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April 17, 2024

Ms. Mary Radparvar
[redacted]

Michael Camello
Consolidated Edison Company of New York, Inc.
4 Irving Place, 9th Floor
New York, New York 10003

Subject: Informal Hearing Case #317398
Hossmand Radparvar
[redacted]

Dear Ms. Radparvar and Michael Camello:

An informal hearing in the above referenced case was held on October 30, 2023. Jeremy Feliciano represented Consolidated Edison Company of New York, Inc. (Con Edison or the utility). Ms. Mary Radparvar represented Hossmand Radparvar (the complainant). Based on all the information presented in this case, and the applicable rules and regulations, the service supplied to the third floor apartment of the above referenced property is considered "non-residential," due to the fact that the third floor apartment wiring is arranged to supply electric service to common areas of the property, and the piping is arranged to supply gas service (hot water and heating) to the entire property. Therefore, only the property owner may be the customer of record for the account associated with the third floor apartment. The utility shall place an appropriate note in its system that no tenant may be the customer of record on the electric or gas accounts for the third floor apartment unless the owner changes the wiring and piping at the premises.

Notwithstanding the above, while the utility properly established the complainant, the property owner, as the customer of record on the electric account, the utility did not bill this account at the proper service classification. According to the utility tariff, this account qualifies for service classification SC-1 (residential or religious service rate) and adjustments to the charges billed to this account are required. Further, while the utility properly established the complainant as the customer of record on the gas account, the utility did not bill this account at the proper service

classification. According to the utility's tariff, this account qualifies for service rate classification SC-3 (residential heating service rates), and adjustments to the charges billed to this account are required. The accounts in question were not eligible to receive the 2023 NYS Bill Relief credit, as both accounts did not have arrears on May 1, 2022, per program requirements. Finally, despite the accounts for the third floor apartment qualifying for a residential service classification, the customer of record on the service account at this apartment is a "non-residential" customer, and is not permitted to opt-out of smart meter installation.

Background:

The complainant has been the owner of the two-family property at [redacted], since 2010.[1] The apartment on the second floor is leased to tenants. The tenants have a residential account for cooking gas and electric service provided to their apartment. At the time of their complaint, the complainant had two non-residential accounts for the property in question: the account for electric service supplied to the first ("ground' or "basement") floor, the third floor, and hallways (electric account), and the account for gas service supplied for cooking in the third floor apartment, and the hot water and heating service for the entire property (gas account). The complainant, Hossmand Radparvar, is the customer of record on these two accounts, which Con Edison established and billed at non-residential rates since 2010.

On February 7, 2023, the complainant contacted the Department of Public Service, Office of Consumer Services (OCS) and complained about the service classification rates billed to their electric and gas accounts. The complainant argued that Con Edison improperly classified their accounts as non-residential, and improperly billed the accounts at non-residential service classification rates. The complainant stated that this is a two-family dwelling, and they occupy the first and third floor of the premises, and the tenant resides on the second floor. The complainant alleged that because the accounts were wrongfully classified as non-residential, they did not receive 2023 NYS Bill Relief Credit, and they were not allowed to opt-out of installing AMI (smart) meters at the property. The complainant stated that they were disputing the service classifications and service rates billed to their accounts for the entire period since the accounts were opened in 2010. The complainant alleged that similar neighboring properties are classified as residential properties, and the accounts for the apartments at these properties are billed at residential rates, but Con Edison is still unable to explain why only their property on the block was classified and billed as non-residential. OCS submitted the complainant's questions to the utility and directed it to address the complainant's concerns.

On March 4, 2023, Con Edison stated that it contacted the complainant and explained that the "property is coded as commercial because a shared meter condition was found at the location, and it appears that a tenant is living on the premises. The rates are being billed as per the utility's rates and tariff… The [Bill] relief program covers arrears up to May 2022, which would not apply [to the complainant accounts], as all bills were paid. The PSC regulation regarding AMI opt out have not change since [the complainant's] last case submitted in September 2022."

[1] See deed for property at [redacted], as on file with New York City Department of Finance, Office of the City Register (as of document date: 04-28-2008, and document date: 01-01-2020).

