York’s largest telephone companies, to be excused from service quality reporting and customer protection rules, as well as other industry efforts to deregulate phone service.

In 2014, PULP published a report called “It’s All Interconnected” that shone a powerful light on Verizon’s purposeful disinvestment in its copper infrastructure, failure to maintain required customer service quality, and policy of pushing legacy copper customers to wireless

service. Although the PSC did not take action in 2014 on that report, in 2015 it supplied the basis for much of the intervenors' positions in the PSC's subsequent State of New York Telecommunications proceeding that is discussed in this annual report. PULP also opposed the Time Warner–Comcast merger, a battle that extended throughout the year. In late summer, PULP began seeking a new Executive Director, as I began looking forward to retiring.

In January 2015, Richard Berkley became the new Executive Director of PULP. I had known Richard for almost ten years, and with my shift to Of Counsel status, I was pleased to be able to help him transition to the organization. A great achievement of Richard's in 2015 was the improvement of PULP's credit line to help weather the long and unpredictable delays between appropriations and actual receipt of funds under contracts. In 2015, I worked with him and PULP's outstanding new Staff Attorney, Lisabeth Jorgensen, on amicus briefs in two cases at the U.S. Supreme Court, *Hughes v. Talen Energy Marketing* and *Federal Energy Regulatory Commission v. Electric Power Supply Association*.

As 2016 came to a close, I began planning for a further transition to consulting status with PULP. Although no longer active in day-to-day lawyering, I am pleased to see PULP's progress in 2015 and 2016, and believe the organization is in good hands.

Sincerely,

/s/

Gerald Norlander, Esq.

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I. Rate Case Litigation

Introduction

In 2016, PULP was engaged in five major rate cases: three in energy and two in water. Such a surfeit of rate cases in one year is unusual, but they arose from the PSC’s commencement of the many REV proceedings and its delay of major rate cases past 2015 so that the utilities could file cases with REV elements included. Acting as lead attorney in this environment was PULP’s Staff Attorney, Lisabeth Jorgensen, who joined as a full-time employee in August 2015. In addition, Special Counsel Saul Rigberg and Of Counsel Gerry Norlander were able to provide insight where necessary. Bill Yates (Con Edison, NFG, and National Grid–LI and New York City) and Richard Berkley (Suez Water–Rockland) acted as expert witnesses and were also on the litigation team in the other cases.

The issues presented in the cases were widely disparate, as were the sought-for and actual outcomes. In general, although PULP did not “win” all the cases, our intervention led to some transformative changes in state and utility policy, and the increases sought by the companies were significantly reduced and/or balanced by other wins. Equally important, PULP’s presence as a party in three different types of energy rate cases, and two water cases, in the same year, was a significant and deliberate dedication of resources to signal to the PSC, and to interested parties, that PULP’s activity in rate cases had resumed, and to meet one of the Executive Director’s expressed goals.

Summaries of the 2016 Major Rate Cases

a. American Water–New York (PSC Case Number 16-W-0259)

The American Water case posed three issues of concern to PULP. First, the Company’s purchase of several small fiscally troubled private water companies, and their merger into the Company’s service areas, created widely disparate rate increases and inconsistent basic service charges. Second, the Company’s service territory contains large numbers of low- and fixed-income customers that were having difficulty affording their water bills. Finally, the Company operates in a high tax area, and there was strong concern from local activists that there would be additional upward pressure on rates with the sunseting of a tax exemption that applied to private water companies.

To PULP’s satisfaction, the settlement agreement filed with the Commission contained provisions addressing PULP’s concerns for moderating increases and rolling back increases of “basic service charges”, and also for the creation of a low-income program, but the joint proposal issued into effect by the Commission does not. Furthermore, no solution was reached in the tax issues. This setback is disappointing especially considering that the parties were able to reach a settlement position that in PULP’s opinion was more consumer friendly than the resulting joint proposal approved by the Commission.

b. Con Edison (PSC Case Numbers 16-E-0060 & 16-G-0061)

PULP submitted testimony from Board Member Alfred Fuente and Director of Research Bill Yates. Mr. Fuentes’s testimony focused on the issue of meter seizures (i.e., replevins), actions that garnered our attention in late 2015 and were the subject of the *Village Voice* exposé

titled "Con Ed's Kangaroo Court: How a Private Company and our Public Courts Put Consumers in the Hot Seat" (February 2016).¹

After significant negotiation in the case, PULP agreed not to oppose the joint proposal drafted by PSC Staff and Con Ed. As part of the settlement agreement, the Company agreed to institute additional processes prior to initiating a replevin case to seize their utility meter. Now Con Edison sends residential customers facing meter seizure a letter written in conjunction with PULP that better explains what the replevin process is and how to avoid termination of service.

c. National Fuel Gas (PSC Case Number 16-G-0257)

National Fuel Gas (NFG) is a gas-only utility that serves Western New York. The company's most prominent metro areas served include Buffalo, Niagara Falls, and Jamestown, NY. The Commission approved a rate order in April 2017 that considered several issues raised by PULP in testimony and throughout this litigated proceeding. PULP opposed the Company's proposal to increase the basic service charge (aka the "fixed charge"), which was subsequently not increased because it would have had strong regressive impacts on low-income customers if it had been accepted. Additionally, the rate increase was lowered from \$41.7 million to \$5.9 million, from roughly 7% to only about a 1.4% increase for an average residential customer. The bill impact was also lowered from the Company's proposal of an increase of \$69 on average to approximately \$13 for an average residential customer for the one year covered by the rate plan. Finally, the Company's existing low-income program will be maintained another year while the Company accrues funding necessary to implement the State's new low-income rate-reduction plan (see Case 14-M-0565), and the Company was required to create a report in consultation with Staff and interested parties on potential "ringfencing"² measures.

d. National Grid–NY & –LI (PSC Case Numbers 16-G-0058 & 16-E-0059)

The two New York City–Metro gas companies owned and operated by National Grid both sought huge rate increases in 2016, and PULP strongly opposed both rate requests. In the KEDNY (f/k/a Brooklyn Union Gas) case, the increase to customer rates equates to roughly 40%, and the Company also requested a separate additional surcharge that places 100% of the costs for the cleanup of the Superfund sites at the Gowanus Canal and Newtown Creek on the ratepayers. The rate increases sought in KEDLI (KeySpan-Long Island) were also massive relatively speaking.

PULP was the only party (and sole consumer advocacy entity) to oppose the settlement agreement. We opposed the settlement on the bases that (1) it unfairly allocated 100% of Superfund costs to ratepayers;³ and (2) questions about HEFPA compliance are prevalent in the Companies' operations, as demonstrated by evidence showing that the use of legally required

¹ Replevin actions are unlike any other lawsuits in New York, and have been challenged before as to their constitutionality. See, St. Johns Law Review, "CPLR 7102: Replevin Statute Upheld Against Constitutional Attack,"

<http://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=3180&context=lawreview>.

² See, <https://www.investopedia.com/terms/r/ringfencing.asp>.

³ See, <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=11-M-0034>; and see, Order Concerning Costs for Site Investigation and Remediation, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={AC9EFACF-2A01-4629-9B7C-F5637530A026}>.

deferred payment agreements (DPAs) has been steadily declining despite the continual increase in customers in arrears over the past decade. Although the Commission approved the settlement agreement in these proceedings, PULP was able to get a comprehensive story in the New York Daily News on the Superfund cleanup cost allocation issue, and was well supported by New York City Council Members and Brooklyn and Queens elected officials on these topics.

e. Suez Water (Rockland County) (PSC Case Number 16-W-0130)

The primary focus of the case was two issues that were equally important to the Company and the intervenors, who were nonetheless diametrically opposed. The Company wished to include in customer rates approximately \$54 million in expenses for a never-built desalination plant, and it was not supportive of engaging in a strong conservation program in the new rate plan. The community and consumer and environmental advocates believed the shareholders should pay for the plant and that a robust and state-leading conservation program was necessary to avoid future water problems. PULP worked with that coalition and additionally, fought for a low-income rate for income-eligible households.

The coalition of community, consumer, and environmental advocates fought cleverly and diligently, getting the county and state legislators and the news media on their side and supporting their positions. In the end, the Commission compromised on the parties' positions, reducing the recovery for the never-built desalination plan and instituting the conservation program at a lesser level of activity. The settlement proposal also contains a mechanism for proceeding in 2017 toward creating a low-income water program for the Company.

II. Policy Proceedings

Introduction

The year 2015 was an extraordinarily busy year for policy (aka “generic”) proceedings at the Public Service Commission. While there are a number of such proceedings that occur on an annual basis, the beginning of the REV proceeding added an extraordinary number of new statewide ones related to the principal REV proceeding (Case 14-M-0101). For example, in 2015 the Clean Energy Fund (Case 14-M-0094), Community Choice Aggregation (Case 14-M-0224), Community Net Metering (15-E-0082), Distributed Energy Resources Oversight (Cases 15-M-0180 and 15-M-0127), Large-Scale Renewables (Case 15-E-0302), Low-Income Affordability (Case 15-M-0565), and Net Metering Updates (Cases 14-E-0151 and 14-E-0422) were all active simultaneously, along with numerous unnumbered REV spinoff proceedings, work groups, and collaboratives. PULP focused on those cases that seemed the most resource rewarding or had the potential to advance or undermine affordability as explained below.

Summaries:

a. Clean Energy Fund (14-M-0094)

The Clean Energy Fund proceeding began in May 2014.⁴ The stated goal was to “provide continuity of funding for a full suite of ratepayer-funded clean energy initiatives, flexibility to allocate funds among initiatives in response to market conditions, and a transparent

⁴ See, Proceeding on Motion of the Commission to Consider a Clean Energy Fund, Case 14-M-0094, May 8, 2014.

upper limit on contributions from ratepayers.”⁵ The Commission issued a request for comments on November 6, 2014, in its Notice Soliciting Comments on the Clean Energy Fund Proposal (CEF) submitted by NYSEDA on September 23, 2014 and to NYSEDA’s recommendation for a 2015 Reallocation Supplement that was filed on November 17, 2014.

PULP filed joint comments with AARP in December 2014.⁶ The comments responded to NYSEDA’s plan(s) and took into account early filings in the Reforming the Energy Vision (REV) proceeding.⁷ Among their policy recommendations, PULP and AARP suggested that, rather than solely use the proposed \$5 billion to “provide long-term funding certainty to local businesses and significant flexibility to the administrators of the State’s clean energy programs,” some of those funds should be used to address unaffordability issues,⁸ which the State’s 2014 draft energy plan highlighted as a serious concern in New York.⁹

While PULP’s suggestion for funding of an enhanced low-income rate-reduction program was not accepted in this proceeding, it was later taken up in the low-income affordability proceeding (14-M-0565) that was begun by Commission Order on January 9, 2015.¹⁰ PULP continues to monitor the CEF case, and we look for opportunities to propose policy changes that would direct additional funding toward low-income affordability issues.

b. Clean Energy Standard¹¹ (Case 15-E-0302)

The Clean Energy Standard (CES) proceeding arose in two parts. First, the 2015 State Energy Plan called for significant reductions in greenhouse gas output—an 80% reduction from 1990 levels by 2050.¹² Second, the Governor announced in December 2015 that he had ordered the Public Service Commission to create a clean energy standard mandating that 50% of New York’s energy come from renewable energy resources by 2030.¹³

⁵ See, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={9AEDFA20-DD04-42BB-A502-1A5F1355C159}>, last visited February 24, 2017.

⁶ See, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={5B731D62-0982-4EA2-B581-1CAAB428139F}>, last visited February 24, 2017.

⁷ PULP and AARP were assisted in these comments by Barbara Alexander, a consumer affairs consultant with over thirty years of professional experience in consumer protection policies and programs with respect to consumer credit transactions, public utility regulatory policies, and regulation of retail competitive markets.

⁸ See, Comments of PULP and AARP on the Clean Energy Fund Proposal (CEF Comments), December 8, 2014, at pp. 3–4; <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={5B731D62-0982-4EA2-B581-1CAAB428139F}>.

⁹ New York 2014 Draft State Energy Plan, at p. 7; <https://energyplan.ny.gov/-/media/nysenergyplan/2014stateenergyplan-documents/2014-draft-nysep-vol1.pdf>.

¹⁰ See, Proceeding on Motion of the Commission to Examine Programs to Address Energy Affordability for Low-Income Utility Customers, Case 14-M-0565; <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=14-m-0565&submit=Search+by+Case+Number>

¹¹ See, <https://www.governor.ny.gov/news/governor-cuomo-announces-establishment-clean-energy-standard-mandates-50-percent-renewables>, last visited February 24, 2017.

¹² See, <https://energyplan.ny.gov/>, last visited February 24, 2017; and see, <https://energyplan.ny.gov/Plans/2015>, last visited February 24, 2017.

¹³ See, <https://www.governor.ny.gov/news/governor-cuomo-directs-department-public-service-begin-process-enact-clean-energy-standard>, last visited February 24, 2017; and see, https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Renewable_Energy_Letter.pdf, last visited February 24, 2017.

PULP began monitoring this proceeding in early summer 2015, when it had originally arisen as a proceeding to reform the procurement of NYSERDA’s “Main Tier” of renewables.¹⁴ PULP subsequently attended the technical conference in July 2015, at which presenters from the PSC and NYSERDA explained the transition away from the historic treatment of NYSERDA’s “Main Tier” of wind and other renewables and toward a reinvigorated focus on wind in the new “large-scale renewables” program. PULP increased its scrutiny of this proceeding due at least in part to some concerns arising from DPS and NYSERDA’s proposals regarding new models for financing construction of large-scale renewables. Because of PULP’s support of the potential for wind development to provide low-cost renewable energy for low-income households, PULP determined to file comments and become a party at the next inflection point in this case.

PULP became a party in early 2016, only a few months before DPS Staff filed its “Responsive Proposal” on July 8, 2016. The Responsive Proposal is the first use in New York of the federal “Social Cost of Carbon” metric, and it departed substantially from the April 2016 DPS Staff White Paper on projected costs of the Clean Energy Standard (CES).¹⁵ Despite the novelty of that and several other issues in the Responsive Proposal, the PSC only allowed six (6) business days to respond. A number of parties sought an extension to this unusually brief period to file comments, arguing that a new State Administrative Procedures Act (SAPA) notice should be issued and forty-five (45) days given to respond. The PSC disagreed and added only four (4) days to the reply period.¹⁶ PULP filed comments in this proceeding on July 22, 2016.

PULP’s comments addressed several issues but particularly focused on the unusually truncated period for comments on DPS Staff’s “Responsive Proposal.” Among other important issues Staff covered was the creation of a very large subsidy for keeping three upstate nuclear generation facilities in business rather than let their troubled finances require the operators to support them. The CES also, as part of the subsidy scheme, redefined nuclear energy as a zero emission/renewable energy resource and created a new form of renewable energy credit (REC) called a zero emission credit (ZEC).¹⁷

The Clean Energy Standard and ZEC plan were ordered into effect by the PSC on August 1, 2016.¹⁸ Seventeen (17) parties including PULP filed petitions for rehearing and/or clarification but were unsuccessful.¹⁹ In partnership with AARP, PULP subsequently submitted a letter to the PSC in September 2016, noting the numerous actions (i.e., rate cases) that were about to increase the burden on ratepayers in 2016 and seeking an evaluation of all of such actions and their impacts upon ratepayers’ bills.²⁰ No action was taken on the letter.

¹⁴ See, Large Scale Renewables in New York—Options and Assessment, filed June 1, 2015, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={26BD68A2-48DA-4FE2-87B1-687BEC1C629D}>.

¹⁵ See, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={7B564AD9-E6E9-4FA9-93B6-1AA85B1719E2}>.

¹⁶ See, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D84C6AED-8701-4C40-B154-4B142E2DD9DB}>.

¹⁷ Id., at 28–30.

¹⁸ See, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={44C5D5B8-14C3-4F32-8399-F5487D6D8FE8}>.

¹⁹ See December 15, 2016 Order on Petitions for Rehearing, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={A682AAE1-A99A-403D-952E-26C3AE0F19ED}>.

²⁰ See, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={76A36599-A129-4D0C-B32E-6F744B75D440}>.

c. Distributed Energy Resources/Resellers (DERs) Uniform Business Practices²¹ (Case 15-M-0180)

One of the major foci of the Reforming the Energy Vision proceeding has been its intended reliance on Distributed Energy Resources/Resellers (DERs) to fill niches in the market formerly filled only by utilities, nonprofits, and government programs. The category of DER as a regulated entity did not exist in the Public Service Law at the beginning of the REV proceeding. This meant that a DER could be a seller/reseller of weatherization services, energy efficiency services, renewable energy, or even a retail energy services company (ESCO), but there was no consumer protection regime under which the DERs would be required to function. In April 2015, Case 15-M-0180 was opened to address that issue. PULP became a party to this proceeding because of concerns that DERs could be regulated as ineffectively as ESCOs, and absent strong input from consumer advocates, consumer protections would not be instituted.

PULP filed comments in September 2015,²² along with the City of New York, the Department of State’s Utility Intervention Unit, the Association for Energy Affordability, AARP, and a number of industry advocates. The case was quite active in late 2015, but, in early 2016, it became inactive, and no action to finalize the case was taken in 2016 despite the receipt of numerous party comments.

d. Energy Service Companies (ESCOs)

The year 2016 was marked by a significant upswing in activity in policy cases before the PSC on ESCO issues. This increased activity was due in part to the Commission’s February 6, 2015, Order in Cases 15-M-0127, 12-M-0476, and 98-M-1343,²³ which began a number of collaboratives that met frequently and considered policy issues into 2016, and also to the Commission’s “ReSet Order” of February 23, 2016, in the same cases.²⁴ The Reset Order, which imposed a strict consumer protection regime on ESCOs—including barring them from serving the residential and small commercial markets unless an ESCO would certify in writing that it would offer electric or gas service more cheaply than the utility or “provide at least 30% renewable electricity”—was immediately resisted by ESCOs, which asserted that such regulation would put them out of business. The Reset Order was therefore immediately litigated by the ESCO industry, which sought and received a temporary restraining order (TRO) prohibiting the PSC from enforcing ordering clauses that required: 1) the certification of lower prices; 2) ESCOs to get affirmative consent before switching a customer from a fixed-rate or guaranteed-savings contract into one that did not guarantee savings; and 3) a mini-Sarbanes-Oxley certification by ESCO CEOs of their companies.

²¹ See, Case 15-M-0180, In the Matter of Regulation and Oversight of Distributed Energy Resource Providers and Products (DER UBP); <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=15-M-0180&submit=Search+by+Case+Number>.

²² See, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={076AB412-02C2-487B-851F-79C3BC9F2FD9}>.

²³ See, Order Granting and Denying Petitions for Rehearing in Part, issued on February 6, 2015, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={8D6B2F27-DC3E-436F-88B4-D797419EE3E9}>.

²⁴ See, Order Resetting Retail Energy Markets and Establishing Further Process, issued on February 23, 2016, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={981AE34E-70A0-4C0F-A523-5AEC99C38AD7}>.

The Commission’s response to the ESCOs’ blocking of the ReSet Order was to issue, on July 15, 2016, the “Moratorium Order,”²⁵ which narrowed the preclusion of ESCOs from serving the entire residential and small commercial market to being barred solely from serving the low-income market. Once again, the ESCOs brought suit, seeking and receiving another TRO—but not until September 28, 2016. This second TRO came two weeks after the PSC had issued the “Moratorium II Order,”²⁶ which had made the low-income moratorium an emergency State Administrative Procedure Act (SAPA) rule and effectuated the seven ordering clauses from the July Moratorium Order:

- 1. Electric and gas distribution utilities that have tariffed provisions providing for retail access are directed to, within 60 days of the effective date of this Order, place a block on all assistance program participant accounts, preventing those accounts from being enrolled with an energy service company.*
- 2. Electric and gas distribution utilities that have tariffed provisions providing for retail access are directed to, within 60 days of the effective date of this Order, communicate to each energy service company serving assistance program participants which accounts the ESCO is no longer eligible to serve, consistent with the discussion in the body of this Order.*
- 3. Electric and gas distribution utilities that have tariffed provisions providing for retail access are directed to, within 30 days of the effective date of this Order, file with the Secretary, for Department of Public Service Staff review, drafts of the letters to be sent to energy service company customers that are assistance program participants informing them that they will be returned to utility service, consistent with the discussion in the body of this Order. This moratorium will not extend to APPs participating in a Community Choice Aggregation (CCA) Program. The appropriate consumer protections for participants in a CCA program, including APPs, are provided in the Commission’s Order Authorizing Framework for Community Choice Aggregation Opt-Out Program, issued April 21, 2016 in Case 14-M-0224.*
- 4. Electric and gas distribution utilities that have tariffed provisions providing for retail access are directed to, within 60 days of the effective date of this Order, send the letters developed pursuant to Ordering Clause 3 to energy service company customers that are assistance program participants, consistent with the discussion in the body of this Order.*
- 5. Electric and gas distribution utilities that have tariffed provisions providing for retail access are directed to, on a rolling basis, communicate to each energy service company serving customers who subsequently become assistance program participants which accounts the ESCO is no longer eligible to serve, consistent with the discussion in the body of this Order.*

²⁵ See, Order Regarding the Provision of Service to Low-Income Customers by Energy Service Companies, issued July 15, 2016, pp. 18-20; <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={A187D2DF-F7A5-481B-839D-3E0727F67447}>.

²⁶ See, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={DFE55E5A-D231-41A5-9642-5C3162CD6D42}>.

6. *Electric and gas distribution utilities that have tariffed provisions providing for retail access are directed to on a rolling basis, notify energy service company customers that subsequently become assistance program participants of the moratorium imposed by this Order and that they will be returned to utility service, consistent with the discussion in the body of this Order.*

7. *Every energy service company eligible to serve customers in New York State shall, within 60 days of the effective date of this Order, de-enroll any customer accounts identified by the electric and gas distribution utilities pursuant to Ordering Clause 2 and 5 of this Order, provided that existing contracts will continue until their expiration.*

After the ninety days of the Moratorium II emergency SAPA Order elapsed, the PSC, on December 15, 2016, issued the “Prohibition Order,”²⁷ which enacted into a permanent rule the consumer protections for low-income households that were the subject of the Moratorium Orders. In response, the ESCOs sought a contempt order from the court against the PSC (ostensibly for violating the September TRO) and a ruling that the TRO was still in effect—which would not be heard by the court until 2017.

Meanwhile, the PSC issued a notice on December 2, 2016, announcing the beginning of an evidentiary proceeding that would inquire deeply into ESCO pricing, the ESCO marketplace, ESCO business practices, and ESCO behavior toward existing and potential new customers.²⁸ Although the initial technical and procedural conferences began in 2017, the initiation of this evidentiary proceeding was a good omen that the PSC intended to continue its fight to impose comprehensive consumer protection regulations upon the industry.

e. Low-Income/Affordability Rate (Energy)

Although the roots of the low-income/affordability proceeding arise from the Clean Energy Fund and REV proceedings of 2014, the Order initiating this case was issued by the PSC in January 2015.²⁹ The purpose of the Affordability proceeding was to create, for the first time in New York, a uniform statewide low-/fixed-income energy rate-reduction program, with a robust and uniform set of criteria for income eligibility and a robust reduction aimed at reducing the inability of low-income New Yorkers to pay their energy bills (roughly one-third of New York’s households).³⁰ PULP’s initial comments in the case were filed jointly with AARP in March 2015 and sought an income threshold of 200% of the federal poverty level,³¹ criteria roughly identical

²⁷ See, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={1803241A-06B8-4B4C-96CA-F6B7C1D64A16}>.

²⁸ See, Notice of Evidentiary and Collaborative Tracks and Deadline for Initial Testimony and Exhibits, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={870C1A86-EEB2-4BB4-9F11-3CC13F663AE1}>.

²⁹ See, Order Initiating Proceeding, issued January 9, 2015, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={B9477FFE-87E4-427F-937A-12E490920EEB}>.

³⁰ See, Case 14-M-0565, Proceeding on Motion of the Commission to Examine Programs to Address Energy Affordability for Low Income Utility Customers (Low-Income Proceeding), Comments of AARP and PULP, filed on March 5, 2015, at pp. 3–6; <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7bE272741E-08F0-4A88-A3B8-D809A0C38260%7d>.

³¹ *Id.*, at 9.

to those used for New York’s Lifeline program,³² and a rate reduction of at least 30%,³³ similar to California’s statewide rate-reduction program.

Based on the first round of comments, DPS Staff issued a report on June 1, 2015, analyzing the then-current state of low-income energy programs in New York and including some comparisons to other states and their models.³⁴ The report was an exhaustive analysis and may constitute the most comprehensive examination of a state’s low-, moderate-, and fixed-income affordability issues, as well as that of a state’s abilities to address such challenges. However, PULP, AARP, and the other parties determined that there were a number of errors in the report, and more important, their analysis revealed that the program design under consideration by the Staff was flawed.

The Commission then sought party comments and reply comments on the Staff report. PULP³⁵ and AARP³⁶ commented separately at this stage, as did numerous other parties,³⁷ including various utilities, the City of New York,³⁸ and Multiple Intervenors,³⁹ among others. In its reply comments, PULP argued that the Staff’s eligibility criteria were too narrow, resulting in the exclusion of more than 50% of low-income utility customers; and that the budget target was too low.⁴⁰

After the comment process finished, the PSC held a series of public statement hearings across New York State. In keeping with the organizational plan to demonstrate PULP’s statewide

³² Id. The Lifeline program criteria are eligibility for one of the following public assistance programs: Medicaid, Supplemental Security Income (SSI), Low Income Home Energy Assistance Program (LIHEAP), Safety Net Assistance, Section 8 Federal Public Housing Assistance, National School Lunch Program Eligibility based on income, Temporary Assistance for Needy Families (TANF), SNAP (Supplemental Nutrition Assistance Program, formerly known as Food Stamps), Family Assistance, Veteran’s Disability Pension (non-service related), Veteran’s Surviving Spouse (non-service related), Bureau of Indian Affairs (BIA) General Assistance, Head Start (Tribal Land residents only), or Food Distribution Program (Tribal Land residents only).

³³ See, AARP and PULP Comments, at 12.

³⁴ See, Proceeding on Motion of the Commission to Examine Programs to Address Energy Affordability for Low Income Utility Customers, Staff Report, filed on June 1, 2015, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={73F1F127-09C1-460D-9F42-D6AE106B3C52}>.

³⁵ See, Comments of the Public Utility Law Project of New York, filed August 24, 2015, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={EA2B8804-00BA-4012-9492-D8959E0F5C61}>.

³⁶ See, Comments of AARP in response to the Staff Report, filed August 21, 2015, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D0A2678E-BC14-49C3-AE17-8B50367B7D62}>.

³⁷ Other parties included: NYS-OTDA, AGREE, the Center for Working Families, the NRDC, the Association for Energy Affordability, Pace Law School’s Energy and Climate Center, et al.

³⁸ See, NYC Comments on Low Income Report, filed August 24, 2015, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={87E97E29-CA54-47C3-AB05-F59007D1D5CE}>.

³⁹ See, Comments of Multiple Intervenors, filed August 24, 2015, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={0FD31E7F-FF1F-4030-B0A1-2C8274139269}>.

⁴⁰ See, Reply Comments of the Public Utility Law Project of New York, filed September 9, 2015, at p. 3, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={58455AF9-AC0F-49C8-A5C3-A624045B118C}>.

reach in person, PULP testified at all of the hearings, making appearances in Glens Falls,⁴¹ Poughkeepsie,⁴² Albany,⁴³ New York City,⁴⁴ Buffalo,⁴⁵ and Syracuse.⁴⁶ At each public hearing, we outlined with specificity the negative effects that the initial program would have on the communities in which we appeared, in order to gain local support for a rehearing and/or clarification of the Commission's Order in the case, as well as, in a number of instances, introduce PULP to communities for the first time. Thirty days after the Commission issued its Order, National Fuel Gas,⁴⁷ Multiple Intervenors,⁴⁸ and the City of New York⁴⁹ filed petitions for rehearing in the case. PULP and almost all of the other intervenors filed letters in support of the petitions.

By the end of 2016, the Commission had taken no action on the petitions and letters of support, but a decision was expected in the first quarter of 2017. While there is no time requirement within which the PSC must act upon a petition, the utilities had begun filing low-income program implementation plans in September 2016, and it was anticipated that the new program and plans would be implemented in the rate cases of 2017, and potentially in some cases that would receive an Order in the latter part of 2016. An inter-agency taskforce was supposed to be created after the Order, but if it had met in 2016, it did so without public fanfare.

It is important to note that while PULP had, and still has, reservations about some aspects of the low-income affordability program, there is no doubt that the PSC and Governor's action, which specifies moving New York's low-income energy policy toward a ceiling of 6% of one's income, is a huge and historic step forward.