On March 8, 2023, OCS sent a letter, signed by the OCS director, with information explaining the NYS Bill Relief Program and program requirements, stating that a one-time credit was automatically applied to eligible customer accounts for unpaid COVID related balances accrued through May 1, 2022, if they met the program requirements. OCS also advised the complainant "to enter into a payment arrangement on account, since there is a balance of 968.69." On March 8 and 17, 2023, the complainant again contacted OCS and stated that they were dissatisfied with the closing letter, as it does not address all the main issues of the initial complaint, and the only thing the closing letter talks about is a payment agreement, which the complainant did not ask for or want. The complainant stated that they believe their accounts were inaccurately coded as non-residential and improperly billed at non-residential rates, which made them ineligible for the second phase of the NYS Bill Relief program. The complainant also stated at that time that they believe the bills are high and that should be investigated as well. On March 27, 2023, OCS requested that Con Edison perform a high bill investigation and an inspection of the complainant's electric and gas meters, because the complainant was disputing the service class and high bills. On April 3, 2023, Con Edison advised OCS that it had arranged an appointment to inspect the gas and electric meter at the property on April 7, 2023, and sent a letter to inform the complainant of the scheduled appointment.

On April 3 and 4, 2023, the complainant contacted OCS and stated that "this case is moving in the wrong direction, and that "meter performance is not her concern," but the issue is why the accounts are billed as commercial, at non-residential rates. On April 8, 2023, in the email sent to OCS, the complainant stated "Wow the incompetence is amazing. 1. What does the meter have to do with my request to have my residential home made into a residential account as it should be not commercial. 2. My complaint was regarding the fact that I was discriminated against and told if I didn't pay my bill my Con Edison would be turned off. Why was I not given the one time bill credit? You guys seem to not even understand my complaint, or your agency is a total joke. This is the 20th time I'm explaining this to your office. Please ask a higher supervisor to call me. I'm truly getting tired of explaining this issue to you with you understanding. I am requesting a hearing immediately. Also a meter test is not the same [as] a meter removal. The issue again is not my meter it's the fact that my home is listed as commercial when it's residential. I have been arguing this for 15 years. It's a total joke and I want my account changed and to be refunded. I want my one time bill credit…. I will call the commissioner's office since you don't seem to understand. I'm sick of explaining the same thing to you. Not sure what it is that you don't understand. Please have my case moved to your supervisor I truly am getting tired of explaining the same thing to you." On April 13, 2023, an OCS supervisor contacted Ms. Radparvar, and on April 24, 2023, an OCS manager contacted Ms. Radparvar, to discuss the reason the meter test was requested. The OCS manager noted in the case file that the complainant agreed to meter testing, the complainant was assured that no smart meter would be installed during this inspection, and that the concerns regarding the rates billed to the accounts would be looked into after the meter test was completed.

On June 15, 2023, at the scheduling of the appointment for inspection, the complainant again stated in an email to the DPS meter group that "there will not be any smart meter installed in my home. We have already gone through this. There will be no meter change made into a smart meter. I will make that clear again." On June 19, 2023, the DPS meter group confirmed to the complainant by email that "Con Edison will not exchange your meter. The meter will be tested in place and remain at your location after our testing." On June 26, 2023, DPS and Con Edison

conducted a joint field inspection and test of the electric meter serving the complainant's electric account. No irregularities with the electric meter were found during the inspection, and the meter was determined to be recording at 99.9 percent accuracy, within the limits of accuracy (98 percent to 102 percent) provided for in the Commission's regulations.[2] The gas meter was not inspected or tested, as the gas meter could not be tested in the field, and the complainant refused a gas meter exchange. Additionally, the DPS Report stated: "Customer claims her Con Edison electric account is billed at the small commercial rate. Staff determined the building is a residential three family dwelling. The meter in dispute monitors the basement, first, and second floor apartments. Basement apartment is empty. Electric usage at time of call is 1.6kW. Customer does not want an AMI meter. Existing meter remained in service."