⁴¹ See, Low-Income Proceeding hearing transcript, Glens Falls, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={164EBF1E-C13F-4BAB-B5C6-48191A8E12B0}>.

⁴² See, Low-Income Proceeding hearing transcript, Poughkeepsie, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={A9CA2127-FE32-41FB-B8E5-3F0FFE180122}>.

⁴³ See, Low-Income Proceeding hearing transcript, Albany, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={FC33CD20-205C-4A24-B4F2-49E67C046228}>.

⁴⁴ See, Low-Income Proceeding hearing transcript, New York City, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D7A56EA5-0F3E-4603-898A-3E1B8FA20B2D}>.

⁴⁵ See, Low-Income Proceeding hearing transcript, Buffalo, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={824EAB7D-0E65-4FD5-A5E6-35F5BA3386E4}>.

⁴⁶ See, Low-Income Proceeding hearing transcript, Syracuse, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={0D00007F-F5E3-485F-B5C0-A7E91FDF7E4D}>.

⁴⁷ See, Petition for Rehearing/Reconsideration/Clarification of National Fuel gas Distribution Corporation, filed June 20, 2016, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={C8395E12-5C9E-4779-A465-340E56F94261}>.

⁴⁸ See, Petition for Rehearing, filed June 20, 2016, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D031DAA0-8565-4D61-ACC2-340A26E5E891}>.

⁴⁹ See, NYC Petition for Rehearing – Low Income Order, filed June 20, 2016, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={3AB14D80-FFFF-4C89-90A8-AD8FCEDA21D7}>.

f. Reforming the Energy Vision

It is difficult to discuss comprehensively in this limited space the multiple aspects of the Reforming the Energy Vision (REV) proceeding⁵⁰ and the effects its changes will have upon New York’s power grid, the public service law, utility behavior, and utility consumer protections. From its beginning in 2014, however, the REV proceeding was divided into two tracks: Policy formulation and macro level strategy were concentrated in Track 1 and changes to New York’s rate-making principles and goals are the focus of Track 2. These two tracks were analyzed largely in 2015 and 2016. That said, REV can be described in a few simple propositions that have wide-reaching consequences:

- To disrupt existing electric utility business models. REV’s means of achieving this is to force the utilities to abandon existing practices of building new plant to meet new demand and require them to meet service goals through outsourcing functions and becoming a “platform manager.”
- To incentivize utilities to create new business models based around monetizing consumer data; to adopt new rate-making models; and to adopt new or modernized methods of accruing additional renewable “generation.”⁵¹
- To require the grid to become more receptive to increasing multi-directional flows of renewable energy, thereby increasing the amount of renewable generation.
- To pay utilities to make these and other service-related changes rather than ordering them to do so.
- To avert the “utility death spiral” prophesied by the Edison Electric Institute in 2013,⁵² which posited that distributed generation would bankrupt utilities unless the utilities found new business models.

PULP and AARP jointly commented in July 2014 on PSC questions raised in its initial Order concerning REV’s Track 1.⁵³ After the release of a Track 1 white paper, the two organizations subsequently filed separately in 2015 in extended notice and comment phases held on separate schedules for Tracks 1 and 2. PULP’s comments and reply comments of October⁵⁴

⁵⁰ See the primary homepage for the REV initiative on the PSC’s web site, <http://www3.dps.ny.gov/W/PSCWeb.nsf/All/CC4F2EFA3A23551585257DEA007DCFE2?OpenDocument>.

⁵¹ See, Large Scale Renewable Development in New York, filed June 1, 2015, p. 14, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={26BD68A2-48DA-4FE2-87B1-687BEC1C629D}>.

⁵² See, <https://knowledgeproblem.com/2014/07/23/the-utility-death-spiral-the-utility-as-a-regulatory-creation/>; and see, <http://www.eei.org/ourissues/finance/documents/disruptivechallenges.pdf>.

⁵³ See, Track 1 Comments of AARP and Public Utility Law Project of New York, Inc., filed July 18, 2014 in Proceeding on Motion of the Commission Regarding Reforming the Energy Vision, 14-M-0101 (“REV Proceeding”); <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={A67F600E-6566-4AAD-AF71-BDE9F66957AA}>.

⁵⁴ See, Comments of the Public Utility Law Project of N.Y., <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={10FD2397-0A0A-4BF8-9FF2-EDD4AFEE8597}>.

and November 2015,⁵⁵ respectively, focused on our concerns about the progress of the REV proceeding to that point.

Due to the broad goals of the REV transformation, it is unsurprising that it spawned a large number of sub-proceedings, both numbered and unnumbered, many working groups and collaboratives and, as REV entered its second full year in 2016, much of the PSC’s activity was branded REV-related.

III. Petitions to Establish Investigations or to Reconsider/Clarify PSC Orders

Introduction:

An unusual feature of practice before the New York Public Service Commission (PSC or Commission) is that while the PSC can initiate cases on its own motion, and public utilities can initiate rate cases and certain other cases on their own motion, the Public Service Law and Commission practice provide that a variety of cases can be initiated by petition. There are also a broad variety of different types of petitions, such as a petition to file a complaint or one to request a rehearing/reconsideration or clarification of an Order of the Commission.

As a result of the unusual circumstance of five major rate cases occurring in the same calendar year, PULP graphically saw the variation(s) in legal interpretation, practice, and procedure followed by PSC staff and administrative law judges (ALJs), despite the uniform procedures and interpretations adopted by the Commission in 1992 under uniform rules of settlement procedure.⁵⁶ PULP came to the conclusion, therefore, that we would petition the Commission at a future point to revisit its settlement rules, using the records of 2016’s rate cases as a lens for viewing the individual ALJs’ implementations of the Commission’s uniform procedures and interpretations, with the goal of updating and reforming the settlement procedures last updated twenty-five years earlier.

PULP also began work on a petition for rehearing/clarification in the National Grid-NYC & LI rate cases, with the hope that the Commission would reverse its Order requiring ratepayers to pay 100% of the cleanup costs of the Superfund sites in Brooklyn.

Summaries:

a. Replevin Investigation

In 2016, PULP began a concerted effort to examine a particular legal process called replevin as it related to utility meter seizures. Replevin is a civil action allowing utilities to apply for court permission to seize their meter when a customer is scheduled for termination and the utility cannot otherwise obtain access to lock the meter. Replevin is an extraordinary remedy that requires the utility company’s compliance with both civil law and the requirements of the Home Energy Fair Practices Act (HEFPA) regarding service termination.

In April 2016, a New York City publication, the *Village Voice*, published an article titled, “Con Ed’s Kangaroo Court: How a Private Company and Our Public Courts Put Consumers in the Hot Seat” that called into question replevin actions brought by Con Edison in the Bronx and

⁵⁵ See, Reply Comments of the Public Utility Law Project of N.Y., <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={60471D76-C1AF-46A4-B42F-AA055C75CE25}>.

⁵⁶ See, Cases 90-M-0255, et al., Procedures for Settlements and Stipulation Agreements, Opinion 92-2 (issued March 24, 1992).

Brooklyn. PULP Board Member Alfred Fuente is featured in the article, and he described his experience while at the New York Legal Assistance Group (NYLAG) representing a client in a replevin action brought by Con Ed. Of particular concern were the so-called voluntary informal conferences (VICs) held on regularly scheduled days in courthouses, by agreement with the New York State Office of Court Administration, between Con Ed and the consumers facing replevins. This article served to put this replevin issue in public view, and it became readily apparent to PULP that consumers needed advocacy and oversight of this issue.

Given that PULP was already a party in the Con Edison gas and electric rate case proceeding, we decided to file Alfred Fuente's testimony describing his experience. He also made several observations about the legal fragility of Con Ed's replevin practices and recommended modifications.

In July 2016, PULP filed a Petition asking the Commission to commence a proceeding to consider issues pertaining to replevin actions initiated by Con Edison. Although we had raised this issue in the context of the Con Edison 2016 Rate Case, through the testimony of Alfred Fuente,⁵⁷ we separately filed a petition with the Commission to seek retrospective remedies and so that the issue could be examined by the regulating administrative body.

In August 2016, a Memorandum was issued by the New York City Civil Courts requiring that *all* utilities abide by New York City Administrative Code Article 4, § 400: to obtain a separate court index number for each replevin case the utility commences; to serve a notice of summons and complaint on the defendant customer; and to follow certain formalities at the VICs.

Concurrent with this media and legal activity in 2016, PULP reached out to various legal and community organizations to gauge interest in supporting a new initiative called the PULP Replevin Oversight Project (PROP), and we have received enthusiastic responses from NYLAG, the Northwest Bronx Community and Clergy Coalition, and former New York State Assemblymember James Brennan, Esq. When the PSC resolves PULP's petition for investigation, PULP will be well-positioned to launch PROP with focused coordination. We have begun seeking funding to support the training of PROP volunteers so that we can oversee the VICs occurring within the five boroughs, not only between consumers and Con Ed, but also potentially with other utilities. We hope to launch initial trainings in the winter of 2017.

b. National Grid–NY and National Grid–LI

In late 2016, PULP began drafting a petition seeking rehearing of the PSC's December 16, 2016, Order approving the three-year rate plan arising from the Joint Proposal in the National Grid–NY and National Grid–LI rate case. Specifically, we argued that the Order lacked any statutory or public policy basis for its decisions that the companies should be permitted to recover the bulk of their clean-up costs for the Superfund sites at Gowanus Canal and Newtown Creek in Brooklyn, known as Site Investigation and Remediation (SIR) costs, through base rates, and that shareholders should be insulated from sharing in future SIR costs. Further, we argued that the new rates were unjust and unreasonable, since the evidence on the record showed that

⁵⁷ See, Case 16-M-0501, Petition of Public Utility Law Project of New York, Inc. for an Order of the Public Service Commission Commencing a Proceeding to Consider Issues Pertaining to Consolidated Edison Company of New York, Inc.'s Replevin Actions, at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={5D780781-C08B-4EEC-ADB0-0D3AE5830982}>, last visited August 1, 2017.

the JP’s anticipated scale of consumer impacts relied upon a wholesale gas cost variable tied to a historically low price of natural gas, a price that increased by more than 50% in the ten months following the companies and DPS Staff selection of it. PULP’s goal was to file the petition in January of 2017.

IV. Consulting Calls/Direct Services

Introduction

In 2016, PULP developed a systematic new approach to receiving and cataloging our hotline calls. First, we assigned individual PULP employees to a particular day of the week to provide respond to hotline calls. This means that our hotline is “staffed” with at least one PULP person who is responsible for ensuring that callers receive a return response on the day they call, or within a reasonable amount of time thereafter. Second, we developed a shared internal database to keep track of PULP’s consulting calls and other direct consumer service work. This database provides: 1) a tangible compilation of PULP’s direct impact on individual lives; 2) documentation of PULP’s effectiveness that is useful for potential funders; 3) a potential means of exposing patterns in consumer problems; 4) a means of generating testimonials for fundraising, potential publicity campaigns, and media outreach; 5) a potential source of public statement testimony; and 6) potential constituent involvement in engagement with public officials.

Direct calls also increased significantly from Legal Aid and Legal Services lawyers, lawyers and advocates working for social service agencies, constituent service representatives in elected officials’ offices, staff and volunteers of community-based organizations, and individuals referred by all of the above. Our new database captures the identify of our referring consumer partners as well.

Summaries

a. Common Legal Issues

A number of issues have become apparent in the course of fielding consumer calls. These include:

1. the rights of tenants in multiple dwelling buildings whose utilities are included in the rent and/or are found to be on a shared meter when the account is in the landlord’s name, and whose landlord ceases to pay the utility bill. When the shared meter is the landlord’s it is frequently a commercial account, making HEFPA protections unavailable to the tenant and recourse to housing court may not remedy the situation. This becomes particularly problematic when there is a medically vulnerable household member;
2. an increasingly concerted effort by the utilities to have consumers take responsibility for accounts that are not in their own names, including harassing consumers for proof of occupancy or responsibility for the premises (i.e., a lease or deed) that the utility then attempts to use as justification for obtaining payment for the arrears beginning on the “responsibility for premises” date rather than that of the beginning of their own account;
3. the coding of electricity accounts indicating “heat included” when an electric blower is required to get heat into the tenants’ apartments, thereby incurring separate charges for electricity; this affects rents and HEAP eligibility, among other harms to tenants;

4. the slowness of merged telecom companies to roll out hard-won reduced-rate programs, including the apparent failure to properly educate their own staffs according to the terms imposed by the PSC as a condition of approving the merger agreement;
5. the seeming lack of knowledge of HEFPA within some public agencies that interact with low-income people on social service or housing concerns (i.e., the Department of Buildings and the Housing Preservation Department in New York City).

V. Outreach

Introduction

In late 2014, when PULP began seeking a replacement for outgoing Executive Director Gerry Norlander, the Board determined that it would dedicate significant resources going forward to re-establish the organization's profile, which had diminished after the state's 2010 defunding, and to raise our profile in New York City, both to educate and aid consumers and in the hope of establishing a second stable pillar of funding to avert the consequences of a future defunding.

The mechanisms for the outreach program began in 2015 and 2016 with the following:

- a. re-establishing PULP's HEFPA training programs across the state;
- b. giving introductory presentations to CBOs, coalitions, and government boards and associations, etc.;
- c. tabling at events and presenting at conferences;
- d. re-establishing PULP's partnership with NYSERDA's Low Income Forum on Energy (LIFE);
- e. conducting "meet and greets" with the New York City Council Members and seeking out important NYC-centric issues that would yield joint media and policy-generating opportunities; and
- f. partnering with national and regional low-income/consumer advocate organizations.

In mid-2015, therefore, PULP restarted its statewide practice of training attorneys, community-based organizations (CBOs), and electeds' constituent service staff, among others, in HEFPA and the rights it provides for utility customers. It also began arranging introductory presentations and participating in a range of group activities (i.e., the Energy Democracy Alliance, PSC-sponsored meetings structured by the Rocky Mountain Institute, the Rural Housing Coalition, and the Neighborhood Preservation Coalition of New York State [NPCs], among others) to raise awareness of low-income consumers' utility rights and add PULP's expertise and ideas into what has become a vibrant debate and public involvement in state energy policy. In 2016, the HEFPA training and continuing legal education (CLE) courses were greatly augmented, as is shown below. Additionally, in 2016, PULP took advantage of the opportunities provided by the numerous major rate cases, two cable television company mergers, REV policy proceedings, the PSC's state-of-the-the-telecom-industry assessment, and the Connect New York Coalition campaign, begun by Common Cause NY, the Communications Workers of America, and Consumers Union, concerning FiOS availability—particularly in low-income areas of New York City—to testify at public statement hearings across the state.

PULP's attorneys also presented on three different topics at NYSERDA LIFE's 2016 annual conference in Albany and discussed deepening the partnership between the two entities in

2017. Subsequent to the 2016 conference, in which PULP’s presentations were very positively reviewed by attendees, PULP and NYSERDA discussed having PULP present at all of NYSERDA LIFE’s upstate regional conferences in 2017.

Concerning PULP’s work on creating and deepening relationships with NYC public officials and other important NYC groups, in 2015–16 PULP presented to the following: the Council's Black Latino and Asian Caucus (BLA Caucus), the Bronx Delegation, the Council’s Finance Division staff, and numerous individual Council Members; in addition, presentations were made to the monthly meeting of the New York City Central Labor Council political directors; the Manhattan and Brooklyn borough boards, which are comprised of each borough’s presidents and district managers; to the Manhattan Borough President and her staff and the staff of the Bronx Borough President; and have consulted frequently with the Public Advocate and her staff. PULP has also developed a particularly strong relationship with the staff director of the BLA Caucus and a positive one with the staff director of the Council's Progressive Caucus; the latter had previously worked on utility issues in Michigan and therefore has a strong affinity for PULP's work.

The presentations PULP made to NYC elected officials and staff concerned PULP’s mission, key rate case and policy issues affecting New York City, potential, and subsequently active, areas of joint efforts, and the constraints PULP has on the resources we can devote to New York City (the source of approximately 80% of PULP hotline calls). The National Grid–NY and –LI rate case was an area of particular interest for the Council Members, who were concerned about the double-digit rate increases, and also about the company’s proposal, and subsequent PSC Order, to allot 100% of the cost of Superfund site cleanups to ratepayers; a number of joint efforts resulted.

Presentations were also made to New York City's Consumer Law Working Group; the Welfare Law Task Force; the Stand for Tenant Safety coalition, which is composed of housing lawyers and organizers from social service agencies focused on the use of construction to harass tenants that has recently seen all twelve of its priority bills passed by the City Council and signed by the Mayor; and clergy leaders active in the Northwest Bronx Community and Clergy Coalition, a long-standing CBO that has become significantly involved in energy and utility issues.

Finally, PULP also deepened its long-standing relationships with the National Association of State Utility Consumer Advocates (NASUCA) and the Low-Income Energy Peer Exchange, participating in and presenting at conferences for both groups in 2016 and engaging PULP staff in monthly conference calls with NASUCA’s committees.

Summaries and Chart

PULP relaunched its training program in 2015 in New York City by hosting with the benefits counselors of the Center for the Independence of the Disabled of New York (CIDNY) in New York City.⁵⁸ Since then, PULP has trained attorneys from Legal Aid—NYC, Legal Services—NYC, and a number from the coalition LEAP, that includes attorneys and organizers at agencies that provide a range of social services. In total, 144 attorneys have been trained and 50 have received introductory presentations. As a result of this training, many attorneys have

⁵⁸ PULP had previously done a training in Syracuse for the Legal Services of Central New York (LSCNY) and its affiliated attorneys.

continued their relationship with PULP by using our helpline to seek outside legal assistance for their clients with utility issues.

PULP also trained 147 elected officials’ constituent service representatives and nonprofits’ benefits counselors in basic HEFPA rights, across Brooklyn, Staten Island, and Manhattan, by coordinating with the staffs of the Senate, Assembly, and Council delegation leaders and the Manhattan Borough President.⁵⁹ PULP has also conducted training for the neighborhood tenants’ rights group Good Old Lower East Side (GOLES), and Sane Energy to the Community Service Society’s Retired Senior Volunteer Program (CSS-RSVP).

In addition, PULP has appeared at a number of gatherings hosted by elected officials or CBOs to which consumers are invited for assistance. The activities range from workshop presentations (Pa’lante Harlem’s Tenants’ Rights Fair), the Manhattan District 10 Resource Fair, State Senator Krueger’s annual senior fair, the Family Head Start Resource Fair in Brighton Beach, and the Northwest Bronx Community and Clergy Coalition clergy strategy meeting.

a. List of Training Activity

Legal Trainings (including CLEs)⁶⁰

Group	Date	No. Attendees
Legal Aid NYC CLE—citywide	2/19/16	52
Legal Services NYC CLE—citywide teleconference Housing Division	4/18/16	75
<u>Legal Presentations</u>		
Welfare Law Task Force	7/17/15	25
Consumer Law Task Force	Fall 2015	25

Consumer/Constituent Representative Trainings⁶¹

Group	Date	No. Attendees
Center for the Independence of the Disabled benefits counselors	4/2015	12

⁵⁹ See, *Brooklyn Eagle* (Aug. 29, 2015) and *Greenpoint Gazette* (Aug. 12, 2015), <http://bit.ly/1P85Sic>; <http://bit.ly/2iEGNqf>.

⁶⁰ At the end of the year, several groups were still in TBD status, and their trainings were not anticipated to occur until 2017. They included: Legal Services NYC Government Benefits and Disability Divisions, Legal Services—NYC, NYLAG Health Project, District Council 37/AFSCME, and other AFSCME District Councils.

⁶¹ At the end of the year, several groups were still TBD and were anticipated to be trained in 2017. They included: Legal Services NYC: Elected Officials’ Constituent Services Reps program; Social workers volunteering with VOLS, white shoe law firms’ pro bono program (possibly in concert with Hunter College School of Social Work); Asian Americans for Equality’s non-legal benefits counselors; Gay Men’s Health Crisis Consumer Advisory Board; Ridgewood-Bushwick Senior Citizens Council benefits counselors; Sen. Comrie/Allen AME merchants and/or constituents; Sen. Alcantara district CBOs; Sen. Hamilton and AM Walker staff and CBOs from their overlapping districts and combined constituent services representatives; Crown Heights Tenants Union/Urban Homesteading Assistance Board (UHAB); Taxi Workers Alliance benefits counselors; AM Rozic constituent services representatives plus neighborhood CBOs; Center for the Independence of the Disabled; CM Rose constituent service reps and local CBOs; CM Gibson constituent service reps and local CBOs; and CMs Reynoso/Espinal and CBOs in overlapping districts.

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Manhattan Elected Officials’ Constituent Services Reps		
• Coordinated by staff of Manhattan Borough President	6/19/15	20
Community Service Society Retired and Senior Volunteers Program	6/19/15	25
Brooklyn/Staten Island Public Officials (Assem., Sen., Council, BP) Constituent Service Reps.		
• Coordination assisted by AM Lentol staff	8/5/15	20
N. Manhattan District Office, Manhattan BP Gale Brewer	8/28/16	15
Legal Hand/Crown Heights volunteer project of Center for Court Innovation/NYLAG	5/11/16	10
CAMBA Brooklyn Homebase staff	12/9/16	20
Sen. Alcantara Constituent Relations staff	12/9/16	5

b. Community Outreach Events⁶²

Workshops/Community Outreach Events/Presentations⁶³

Manhattan Borough President Cabinet/Agency Representatives	6/9/15	40
Brooklyn Borough President’s Borough Board Mtg	8/1/15	24
Manhattan District 10 event tabling	5/17/16	75
Palante Harlem Housing Conference, 2 workshops	6/16/16	33
Family Head Start Neptune Center Health & Resource Fair Brighton Beach—tabling	6/21/16	30
Goddard-Riverside Senior Center— Family Council	8/3/16	40
Stand for Tenant Safety Coalition	8/18/16	18
Washington Heights–Inwood Community Service center at YM/YWHA Mayor’s CAU Manhattan Borough Mgr	9/25/16	12
Brooklyn Family Services Health Fair at Kings Plaza	10/15/16	20
Sen. Krueger’s 9 th Annual Senior Services Fair, Temple Emanu-El	10/27/16	500
Northwest Bronx Community & Clergy Coalition	11/15/16	20

c. Public Statement Hearings

PULP staff presented at a large number of public statement hearings in 2015-16. They included:

Con Edison

- NYS Dept. of Public Service, NYC Office, 4:30 p.m. 6/21/16
- Yonkers Public Library, 4:30 p.m. 6/22/16

⁶² There are a number of Community Outreach Events proposed for 2017 that were not finalized in 2016. The potential groups include: Bronx Borough President’s constituent services staff; Housing Conservation Coordinators; Make the Road NY; Sen. Jose Serrano constituent services staff; Legal Services Staten Island Housing attorneys; New York Communities for Change; Sen. Leroy Comrie constituent services staff; Brooklyn Legal Services Corp A; Community Voices Heard; LiveOn NY; Chhaya Community Development Corporation (Queens); and SEIU Local 32BJ Legal Services Unit.

⁶³ Only a few groups were left unscheduled in 2016 and were expected to carry over to 2017. They included: the Mayor’s Constituent Affairs Unit, Borough Managers—All Boroughs; the Mayor’s Community Engagement Unit Know Your Rights presentations program; and CM Chin—community presentation.

National Fuel Gas

- Buffalo and Erie County Public Library, 3 and 6 p.m. 10/26/16
- City of Jamestown Municipal Building, 3 and 6 p.m. 10/29/16
- Town of Amherst Municipal Building, 4 and 7 p.m. 10/28/16

National Grid–LI

- Mineola, Theodore Roosevelt Exec & Leg Bldg, 6:30 p.m. 7/26/16
- Hauppauge, Legislative Auditorium, 6:30 p.m. 7/27/16
- Riverhead, Legislative Auditorium, 1 p.m. 7/27/16

National Grid–NY

- Mineola 7/26/16
- St. Francis College, Brooklyn 8/10/16
- CUNY School of Law, Queens 8/11/16

Proceeding on Energy Affordability for Low Income Utility Customers

- Glens Falls, 3 and 6 pm 9/10/15
- Poughkeepsie, 3 and 7 pm 9/24/15
- Buffalo, 3 and 7 pm 10/1/15
- New York City, 3 and 7 pm 10/13/15
- Syracuse, 3 and 7 pm 10/19/15
- Albany, 3 and 7 pm 10/21/15

Suez Water

- Stony Point Community Center, 3 and 6 p.m. 6/15/16
- Rockland Community College, 2 and 6 p.m. 6/16/16

Time Warner Cable–Charter Merger

- Bethlehem Town Hall, 6 p.m. 9/17/15

d. NYSERDA Low Income Forum on Energy (LIFE) Conferences

NYSERDA LIFE Annual Conference, Albany, NY

- Presentation on Submetering 5/25/16
- Presentation on PSC Practice 5/26/16
- Know Your Rights Presentation 5/26/16

e. NASUCA and Low-Income Energy Advocates' Peer Exchange Conferences

- NASUCA Annual Meeting, Austin, TX 11/8–12/15
- NASUCA Mid-Year Meeting, New Orleans, LA 6/5–8/16
- Low-Income Energy Peer Exchange, Boston, MA 12/6–7/15

VI. Litigation: Amicus Briefs to the Supreme Court of the United States

Introduction

The issue at concern in both of PULP’s Supreme Court amicus briefs was the balance between the power inherent in the Federal Energy Regulatory Commission (FERC) by nature of the Federal Power Act (the Act), and that assigned to the states. The Act provides for the sharing of power with states in this vital and very complex area, but recent actions at the federal level, particularly in the area of wholesale power markets, have been siphoning power from the states by increasing the federal grasp of wholesale market activity over formerly state regulatory action.

Starting in the 1970s, but greatly increasing in the Enron-inspired deregulations of the late 1990s, that old division of the regulatory authority between the FERC and state public utility commissions has broken down. *FERC v. EPSA* and *Hughes v. Talen* were about state attempts to regain some of the regulatory power and control over markets they have lost and the FERC’s attempt to intrude into state markets with market-based products that the states did not want.

Summaries:

a. *Federal Energy Regulatory Commission v. Electric Power Supply Association*

The underlying activity that led to this case’s trip to the Supreme Court was a simple theory: Could the FERC require participants in the energy wholesale spot markets to pay energy consumers to use less energy “when overall demand is expected to peak”?⁶⁴ In 2011 the FERC issued Order No 745, which “made ‘demand response’ a nationwide phenomenon. And, to the dismay of local electric companies and state utility commissions, the order includes retail customers among those who get payments for cutting back,”⁶⁵ i.e., responding to demand.

PULP’s argument in its brief was two-fold: First, that the FERC was created by the Federal Power Act of 1920 and only has the powers allotted to it via that federal statute. Consequently, FERC’s assertion of jurisdiction to pay retail customers for not using electricity is *ultra vires* (that is, beyond one’s legal power and authority), “and substantive provisions of the Federal Power Act do not support it.”⁶⁶ Second, if the Court found that FERC did possess the power it was claiming, then the Court should not rule that FERC has the power to allow the market to set rates. PULP had argued this second issue before, and repeated our argument in this case, citing the *Morgan Stanley* decision, that “the Court has not addressed the legality of FERC’s market rate regime for wholesale electric energy,” and should not do so.⁶⁷

As always, the bottom line issue that PULP was fighting for is that we do not believe that markets set better or cheaper rates for electricity, and that if the FERC was forced to use a traditional rate-setting process, electricity would be more affordable. Ideologues of markets,

⁶⁴ See, Lyle Denniston, “Argument Preview: Evening Out Supply and Demand,” SCOTUSBlog, <http://www.scotusblog.com/2015/10/argument-preview-evening-out-supply-and-demand/>.

⁶⁵ *Id.*

⁶⁶ See, Brief of Amicus Curiae, Public Utility Law Project of New York in Support of Respondents, in *Federal Energy Regulatory Commission, Petitioner, v. Electric Power Supply Association, et al.*, Respondents, and *Enernoc, Inc., et al.*, Petitioners, v. *Electric Power Supply Association, et al.*, Respondents, on Writ of Certiorari to the Supreme Court of the United States, September 8, 2015, at p. 9; <http://www.scotusblog.com/wp-content/uploads/2015/09/2015-09-08-Utility-Project-Amicus-Brief-in-FERC-v-EPSA.pdf>.