On June 27, 2023, OCS sent a closing letter to the complainant, and also included a copy of the initial closing letter, which had been sent on March 7, 2023. On June 27, 2023, the complainant again contacted OCS and requested an informal hearing in this case.

Complainant's position

On October 30, 2023, during the informal hearing, the complainant stated the following:

> Our home is not commercial property, it is a residential property. I do reside at the property, and this was confirmed four times by Con Edison and one time by Department of Public Service. I reside at basement floor (walk in floor) and third floor. Second floor is rented. This is a legal two-family dwelling. In 2010, per court order, we became the owners of this property. At that time, Con Edison established these two accounts, gas and electric, in our names, as non-residential, and billed at commercial rates. I have been fighting over this issue since 2010, trying to take my home from commercial rates and put into residential. Commercial property is used for commercial purposes; my property is used for residential purposes.
>
> I filed several complaints with DPS, but my complaints were ignored, and cases closed. I was overcharged since 2010, and I want a reimbursement for overcharge plus interest. Until today was done nothing to resolve this matter. I have been sent disconnection notices continuously and this issue has been not resolved. I have requested Covid Relief Fund, but up to this day I was not given that. I am entitled to that as a resident of New York State, as it was given to every resident. The utility forced me to pay my bills, threatened to disconnect my service, if I will not pay my bills. I had suffering paying my bills, when everybody else received a discount on their bills. Con Edison basically defrauded me.
>
> The house was built in 1960, per requirements in 1960, and you cannot penalize me because the law changed in 1991. If Con Edison wants to come and change it is fine. There's an identical house next to me and they are listed as residential. Both houses built in 1960 by the same person, by my father-in-law. So why is the other property considered residential, and our property considered non-residential. So why do they pay different

[2] 16 NYCRR §92.

> rates. Why is my home listed as commercial and the same home to mine is listed as residential, and they also have a tenant in the premises.
>
> Me and my tenant are both being harassed by Con Edison for installing smart meters. I am not installing a smart meter at the property. I don't want a smart meter in my home due to my health condition.

The complainant stipulated that they are responsible for the electric service provided to the first floor, for the third floor apartment, and for halls/common areas at the property. The complainant stipulated that they are responsible for gas service provided for cooking gas to the third floor, and for hot water and heating for the entire property. The complainant confirmed that the official owner of the property is Mehrak LLC, and the complainant, Hossmand Radparvar, is the owner of Mehrak LLC, and confirmed that they live at this property.

Utility's position

On October 30, 2023, during the informal hearing, the utility stated the following:

> The accounts in dispute are set up as non-residential accounts, because a shared meter condition for one account, and potential shared meter condition for another account, due to what parts of premises supplied service recorded on the meters… HEFPA rules were enacted in 1981. Shared meter law was activated in 1991… Shared meter law is specific about the meter that services areas outside of one's dwelling… Although at the hearing the complainant stated that the property is two-family dwelling, at the time of inspection it was observed that this is building is three-family residential dwelling.
>
> The meter for the [electric] account services common areas. This account is under the owner's name, because of a potential shared meter condition. The part supplied by the meter is listed as [redacted]. This would indicate the meter is recording usage for the Halls, 1st floor, and 3rd floor. In order to classify this meter as residential – the service from common areas has to be separated. Utility tariff is specific when it defines a residential and non-residential customer. We consider your property not as commercial but as non-residential, where service provided partially for general use and to specific units of dwelling. This is understood from the definition of a residential customer found in PSC No. 10 Electricity Leaf 387 (SC1) and by understanding what defines a non-residential customer as seen in PSC No.10 Electricity Leaf 396 (SC2). The same applies to gas. The gas meter [for the gas account] is supplying cooking gas to the third floor apartment, and for hot water and heat service to the entire property. Only the owner can be billed for this account. Tenants are not allowed to be placed on record for accounts coded as shared meter when the company has knowledge of its existence (unless in a minimal shared meter condition).