⁶⁷ See, *Morgan Stanley Capital Grp. Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527, 538 (2008).

however, believe differently, and they are incentivized to bring suits to advance their policy beliefs. Unfortunately, the Court held to the contrary of PULP’s argument, finding: “The FPA provides FERC with the authority to regulate wholesale market operators’ compensation of demand response bids.”⁶⁸

Importantly, while expanding the power of the FERC, this decision limited the power of the states to control their retail power markets, an argument that dates back before the New Deal. Indeed, at oral argument, when the Solicitor General claimed “demand response” made the deregulated spot markets work better, Justice Scalia pointed out that one of the briefs (PULP’s) pointed out that the Court had never approved FERC’s claimed authority to deregulate wholesale electricity prices.⁶⁹

b. *Hughes v. Talen Energy Marketing*

The issue presented in this case is essentially identical to that in *FERC v. EPSA*—i.e., state versus federal jurisdiction clashing over where the boundary is drawn between wholesale and retail markets and between federal regulatory power and state regulatory power. However, the triggering event is diametrically different. Rather than federal overreaching encroaching upon state power, as in *FERC v. EPSA*, this case is about state overreach encroaching upon federal jurisdiction.⁷⁰

In the states of Maryland and New Jersey, both members of the PJM regional transmission operator (RTO) market, it was felt that an insufficient amount of generating capacity was being built. The states, therefore, created a subsidy mechanism to incentivize generating entities to build new capacity.

PULP’s rationale for intervening was to try to deflect the Supreme Court from issuing a decision that might lead to legalization of the FERC’s market-based rates regime, replacing the traditional publicly filed rate-setting basis for arriving at wholesale energy prices. Again, PULP believes that such a manner of arriving at rates for energy leads to higher prices, and thus harms New York’s low- and fixed-income households. In the end, the Court found that Maryland’s (and, by implication, New Jersey’s) subsidy program was preempted because it disregarded the interstate of wholesale rate FERC requires.

PULP’s brief was mentioned in a footnote to the Court’s opinion,⁷¹ and, significantly, the Court wrote a relatively narrow opinion that refrained from any finding that FERC’s market-based-rate regime is authorized by the Act.

VII. Organizational Capacity Building

Introduction

⁶⁸ See, *FERC v. EPSA*, at p. 2.; https://www.supremecourt.gov/opinions/15pdf/14-840_diff_pok0.pdf.

⁶⁹ See, https://www.supremecourt.gov/oral_arguments/argument_transcripts/2015/14-840_5ok6.pdf, at p. 13.

⁷⁰ See, Lyle Denniston, “Argument Preview: FERC Versus the States—Round 2,” SCOTUSBlog, <http://www.scotusblog.com/2016/02/argument-preview-ferc-v-the-states-round-2/>.

⁷¹ See, https://www.supremecourt.gov/opinions/15pdf/14-614_k5fm.pdf, p. 9, footnote 6, stating: “Because neither CPV nor Maryland has challenged whether plaintiffs may seek declaratory relief under the Supremacy Clause, the Court assumes without deciding that they may. See Brief for Public Utility Law Project of New York, Inc., as Amicus Curiae 21 (arguing that the incumbent generators should have been required to exhaust administrative remedies before filing suit).”

Starting in 2016, PULP devoted substantial efforts towards improving operations, streamlining programs, and developing and seeking new revenue streams so that PULP could more effectively and efficiently advance its mission. PULP also actively sought to forge new alliances, with the expectation that expanding communication about PULP and its services would enhance the capacity of our organization as a leading intervenor on behalf of the poor and fixed-income utility consumers of New York State. Finally, PULP focused critical resources on strengthening and expanding our internal structure and organizational management.

Essential to the best working practices of an advocacy organization is the commitment and active involvement of a fully constituted and active Board, as well as a strategic plan and planning process to guide staff and Board alike. Prior to 2015, Board membership had been depleted, but in 2015 and going into 2016, new members —bringing new skills, expertise, and commitments to the organization— were added. New committees and oversight procedures were also put in place, as well as entry points for ongoing Board activism. PULP’s statewide presence was also enhanced by the addition of new satellite offices in New York City and Syracuse, a readiness to meet with prospective activist partners in their home communities, and the creation of new consumer education materials.

Finally, PULP re-initiated direct fundraising across the state, and sought more foundation funding.

Summaries

a. Creation of New Presentations and Training Materials

One of PULP’s priorities is to raise public awareness of the utility issues that impact everyday lives. To that end, PULP is increasing its library of presentations and training materials to complement in-person training and workshop presentations.

These presentations on consumers’ rights, how and why individuals and groups might participate in PSC rate and policy cases, and other consumer oriented presentations have been adapted for varied audiences.

Additionally, we have created concise pamphlets (“One-Pagers”) on consumer utility rights that are regularly distributed to not-for-profit advocacy organizations, to municipal and state legislators for distribution in the community at large. Finally, upon request PULP has and can provide targeted information to elected officials’ offices concerning constituent-specific demographics. For example, we have provided information concerning the extent of abuses by energy service companies (“ESCOs”) in a particular community.

b. Reconstitution of Board of Directors

In 2014, PULP’s Board of Directors had diminished in size below the target envisioned by its founders. Consequently, a Board recruitment meeting was held in Fall of 2014 while the organization was searching for a new Executive Director. There was a strong response to PULP’s call for new Board Members, and these new members were in place by the time the first 2015 Board meeting was held. The new Executive Director was also determined to diversify the board by ethnicity, gender and race, as well as geographically, and has been seeking Board members across the State. One additional member was added in late 2015, Alfred Fuente, who took his seat in the first meeting of 2016. That brought the Board membership back up to nine members, of which seven were attorneys. The new members added in 2014 included: Stuart

Appelbaum, Esq.,⁷² Charles Bell,⁷³ Alfred Fuente, Esq.,⁷⁴ Keith Mestrich,⁷⁵ and Ann Toback, Esq.⁷⁶

PULP is seeking two additional Board Members, who will presumptively be from Upstate and/or Western New York, allowing PULP to continue diversifying the Board. It has been pointed out to PULP that as a statewide organization it should have some Board Members from the poorer regions of Upstate, and it is believed that in 2017 PULP will accomplish that goal.

c. Transition to Working Board

The collective wealth of experience among the PULP Board of Directors is not an asset to be kept unutilized. As such, PULP has engaged our Board as an active partner in our pursuit of expanding public awareness of consumers' rights and attracting sources and resources to assure the continuation of PULP's services. In that spirit, the Board Members have become more participatory in the distribution of information, making public appearances at PULP-sponsored events, identifying and directing sources of funding to meet PULP's growing needs, advising on policy, contributing ideas, and engaging in an active exchange of ideas and strategies.

d. Creation of Board Fundraising and Governance Committees

In 2016, PULP created two new sub-committees. The Governance Committee reviews, accepts, questions, and recommends actions pertaining to the organization's fiduciary, policy, and human resources actions. The committee also performs as the organization's audit committee and is mindful of orders, changes, and initiatives by the New York State Attorney General that complement PULP's mission to protect the public good of low- and fixed-income,

⁷² Mr. Appelbaum is President of the Retail, Wholesale and Department Store Union. He serves on the AFL-CIO Executive Council, is a Vice President of the United Food and Commercial Workers, and is a Vice President of the New York City and New York State AFL-CIO, the AFL-CIO Department for Professional Employees, and the Jewish Labor Committee. Mr. Appelbaum was represented on PULP's Board in 2016 by Zayne Abdessalam.

⁷³ Mr. Bell is Programs Director for Consumers Union, the nonprofit publisher of *Consumer Reports* magazine. He works closely with Consumers Union's advocacy offices in California, New York, Texas, and Washington, D.C., on consumer policy issues, including health care restructuring, financial services, energy, telecommunications, and the environment, and he is a member of the Board of the New York State Energy Research and Development Authority (NYSERDA).

⁷⁴ Mr. Fuente currently works as a litigator at Fuente & Fuente. He was formerly with Jajan & Associates and in the Storm Response Unit at the New York Legal Assistance Group (NYLAG). A member of the Bar of the State of New York, he is also a member of the New York County Lawyers' Association and Secretary of its Committee on the Supreme Court and a member of the New York City Bar Association and the Royal Institution of Chartered Surveyors (MRICS).

⁷⁵ Mr. Mestrich has been President of Amalgamated Bank and its Chief Executive Officer since 2014. Mr. Mestrich is a twenty-five-year veteran of the labor movement, and currently serves as Director of the National Consumers League. Mr. Mestrich was represented on PULP's Board in 2016 by Lisa Steglich, a Harvard-graduated astronomer, astrophysicist, and social justice activist with a field organizing background who currently serves as First Vice President of Amalgamated Bank.

⁷⁶ Ms. Toback is the Executive Director of the Workmen's Circle/Arbeter Ring. Ms. Toback was a trade union leader at the Writers Guild of America, East. Since June 2009 she has led the Workmen's Circle to a new community learning-based mission focused on celebrating cultural Jewish identity and transmitting the Workmen's Circle's heritage of progressive values and activism to today's American Jewish community.

disabled, and non-English-proficient consumers and to assure them an equitable and affordable utility marketplace. As a result, there is greater interaction among the Board and staff.

The Fundraising Committee has proven invaluable as PULP begins to explore new methods, avenues, and sources of funding with a forward goal of self-sufficiency. The Fundraising Committee members have encouraged Board contributions of either funds or services, as well as, through personal contacts, introduced PULP to philanthropies, foundations, and sources that delineate appropriate notices of funding availability (NOFAs), requests for proposals (RFPs), and initial letters of intent (LOI).

e. Re-establishment of Offices (Albany, New York City, Syracuse)

The State of New York has a varied topography and population density among its sixty-two counties, but common among them are pockets of poverty, with disabled, elderly, non-English proficient and significant communities of color, all of whom are struggling to survive in a climate of stagnant wages, increasing municipal fees and taxes, and rising housing costs, as well as needs for health care, child care, transportation to and from work, and fundamental sustenance—food. The number of calls from consumers on PULP’s hotline and the involvement and inquiries from advocacy organizations both from the downstate New York City Metropolitan and Upstate areas made it clear to PULP that a presence in New York’s most economically challenged areas was essential to addressing the needs, circumstances, and problems faced by a diverse population with common concerns.

In response, PULP re-established a permanent office in Albany, the first since PULP wound down our operations in 2010. The new office allowed us to interface with and inform multiple statewide advocates, consumers, state agencies with oversight over utility matters, and legislators unaware of how actions around utilities, ranging from telecommunications, water, electricity, gas, and broadband to alternative energy options and the marketing of ESCOs, affect their constituents.

Central New York, which includes some of the poorest counties in the nation and the twenty-second poorest city in the United States (Syracuse), emerged as an area requiring assistance given its economy, changing demographics, increased diversity, and an aging population in the midst of an affordability crisis. Acknowledging these circumstances, PULP established a Syracuse office headed by its Staff Attorney. The location was in the “One Roof” project, which is an environment that integrated PULP with other public interest practitioners, establishing a synergy of ideas among lawyers concerned with providing help to the same population as PULP’s consumers.⁷⁷

The overwhelming nature of the targeting of ESCOs upon New York City’s low- and fixed-income consumers provided strong motivation to re-establish a New York City-based office. The satellite office is headed by PULP’s Community Outreach Coordinator. Through this office, with support from other PULP staff, PULP is able to conduct outreach to community-based organizations, city agencies, the Council of the City of New York and Council committees representing the interests of those individuals most affected and at economic risk, the Offices of the Borough Presidents, and local offices of state legislators representing the rights of their consumer/constituents.

⁷⁷ While PULP is still in communication with several of our Syracuse partners, its satellite office temporarily closed in May of 2017, when its Staff Attorney moved out of state.

As a result of these office expansions, PULP has gained more recognition with the general public, advocates, and those public officials representing them, and the number of hotline requests for intervention and assistance has increased.

Finally, it has also become clear, based on the varied utility issues arising in Western New York, that Buffalo is the location of choice for an additional office, and PULP is seeking to secure funds for that purpose. The low- and fixed-income consumers residing in Buffalo are experiencing cost challenges with regard to water, natural gas and electricity that is undermining the economic gains made in Erie County since the end of the Great Recession, and is prolonging and exacerbating the region’s affordability crisis.

f. Strategic Planning

Juggling the myriad of activities PULP is involved in on a daily basis requires strategic application of its limited staff resources. In 2016, PULP hosted a one-day staff retreat to help build an effective strategic agenda and process for the forthcoming year. The process served as a road map for PULP’s 2016 trajectory. PULP proposes to engage in this exercise annual in preparation for subsequent program years.

VIII. Telecommunications Cases

Introduction

Unlike many other states, New York has not yet deregulated its traditional telephone services. New York continues to regulate “plain old telephone service,” or POTS, lines, and impose performance improvement plans if the large and small companies fail to provide adequate service. In 2016, two of the largest in-state cable television, telephone, and broadband providers proposed to merge. Additionally, after extended delay, the PSC opened a proceeding to inquire into the state of New York’s telecommunications infrastructure⁷⁸ and industry, which gave rise to a statewide proceeding inquiring into Verizon’s service quality in its landline operations.

PULP was active in these merger cases, and several other ancillary telecommunications cases in 2016. In these proceedings, PULP focused its advocacy on the creation of a high-speed, low-cost broadband for income-eligible households and seniors.

Summaries

a. Altice–Cablevision Merger

As of 2016, the Cablevision Systems Corporation (Cablevision) was the second-largest cable television, telephone, and broadband provider in the State of New York. It provided service to approximately 3.1 million households in Connecticut, New Jersey, and New York, and operated a network of approximately 1.3 million Wi-Fi hot spots in commuter pathways such as the MetroNorth rail lines and in municipalities in its service areas. In New York, Cablevision served approximately 220 communities throughout Dutchess, Nassau, Orange, Putnam,

⁷⁸ See, <http://www3.dps.ny.gov/W/PSCWeb.nsf/All/0766D31ED8DF519185257D08004F2B09?OpenDocument>; and Case 14-C-0370, <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=14-00874&submit=Search+by+Case+Number>.

Rockland, Suffolk, Ulster, and Westchester counties and in two of the five New York City boroughs (Bronx and a substantial portion of Brooklyn).⁷⁹

In early November 2015, Altice, N.V. (Altice) and Cablevision (together, the Joint Petitioners) filed a joint petition with the PSC seeking approval of the proposed purchase of Cablevision by Altice. Three weeks later the PSC published a notice seeking comment upon the proposed merger,⁸⁰ and then subsequently published a schedule of public statement hearings.⁸¹ PULP became a party to the proceeding and was joined by Communications Workers of America District 1 (CWA), the Public Advocate of New York City (Public Advocate), and the Utility Intervention Unit of the New York State Department of State (UIU).

PULP partnered closely with the Public Advocate, who focused upon issues specific to New York City (the City) and her duties and powers under the City’s Charter.⁸² PULP filed comments in the proceeding that, among other things, stressed the needs for: a high-speed low-cost broadband product for income-eligible households and seniors; Cablevision to become an eligible telecommunications carrier (ETC) after the merger, which would require it to provide Lifeline telephone service as Time Warner Cable had elected to do; and a “firewall” or “ring fence” between the highly leverage parent entities and the New York company. PULP also sought a significant increase in infrastructure investment into broadband in distressed commercial and residential census tracts and an elimination of the most pressing customer service issues.

In February 2016, PULP presented testimony at a public statement hearing in Brooklyn⁸³ and coordinated our actions with other advocates.

The PSC issued an Order approving the merger in June 2016, and the new company was required to create a low-income high-speed broadband program, invest significantly in its infrastructure, cure persistent service quality issues, retain those jobs in New York that support customer service (“forward-facing jobs”), and triple the top speed of its broadband network to 300 Mbps by the end of 2017.⁸⁴

⁷⁹ See, Joint Petition of Altice N.V. and Cablevision Systems Corporation and subsidiaries for Approval of a Holding Company Level Transfer of Control of Cablevision Lightpath, Inc. and Cablevision Cable Entities, and for Certain Financing Arrangements, filed on November 4, 2015 in Case 15-M-0567, at p. 5; see also, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={BA96A595-6908-4093-8A66-68150832DB57}>.

⁸⁰ See, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={B63585FC-FC4A-4062-BEAD-E0DDDB36B931}>.

⁸¹ See the notice of informational events and public statement hearings held by the Joint Petitioners and PSC, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={8F4DA8E6-A3C5-449D-94D4-7941227D217D}>; and see, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={04469DCF-837F-489A-B786-BB105455F78C}>, adding an additional public statement hearing.

⁸² See, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={C02103DE-512E-4AD7-93FB-96CEBF93DFAF}>.

⁸³ See, Brooklyn Public Statement hearing, February 17, 2016, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={F9E3527D-54E6-4E59-ABBE-A1DB3398D914}>.

⁸⁴ See, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={96609C44-54B5-4193-A826-6EE4230DAED5}>.

b. Charter–Time Warner Merger

As of 2016, Time Warner Cable (TWC) served customers in almost all of New York’s sixty-two counties, with strong presences in “four of five New York City boroughs (all of Manhattan, Queens, and Staten Island, and the northwest portion of Brooklyn); the major upstate cities (Albany, Buffalo, Rochester, and Syracuse); and more than 1,100 other towns, villages, and cities in most of the major regions of the state (including Mid/Upper Hudson Valley, Capital Region, North Country, Central New York, Mohawk Valley, Finger Lakes, Southern Tier, and Western New York).”⁸⁵ Charter Communications (Charter), the proposed purchaser of TWC, provided service in only twenty-seven municipalities in New York, as well as in twenty-eight other states.

In July 2015, TWC and Charter filed a merger petition with the PSC seeking approval of the purchase of TWC by Charter. Roughly three weeks later, the PSC published a notice seeking comments on it,⁸⁶ and then, subsequently, it published a schedule of public statement hearings.⁸⁷ PULP became a party to the proceeding and was joined by the Public Advocate.

PULP filed comments on the merger petition on September 17, 2015, stressing the need for a high-speed low-cost broadband product for income-eligible households and seniors; PULP also sought a significant increase in infrastructure investment into broadband in distressed commercial and residential census tracts and an elimination of the more pressing customer service issues.⁸⁸ PULP also had strong concerns about reports of TWC’s very low consumer satisfaction and reported problems with service quality, and we proposed that, as a condition of the merger, the new company agree to an updated version of TWC’s social contract that the FCC had ordered it to adhere to in the 1990s.⁸⁹

In October, the PSC held public statement hearings in Delmar,⁹⁰ Williamsville,⁹¹ and New York City.⁹² PULP presented testimony at all of the hearings and coordinated its actions with other advocates.

⁸⁵ See, Joint Petition of Charter Communications, Inc. and Time Warner Cable, Inc., for Approval of a Transfer of Control of Subsidiaries and Franchises; for Approval of a Pro Forma Reorganization; for Approval of Assignment of 16 Franchises; and for Approval of Certain Financing Arrangements (“Merger Petition”), filed July 2, 2015, at p. 9; <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={C4AED78C-BD5E-47BD-B6B7-11A25D8A59DF}>.

⁸⁶ See, Notice Inviting Comments, filed July 22, 2015, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={5107E8C2-4DA4-48F6-ABE5-625454A7DE90}>.

⁸⁷ See the notice of informational events and public statement hearings held by the Joint Petitioners and PSC, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={8F4DA8E6-A3C5-449D-94D4-7941227D217D}>; and see, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={04469DCF-837F-489A-B786-BB105455F78C}>, adding an additional public statement hearing.

⁸⁸ See, Comments of the Public Utility Law Project of N.Y., filed September 17, 2015, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={DF538D19-ED79-4A8E-A36C-4F7957C81A56}>.

⁸⁹ Id. at pp. 10–13.

⁹⁰ See, PULP testimony at Delmar public statement hearing, October 9, 2015, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={B8616B67-C196-4EE7-8121-433F8187D9A3}>.

⁹¹ See, PULP testimony at Williamsville public statement hearing, October 9, 2015, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={3DFA6E43-BB17-4025-A83D-EBC3935BBEB8}>.

The PSC issued an Order in January 2016 approving the merger, and the new company was required to create a low-income high-speed broadband program, invest significantly in its infrastructure, cure persistent service quality issues, retain forward-facing jobs in New York, and increase the top speed of its broadband network to 100 Mbps by the end of 2018 and to 300 Mbps by the end of 2019.⁹³

b. Inquiry into the State of Telecommunications in New York

In a letter dated May 13, 2014, but not filed publicly until July 1, 2014, New York PSC Chair Audrey Zibelman committed to the Legislature’s leaders to undertake a comprehensive study of the state of New York’s telecommunications companies, infrastructure, markets, networks, and services.⁹⁴ A few months thereafter, the PSC opened matter number 14-00874.⁹⁵

In response to the initiation of the case, the Connect New York Coalition (Coalition)⁹⁶ filed a petition in July 2014 seeking an investigation into New York’s telecommunications, and particularly into the status of Verizon Communications (d/b/a New York Telephone).⁹⁷ At roughly the same time, PULP released a report, in May 2014, entitled, “It’s All Interconnected: Oversight and Action is Required to Protect Verizon New York Telephone Customers and Expand Broadband Services (Report),”⁹⁸ which studied in great detail the then-current status of New York telecommunications. PULP subsequently submitted the report and comments into Matter Number 14-00874, which subsequently became Case 14-C-0370.⁹⁹

Despite a promise from the PSC Chair that the Department of Public Service Staff (DPS or Staff) would begin the telecommunications study at the core of Case 14-C-0370, a protracted period of time elapsed after the proceeding was opened without evidence of the study having

⁹² See, PULP testimony at New York City public statement hearing, October 9, 2015, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={F6A716E9-0EA6-44E9-A5D0-A76BF9854F82}>.

⁹³ See, Order Granting Joint Petition Subject to Conditions, filed January 8, 2016, at pp. 50–68, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={DEE1823A-AADD-48D4-94BD-B96BAC096DAA}>.

⁹⁴ See, letter from Chairwoman Zibelman to Senator Dean Skelos, Assemblyman Sheldon Silver, and Senator Jeffrey Klein, dated May 13, 2014, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={203EDB06-959D-4CC6-93F4-2F3B17E58AA0}>.

⁹⁵ Id at p. 1.

⁹⁶ The Connect New York Coalition included Assemblymember Brian Kavanagh, Mayor of Syracuse Stephanie Miner, former Assemblymember Richard Brodsky (counsel for CWA), Michael Gendron (representing CWA), Bob Master (representing CWA), and Susan Lerner of Common Cause.

⁹⁷ In the petition, the Connect New York Coalition was joined by sixteen public interest organizations and over seventy Mayors, Supervisors, Presiding Officers, County Executives, Legislators, Senators, Assembly Members, and Members of Congress, who cosigned and filed the July 1, 2014, Petition. See, letter from Connect New York Coalition to Chairwoman Zibelman, dated November 12, 2014, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={7610C78D-6FD1-4BE4-B1C6-212748FC729F}>.

⁹⁸ See, <http://bit.ly/109LZ6O>.

⁹⁹ See, Public Utility Law Project, Comments with attached report, October 31, 2014, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={68E3C779-225E-4DE0-8EC1-D9FBE659327D}>.

been commenced. Consequently, the Coalition¹⁰⁰ and PULP¹⁰¹ sent letters to the Chair in January and May, respectively, of 2015, urging an end to delays in performing the study.

Fairly soon after the Coalition's and PULP's letters, DPS issued the study¹⁰² and opened up a comment period. Numerous elected officials, unions, municipal intervenors, and advocates filed comments that can be summarized as follows: (1) Verizon was allowing its infrastructure to crumble through disinvestment; (2) Lifeline and universal service were being undermined by the company's behavior; (3) customer complaints had continually increased since the PSC's Competition III proceeding in 2005;¹⁰³ and (4) the major telephone companies should be required to undergo a major rate proceeding. PULP's comments, submitted October 26, 2015, focused on similar issues, and also refiled its 2014 report on telecommunications in New York.¹⁰⁴

After the comment period, the case was delayed by protracted litigation over a FOIL¹⁰⁵ request seeking data about Verizon's use of its wireless-cellular Voice Link service. That dispute was decided by the Third Department Appellate Division in January 2016, and the proceeding largely went into suspension soon thereafter, following, among other actions, a determination by the PSC that the record was sufficient to Order an inquiry into Verizon's service quality and certain other issues, and they initiated Case 16-C-0122 in 2016.

c. Verizon Service Quality

The Verizon Service Quality proceeding began on March 21, 2016, pursuant to an Order from the PSC that called for the examination of Verizon New York Inc.'s service quality standards, and questioned whether competition is providing sufficient incentive for Verizon to maintain customer service quality.¹⁰⁶

On June 7, 2016, a procedural conference was held to determine the litigation schedule for the procedure. Due to a work stoppage, Verizon did not proffer its testimony until August 1,

¹⁰⁰ See, letter of the Coalition to Chair Zibelman filed January 28, 2015, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={76EEA427-8922-4DDB-8673-1F6CD1185882}>.

¹⁰¹ See, letter from PULP concerning the overdue study on the state of telecommunications to Chair Zibelman filed May 7, 2015, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={70BFEAED-E800-4CB1-BDFD-F8F43FCC30C0}>.

¹⁰² See, Staff Assessment of Telecommunications Services, June 23, 2015, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={3DDDC8A5-E94A-4873-886C-3D73F68EC9AB}>.

¹⁰³ See, Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services, Order Initiating Proceeding and Inviting Comments, June 29, 2005, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={1B9E19FD-206B-4509-9DA3-D38A29194F9D}>.

¹⁰⁴ See, PULP Comments, filed October 26, 2015, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={CD0C5946-543A-4937-B963-B1CCCCB6046F}>.

¹⁰⁵ See, decision of the Third Department Appellate Division, January 2016, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={C11367C2-B258-47E9-8A8D-AF259E30F684}>.

¹⁰⁶ See, Order Initiating Proceeding to Review Verizon New York, Inc.'s Service Quality, filed March 21, 2016, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={1A79C04D-3D4D-4EFE-89CC-06DDF732680A}>.

2016.¹⁰⁷ A second procedural conference was held on August 11, and a ruling on schedule was made by Administrative Law Judge (“ALJ”) Mullany on October 7, 2016.¹⁰⁸ Staff and Intervenor testimony was originally due in December of 2016, but was delayed via requests for extension and interlocutory appeals by CWA, the principal intervenor, until 2017.

Due to its involvement in five major rate cases, the Altice merger, and numerous policy cases, PULP’s legal and financial resources were fully committed and left no additional funds or attorney time to a more active role in this case than to wait for the settlement process, which was anticipated to begin in early 2017. Despite PULP’s inability to play an active role throughout the entire case, there was room to believe there might be good outcomes in the case. One reason to be positive was that New Jersey’s Board of Public Utilities was petitioned in December of 2015 by a number of rural towns to conduct a proceeding very similar to this case.¹⁰⁹ Additionally, CWA filed a similar petition in Pennsylvania in late 2015,¹¹⁰ seeking a similar investigation and positioning the Company to be facing roughly identical proceedings in three neighboring states simultaneously, with the ability for consumer advocates to compare strategies.

None of the three states had finished litigation or settlement procedures by the end of 2016, but it appeared likely that positive outcomes could result in all three service territories.

IX. Activity on State Boards and Committees

Introduction

PULP has fervently renewed its direct participation and activities with numerous organizations. In recognition that the utility industry is at the intersection of housing and small business, PULP has become a vocal participant on several State boards and committees concerned with meeting the goals of energy efficiency and conservation concurrent with affordability. In this capacity PULP has become engaged in a collaborative peer to peer process with entities which share common concerns to address issues by making transformative procedural, fiscal and policy recommendations.

Given the reduction and tenuous availability of Federal subsidies for critical low- to moderate-income programs, sustaining a relationship with sources that may have alternative solutions and/or resources to address consumer problems is of import to PULP. PULP’s association with the Clean Energy Advisory Council, opened an opportunity to work with NYSERDA to invest in reducing the cost of energy, for low- to moderate-income consumers, improving energy efficiency and accessing weatherization services to achieve that goal. The Consumer Advisory Council to the PSC, in turn has enabled PULP to keep consumer advocates informed, including them in the dialogue that affects their constituents and provide their perspectives on issues affecting them. PULP’s membership on the Low-Income Forum on

¹⁰⁷ See, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={014C5E15-4719-4A02-9861-9A2D3F8741E2}>

¹⁰⁸ See, Ruling on Schedule, October 11, 2016, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={98668B1F-C285-475D-BAFE-322A10F2F2A7}>.

¹⁰⁹ See, <http://www.newsworks.org/index.php/local/new-jersey/88661-south-jersey-towns-ask-state-to-investigate-verizon-over-phone-internet-problems>.

¹¹⁰ See, <http://www.fiercetelecom.com/telecom/verizon-cwa-reach-copper-network-settlement-pennsylvania>.

Energy (LIFE) Steering Committee is of import in that it enables a synergy among the many programs represented that assist low- income consumers to integrate their recommendations with a programmatically compatible approach. PULP’s 2016 re-engagement with the Targeted Accessibility Fund Board is timely in addressing critical telecommunications decline in funding and potential decertification of numerous non-English proficient low-income individuals.

Summaries

a. Consumer Advisory Council to PSC

The Consumer Advisory Council (CAC) of the PSC was created in late 2014 after Michael Corso of the PSC was named the PSC’s Consumer Advocate. The CAC meets on a roughly quarterly basis, although depending upon the number of cases and issues in controversy at the PSC, it might meet more often. One of the key early functions of the CAC was to brief the State’s key consumer groups focused on utility issues on planned and ongoing activities in the myriad cases, collaborative discussions, and workgroups spun out of the main REV proceeding. Members of the CAC can also propose items for an agenda based on existing cases, or potential new PSC action(s), and the Consumer Advocate’s staff will facilitate a briefing and discussion on those items. While the CAC is continuing to develop its procedures and function, the ability of consumer advocates to get a peek inside the “black box” of the PSC’s routine function, and to provide issues for the Consumer Advocate to inquire into, appears to be extremely valuable.

b. NYSERDA Low Income Forum on Energy (LIFE) Steering Committee

The Low Income Forum on Energy is an important statewide dialogue administered by NYSERDA¹¹¹ “that brings together organizations and individuals committed to addressing the challenges and opportunities facing low-income New Yorkers, ... and encourages an interactive exchange of information and collaboration among the programs and resources that assist low-income energy consumers.”¹¹² As part of PULP’s initiative to deepen its partnerships with NYSERDA, which included three members of PULP presenting at 2016’s statewide LIFE conference in Albany,¹¹³ PULP sought and received appointment to the LIFE Steering Committee in 2016 so that we might have more input into the shaping of LIFE’s programs in the future.

It is anticipated that this will provide the opportunity for PULP to conduct more trainings and continuing legal education (CLE) classes as part of LIFE’s regional and statewide conferences, and to leverage our unique competence in the areas of LIFE’s concerns to provide technical assistance to NYSERDA’s LIFE programming, and to the entities that take part in LIFE and provide services to low-income New Yorkers.

¹¹¹ See, <https://www.nyserdera.ny.gov/All-Programs/Programs/Low-Income-Forum-on-Energy>.

¹¹² Id.

¹¹³ See, <https://www.nyserdera.ny.gov/All-Programs/Programs/Low-Income-Forum-on-Energy/LIFE-Events/2016-Statewide-LIFE-Conference>. PULP presented on HEFPA rights, Participating in a PSC Proceeding, and sub-metering.

c. Clean Energy Advisory Council – Low/Moderate-Income Board¹¹⁴

The Clean Energy Advisory Council (CEAC) is jointly chaired by the PSC and NYSERDA,¹¹⁵ and was established by the PSC’s January 16, 2016 Order in the Clean Energy Fund (CEF) proceeding, case 14-M-0094. The CEAC was required to report back to the PSC and NYSERDA on a variety of issues integral to the proceeding, and research and writing of the reports done by workgroups, including a low and moderate income workgroup of which PULP was a member.¹¹⁶ The low and moderate income workgroup provided their report to the PSC on June 23, 2017.¹¹⁷ The purpose of the report was to provide a roadmap for NYSERDA to invest monies from the Clean Energy Fund into reducing costs for energy for low and moderate income households, and also to improve energy efficiency and weatherization opportunities for those consumers. With its task on the workgroup done, PULP is continuing to engage with NYSERDA in this council and through the LIFE Steering Committee to provide input into how these investments can help the groups we serve.

d. Targeted Accessibility Fund (TAF) Board

New York’s Targeted Accessibility Fund (TAF) was established by the PSC in 1998,¹¹⁸ two years after the 1996 Telecommunications Act significantly changed federal regulation of telecommunications. The purpose of the TAF is “to ensure the proper funding by the telecommunications carriers of various targeted programs ... Lifeline, emergency services E911, Public Interest Pay Phones, and the Telecommunications Relay System.”¹¹⁹ In previous years, Senior Staff Attorney Lou Manuta had represented PULP on the TAF Board, which PULP had taken a role in creating through its work on Universal Service generally.

PULP rejoined the TAF Board in 2016, and will take part in any action necessary to adjust TAF funding and administration based on changes in the federal universal service programs. Two such changes are the decline in federal subsidies for Lifeline and the federalization of the annual recertification/decertification process for Lifeline consumers, both of which began in 2015. The declining subsidy will require increases in New York State assessments, and a new Order from the PSC. The decertification program changes pose significant problems in creating erroneous de-certifications due to the federal program only communicating in two languages, which led to an erroneous decertification of tens of thousands of Asian language and Russian language speakers in New York.¹²⁰

¹¹⁴ See, <http://www3.dps.ny.gov/W/PSCWeb.nsf/All/F287BFCBBA89475885257FCE006D2DBF?OpenDocument>.

¹¹⁵ See, <http://www3.dps.ny.gov/W/PSCWeb.nsf/All/F287BFCBBA89475885257FCE006D2DBF?OpenDocument>.

¹¹⁶ Public documents from the CEAC process are available in Matter 16-00561, which is connected to eight sub-proceedings of the REV proceeding.

¹¹⁷ See, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={DD726160-E11F-4E11-A54D-778F6E9009CB}>, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={DD726160-E11F-4E11-A54D-778F6E9009CB}>.

¹¹⁸ See, <http://www.tafny.org/>; see also, Opinion 96-13 in Case 94-C-0095, <http://www.dps.ny.gov/otherreqs.htm>, providing that all local exchange carriers shall contribute to TAF, and outlining universal service requirements; and see, Opinion 98-10 in Case 94-C-0095, pp. 30-40, outlining a working group’s report on how TAF should be altered after the Competition II Order, and exempting cellular service from contributing to TAF, http://www.tafny.org/resources/psc_orders/PSC%20Order%2098-10.pdf.

¹¹⁹ Id.

¹²⁰ <https://www.nysenate.gov/newsroom/press-releases/daniel-l-squadron/squadron-rozic-chin-announce-fcc-agreement-improve-verizon>.

X. Media Coverage

Introduction

For PULP the media, written, broadcast, televised and social has served as a powerful means to extend the consumers' message of necessity in these times of crisis in affordability. The utility industry technology and related language is daunting and frequently incomprehensible to the general public. PULP's involvement in televised interviews, distribution of written press releases, social media and E-blasts in partnership with other entities whose members are deeply affected by utility rate increases, misrepresentations, abuses and misinformation, have helped inform consumers and elected officials, and bring transparency to an otherwise arcane process and set of consumer rights.

During this last year Richard Berkley, Esq. PULP Executive Director appeared on cable broadcast interviews with Senator Kevin Parker, ranking Member of the Senate Energy Committee, Senator Leroy Comrie, Queens County (*14th Senatorial District*), Liz Benjamin Capital Tonight host on Spectrum News, and in various press conferences addressing the looming issue of the day with ESCOs, replevin/meter seizures, rate increases, over-charges, violations of the Home Energy Fair Practices Act (HEFPA). PULP has also increased its use of social media through tweets informing and/or responding to public concerns; Facebook outreach, on-going issues updates, announcements, consumer rights and alerts. Finally, PULP has authored numerous Op Ed pieces in both English and Spanish, in collaboration with interested public and not-for-profit partner organizations, and elected officials.

This increased media presence has heightened an awareness of the public service rendered by PULP as the sole independent intervenor in New York on behalf of low-income and fixed-income utility consumers. It has also shone a light on issues that might have otherwise gone unnoticed or misunderstood, or been too steeped in technical jargon to be easily accessible to the "consumer on the street."

Summaries

PULP accumulated a sizable amount of press coverage on its high-priority issues and activities throughout New York State in 2016, encompassing local and major-market online, print, and broadcast media, as well as coverage in national trade publications; see Appendix A for a list of links/summaries to known appearances. In addition to garnering attention to PULP's core concerns, the effort also has built on outreach activities when the organization partnered with like-minded groups on press releases, statements, and press conferences. This simultaneously increased the opportunities for coverage and for working with elected officials and CBOs. It also served to bring high-profile, local, and directly affected voices into the room in ways they rarely are on utility consumer issues and contributed to PULP's effort to deepen those relationships.

At times, while not necessarily generating coverage, bringing together disparate voices into a press release or statement has been a valuable effort in itself, as it has served to create a deeper commitment to the specifics of PULP's ongoing work and a more comprehensive awareness of how the issues PULP addresses infuse people's lives. PULP also joined with community-based organizations in press conferences publicizing public statement hearings during the Governor and PSC's "Reforming the Energy Vision (REV)"-related proceedings.

These partnerships have included AARP, NYS Senator Kevin Parker, NYS Assemblymembers Joseph Lentol and Latrice Walker, NYC Councilmembers Ritchie Torres, Debi Rose, Donovan Richards, and Carlos Menchaca, the NYC Council’s Black, Latino/a, and Asian Caucus and its Progressive Caucus, and the Center for Working Families.

a. ESCOs

In addition to the *Village Voice*’s initial 2016 cover story on ESCOs that features our current Board Member Alfred Fuente, we have contributed to local articles across several publications including syracuse.com, the *Livingston County News*, the *Gates Chili Post*, and the *Ossining-Croton-On-Hudson Patch*, and Politico. In addition, in a somewhat unexpected occurrence, PULP received even-handed mention in a blog called the “Energy Law Tribune” that is published by the Feller Law Group, which represents the Impacted ESCO Coalition, a group of the smaller ESCOs.

b. Rate Cases

Media coverage of PULP’s activities in rate cases across the state ran in *Newsday*, the *Brooklyn Eagle*, the *Queens Ledger*, the *Buffalo News*, the *Hudson Valley Daily Freeman*, and WCBS-TV/Local News. The Environmental Finance Blog, hosted by the University of North Carolina-Chapel Hill’s Environmental Finance Center, published a significant piece on PULP’s attempts to negotiate low-income rates into the American Water and Suez rate cases; this piece was reproduced in the Capitol Hill, Albany, blog hosted by [parkbench](http://parkbench.com).⁵⁵ PULP also released a joint statement on the National Grid—NY rate case with the NYC Council’s Black, Latino/a, and Asian and Progressive caucuses.

c. Amicus Briefs

SCOTUSblog, the well-respected independent online site for U.S. Supreme Court cases, included PULP’s briefs in *Hughes v. Talen Energy Marketing* and *Federal Energy Regulatory Commission v. Electric Power Supply Association*.

d. State-Wide Low-Income Affordability Order

The Western New York Peace Center posted PULP’s public hearing testimony presented in Buffalo on YouTube, and a PULP appearance at the press conference that followed was broadcast on Buffalo local TV and radio news programs.¹²¹ A Hudson Valley CBO, Nobody Leaves Mid-Hudson, quoted PULP in a *Poughkeepsie Journal* op-ed,¹²² as did Politico.

e. Nuclear Bailout/CES Order

¹²¹ See, <http://wivb.com/2015/10/01/state-regulators-set-course-for-affordable-utility-bills/>.

¹²² See, <http://www.poughkeepsiejournal.com/story/opinion/valley-views/2015/11/04/low-income-customers-need-far-more-help-utility-bills/74742862/>.

NYPIRG cited PULP’s work on the consumer rate cost of the Clean Energy Standard bailout of three upstate nuclear power plants in an op-ed in lohud.com;¹²³ the same PULP data was cited in a number of other publications and broadcasts.

f. Replevins

The story concerning Con Edison’s use of replevin actions (i.e., meter seizures) as a collection technique in the New York City courts was covered in great detail by the Village Voice in its story: “Con Ed’s Kangaroo Court: How a Private Company and Our Public Courts Put Consumers in the Hot Seat.”

g. PULP Regional Offices

Following the opening of PULP’s Syracuse office in 2015, the Onondaga County Bar Association’s *Bar Reporter* published a staff profile on the organization’s mission.

XI. Fundraising & Grant Writing

Introduction

In 2014, Gerry Norlander announced his retirement, and a search for Executive Director was launched. Among the Board of Directors’ primary criteria for selecting a new executive director was that the successful candidate should have a clear plan for diversifying PULP’s funding resources. In 2015, Richard Berkley assumed the title of Executive Director and put into adoption a “three-legged stool” approach to both diversifying and increasing funding for PULP. The three legs were:

- Government: Achieving both a full restoration of pre-“09/11” level funding¹²⁴ and new funding from the City of New York, whose residential utility customers were (and continue to be) the focus of 35 – 50% of PULP’s work;
- Foundations: New initiatives to find legal, social, economic justice-minded grantors to help fund PULP’s work; and
- Direct fundraising: Outreach and development of a donor base of individuals, businesses and other institutions willing to support PULP’s general operations on a continuing basis.

These three legs were calculated to bring in sufficient new revenue for PULP to continue to grow its statewide reach, to deploy more direct services (thus opening the door to potential IOLA or other legal services funding in the future), and to de-link the organization’s activity and receipt of funding from the State’s funding and funding cycles.

¹²³ See, <http://www.lohud.com/story/opinion/contributors/2016/10/24/nuclear-plant-bailout-nypirg-commentary/92681584/>.

¹²⁴ After the September 11, 2001, attacks on the World Trade Center in New York City, the New York State budget process for the fiscal year 2001 – 2002 – which had already experienced delays through the entirety of the summer – was overwhelmed by the need to address the consequences of the attacks on the state budget. Ultimately, non-profit organizations such as PULP saw their state funding cut dramatically. PULP funding was cut by over 35%, to a level from which the organization has never been restored to its prior funding amounts.

Summaries

a. Fundraising to rebuild unrestricted funds

PULP raises unrestricted or specific project directed funds through a combination of grant writing and direct solicitation from Board members, philanthropies, foundations, small businesses and general supporters.

On May 4, 2016, PULP held a public event celebrating *35 years of Service Championing Low- and Fixed-income Consumer Utility Rights*. Held at Albany City Hall and hosted by the Mayor, the Honorable Kathy M. Sheehan, the celebratory reception doubled as a silent auction to benefit PULP's work. A variety of goods and services provided by local Albany and New York City businesses and legal services provided by Board Member Jill Kupferberg, Esq. yielded a few thousand dollars and new supporters for PULP.

Alternatively, PULP sought to limit events to a narrower group of individuals known to support the organization in their own turf, the City of New York. On October 4, 2016, on the advent of HEAP season, Author/Philanthropist Randy Fertel, President of The Ruth U. Fertel Foundation sponsored an apartment party attended by elected municipal and State officials, other philanthropies and friends of PULP. Totally underwritten by the Foundation, the event only yielded several thousand dollars as it competed with multiple events taking place that evening. A second apartment party hosted and underwritten by Bill Samuels, New York City-based progressive Democrat, businessman, founder and chairman of the board of the good government group EffectiveNY and the EffectiveNY Howard Samuels Policy Center was held in January 2017. An impressive list of interested supporters were invited but, again, events competing for the attendance of the same participants at the beginning of the legislative session in New York City undermined the well-planned efforts and the yield was less than a thousand dollars.

PULP also engaged the Board of Directors as emissaries to their known circle of program supporters, and in turn they provided staff with known sources of funding and in one innovative instance donated legal services to be auctioned to benefit PULP. The organization has also explored a variety of other approaches to fundraising to determine which is more far-reaching, offers more exposure and renders the most positive revenue without taxing the limited number of personnel currently working on a variety of projects.

b. Direct and Email Solicitations

PULP has utilized social media sites to request donations from known friends and acquaintances. In addition, PULP has reached out to a wider audience of Amazon customers to order their purchases through Amazon Smile thus assuring the dedication of sales percentage to the organization. This approach has yielded donations ranging from a few dollars to as much as thousand-dollar donations from friends and philanthropies.

c. Grant Writing and Awarded Grants

The National Consumer Law Center was one among our successful grant applications. PULP was awarded \$7,500.00 under the Energy Foundation to produce and distribute an “anti-fixed charge” pamphlet, host a statewide organizational fixed rate meeting and an “anti-fixed rate” media campaign. It has been close to a decade since PULP's Laws Manual was last updated. In 2016 PULP sought funds to engage second and third year law students to update the manual under the supervision of a staff attorney. PULP applied for and received \$5,000 from the

David & Minnie Berk Foundation for this purpose. PULP was also informed in 2016 that it would receive a \$10,000 grant from the Impact Fund¹²⁵ for use with expert witness expenses in the ESCO Evidentiary Proceeding.

d. Draft Fundraising Plan for 2017

The lessons learned during 2016 gave agency to the 2017 Fundraising Plan. The costs associated with discovery and filings in the matter of energy service companies, replevins and seized meter circumventing the Home Energy Fair Practices Act, telecom mergers and their economic impact on low-income consumers, escalating water rates, 66,000 record energy shut-offs are driving PULP's 2017 Fundraising Plan. The target foundations/funders include:

- **The Center for Urban Pedagogy**¹²⁶ – to partner with PULP in creating HEFPA/HEFPA/utility “Know Your Rights” posters/brochures for dissemination to State and City legislative members, community-based organizations and advocates.
- **The Unitarian Universalist Association Funding Program** – Under the Association’s Fund for a Just Society which addresses issues of social and economic justice PULP will be seeking an award to pay a lead attorney and second and third year law students to assist consumers facing replevin and meter seizures. (\$15,000.00).
- **New York City Council** – In the Fall, 2015, PULP began to visit New York City Council Members of the most vulnerable and at-risk neighborhoods experiencing predatory marketing solicitations from ESCOs. Tailored packages delineating the growth of active ESCOs in their districts including formal constituent complaints to the Public Service Commission were included. These packages initiate a dialogue as to the need for services in their districts on numerous utility related issues. The goal for PULP is to seek funding from the discretionary funds available to the Speaker and Council Members of those target areas to expand services in their districts. (\$75,000 - \$100,000).

¹²⁵ The Impact Fund is a California-based not-for-profit organization dedicated to offering support to public interest lawyers through training, co-counsel and grants. PULP began seeking funding in the end of 2016 for expert witness testimony and analysis, discovery and filings related to the ESCOs in the PSC’s Evidentiary Proceeding.

¹²⁶ While CUP is not a funder, its donation of large amounts of design work, editing and testing, focus groups, and an initial print run of the event HEFPA/“Know Your Rights” brochure and poster will be immensely valuable to PULP and the communities it serves.

APPENDICES

A. 2015-2016 Press clippings

Note: *Newsday* articles are contained behind a paywall, as are Politico's initial postings.

Central Hudson Electric & Gas

"AARP, law group rap Central Hudson for making customers pay legal costs in rate hike process
William J. Kemble, *Daily Freeman*, news@freemanonline.com, posted: 03/25/15;
<http://www.dailyfreeman.com/general-news/20150325/aarp-law-group-rap-central-hudson-for-making-customers-pay-legal-costs-in-rate-hike-process>

Clean Energy Standard--Nuclear Subsidy

"Environmentalists Say Cuomo Administration Should Reconsider Nuke Subsidy," Karen Dewitt, WAMC Northeast Report, Oct. 5, 2016; <http://wamc.org/post/environmentalists-say-cuomo-administration-should-reconsider-uke-subsidy>

"CES Under Attack on Multiple Fronts in Rehearing Requests," William Opalka, *RTO Insider*, Sept. 5, 2016; <https://www.rtoinsider.com/ces-clean-energy-nuclear-power-31157/>

"Nuclear plant bailout burdens New Yorkers, NYPIRG writes," Blair Horner, *lohud.com*, Oct. 24, 2016, <http://www.lohud.com/story/opinion/contributors/2016/10/24/nuclear-plant-bailout-nypirg-commentary/92681584/>

"Groups Call Nuke Plant Bailout a 'Tax' on Ratepayers," Karen DeWitt, WXXI News, Oct. 5, 2016; <http://wxxinews.org/post/groups-call-uke-plant-bailout-tax-ratepayers>

Con Ed Kangaroo Courts

"Con Ed's Kangaroo Court: How a Private Company and Our Public Courts Put Consumers in the Hot Seat," Jon Campbell, *Village Voice*, Apr. 5, 2016; <https://www.villagevoice.com/2016/04/05/con-eds-kangaroo-court-how-a-private-company-and-our-public-courts-put-consumers-in-the-hot-seat/><https://www.villagevoice.com/2016/04/05/con-eds-kangaroo-court-how-a-private-company-and-our-public-courts-put-consumers-in-the-hot-seat/>

ESCOs

"The Scam Albany Won't Fix," Jon Campbell, *Village Voice*, Feb. 2, 2016; <https://www.villagevoice.com/2016/02/02/why-is-albany-letting-these-energy-companies-scam-thousands-of-new-yorkers/>

"NY regulators clamp down on energy marketers after too many customers get fleeced," Tim Knauss, *syracuse.com*, Feb. 23, 2016; http://www.syracuse.com/news/index.ssf/2016/02/ny_regulators_rein_in_energy_service_companies_after_too_many_get_fleeced.html

"After Voice Investigation, Major Reforms Announced in Retail Energy Industry," Jon Campbell, *Village Voice*, Feb. 23, 2016; <https://www.villagevoice.com/2016/02/23/after-voice-investigation-major-reforms-announced-in-retail-energy-industry/>

"New Rules Mean Shady Energy Companies Have to Stop Scamming Low-Income New Yorkers," Jon Campbell, *Village Voice*, July 18, 2016; <http://www.villagevoice.com/news/new-rules-mean-shady-energy-companies-have-to-stop-scamming-low-income-new-yorkers-8873939>

"NY regulators to energy marketers: Save customers money or return them to utility," *syracuse.com*, March 3, 2016; http://www.syracuse.com/news/index.ssf/2016/03/ny_regulators_to_energy_marketers_save_customers_money_or_return_them_to_utility.html

"Judge Puts the Brakes on Cuomo's Major Energy Industry Reforms," Jon Campbell, *Village Voice*, March 4, 2016; <https://www.villagevoice.com/2016/03/04/judge-puts-the-brakes-on-cuomos-major-energy-industry-reforms/>

"Court Delays New York 'Guaranteed Savings' Rules," William Opalka, *RTO Insider*, March 7, 2016; <https://www.rtoinsider.com/court-delays-new-york-rules-22943/>

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"PSC Re-Adopts APP Moratorium Through Emergency Order," Meghan Boland, Esq., *Energy Law Tribune* (Feller Law Group, PLLC), Sept. 21, 2016; <http://energylawtribune.com/tribune/?p=651>

"NY regulators ban energy company sales to low-income people," *Gates Chili-Post/Monroe County Post*, Associated Press, Dec. 13, 2016; <http://www.gateschilipost.com/news/20161216/ny-regulators-ban-energy-company-sales-to-low-income-people>

"Energy Service Companies Banned from Selling to Low Income New Yorkers: A preliminary investigation finds residential and small business customers overpaid hundreds of millions of dollars," Lanning Taliaferro, *Patch*, Dec. 16, 2016; <http://patch.com/new-york/ossining/energy-service-companies-banned-selling-low-income-new-yorkers>

"NYS Exposed: State Attempting to Rein in Energy Marketers," Jennifer Lewke, *WHEC*, Rochester, Dec. 19, 2016; <http://www.whec.com/news/energy-marketers-state-nys-exposed/4349023/>

"Albany Times Union Editorial: Score one for consumers," Dec. 20, 2016; <http://blog.timesunion.com/opinion/score-one-for-consumers/37052/>

"NY's Parasitic Private Energy Scammers Are Digging In Their Heels," Jon Campbell, *Village Voice*, June 6, 2017; <https://www.villagevoice.com/2017/06/06/nys-parasitic-private-energy-scammers-are-digging-in-their-heels/>

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"National Grid not helping delinquent customers, advocate says," Mark Harrington, *Newsday*, Aug. 8, 2016; <http://www.newsday.com/beta/business/advocate-national-grid-not-helping-delinquent-customers-enough-1.12149886>

"LI natural gas rates to rise by 5 percent a year through 2019," Robert Brodsky, *Newsday*, Dec. 15, 2016; <http://www.newsday.com/beta/long-island/li-natural-gas-rates-to-rise-by-5-percent-a-year-through-2019-1.12762672><http://www.newsday.com/beta/long-island/li-natural-gas-rates-to-rise-by-5-percent-a-year-through-2019-1.12762672>

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“EXCLUSIVE: NYC home energy rates could soar under National Grid proposal to clean up Superfund sites,” Jennifer Fermino, Daily News, Oct. 24, 2016; <http://www.nydailynews.com/new-york/nyc-home-energy-rates-soar-superfund-cleanup-plan-article-1.2842280>

“National Grid Customers Could See Rate Hike Over Cleanup of Gowanus Canal,” Nancy Espinosa, CBS Local News, Dec. 14, 2016; <http://bit.ly/2i8bWgB>

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Politico.com Pro, September 14, 2015;

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National Fuel Gas

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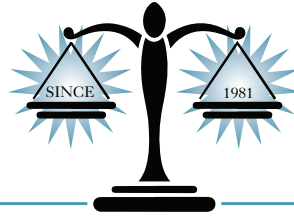
With AARP

“Commentary: Energy service companies a money drain on consumers,” Richard Berkley and Beth Finkel, Oct. 24, 2016; <http://www.timesunion.com/tuplus-opinion/article/Energy-service-companies-a-money-drain-on-10172915.php> <http://www.timesunion.com/tuplus-opinion/article/Energy-service-companies-a-money-drain-on-10172915.php>

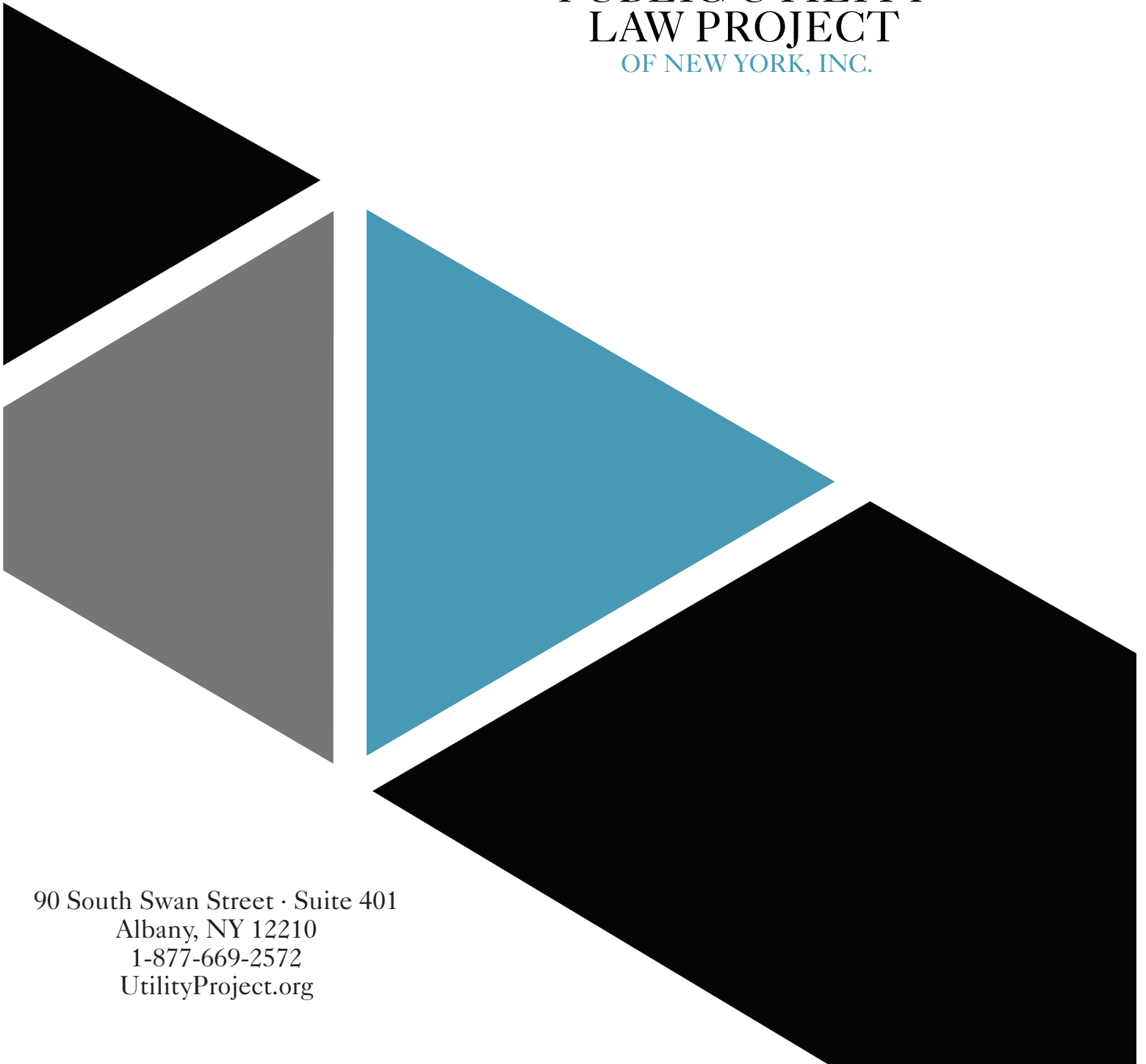
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“Have issues with your utility company? Here’s how you fight back: Pols Have Staffers Take Course For Outreach,” Paula Katinas, *Brooklyn Daily Eagle*, Aug. 7, 2015; <http://www.brooklyneagle.com/articles/2015/8/7/have-issues-your-utility-company-here%E2%80%99s-how-you-fight-back>

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