The utility maintained the position that the complainant's accounts are not eligible for residential rates per the utility's tariff. Con Edison maintained the position that gas service cannot be billed at residential rates if a meter records gas service supplied outside of the apartment to the entire property. Con Edison maintained the position that electric service cannot be billed at residential rates if the meter records electric service supplied outside of the apartment to common areas at the property. Con Edison maintained the position that the complainant's accounts are not eligible for

residential rates per the utility's tariff. Regarding the Bill Relief Credit, "the customers receive a bill relief credit based on having arrears on May 1, 2022. The complainant did not receive these credits, because there were no unpaid balances through this date."

Regarding the installation of smart meters at the property, "non-residential accounts are exempt from opting out of the smart meter program. The non-residential customers cannot opt-out of having the smart meters installed at their premises." Regarding the complainant's request for copies of the actual billing invoices issued by the utility since 2010, Con Edison stated that the utility "is not required to retain actual copies of customer bills. Customers may request a "billing statement" based on the availability of records up to six years. This type of statement does have a $15.00 charge per account and per year unless there is a specific billing dispute. See PSC No. 10 Electricity Leaf 127, 17.4."

Con Edison did not provide any further documentation or information after the informal hearing.

Analysis

The central issues to be addressed in this case, are: **(1)** whether the utility a) properly established the complainant as the customer of record on the electric account, and defined the service to this account as "non-residential;" and b) properly billed this account according to an appropriate service classification as per its tariff; and **(2)** whether the utility a) properly established the complainant as the customer of record on the gas account, and defined the service to this account as "non-residential;" and b) properly billed this account according to an appropriate service classification as per its tariff; **(3)** whether these accounts were entitled to the NYS Bill Relief Credit (Phase 2); and **(4)** whether the complainant may opt-out of AMI installation.

Con Edison established the complainant's electric account on October 20, 2011, with an effective date of June 30, 2010, and billed it at the non-residential service classification rate SC-2 (General-small). Con Edison established the complainant's gas account on September 1, 2011, with an effective date of March 18, 2010, and billed it at the non-residential service classification rate (SC-2). According to Con Edison, the complainant, Hossmand Radparvar, was established as the customer of record on the gas and electric accounts in question as the owner of the property due to a shared meter condition at the property.

The complainant confirmed that they have owned this property since 2010. The complainant stated that they occupy the third floor and the first floor of the property, and the apartment on the second floor is rented to tenants. During a DPS inspection on June 26, 2023, staff observed that there is a vacant apartment on the first floor.

Was the complainant properly established as the customer of record for the accounts in question?

The Public Service Law (PSL) § 52, which addresses gas and electric service to tenants provided through a shared meter (shared meter law), defines a "shared meter" as any meter that measures gas or electric service provided to tenant's dwelling and also to areas outside that dwelling. Per the shared meter law, no tenant may be the customer of record for a utility account associated with a shared meter. The shared meter law requires owners of rental dwellings to eliminate any shared meter condition by re-piping or rewiring, or to place the utility service in the owner's name for all

future utility service measured by the shared meter.[3] The shared meter law requires the property owner, not the utility, to make the required corrections to eliminate the shared meter condition. The provisions of the shared meter law may not be waived by owners, tenants or utilities.[4] Therefore, any utility account billed for service based on a meter recording service to areas outside of the associated dwelling in a rental property shall, by law, only be in the owner's name.

As established earlier, the gas meter for the third floor apartment records service supplying hot water and heat for the entire property. Thus, Con Edison is obligated to maintain the gas account for the third floor apartment only in the owner's name until such time that the owner corrects the shared meter condition and Con Edison verifies those corrections. Likewise, the electric meter for the third floor apartment records service supplied to common areas/halls of the property. Thus, Con Edison is obligated to maintain the gas account for the third floor apartment only in the owner's name until such time that the owner corrects the shared meter condition and Con Edison verifies those corrections. Because the owner has not corrected the shared meter condition since purchasing the property in 2010, Con Edison properly established and maintained the complainant as the customer of record for the electric account and gas account. However, shared meter law does not specify what service classification a utility should assign to an account established in the owner's name.

Is the complainant a "residential" or a "non-residential" customer?

Commission regulations 16 NYCRR §11.2 and §13.1 define the term "residential customer" and "non-residential customer." According to Commission regulations, the term "residential customer" includes any person who is supplied directly with all or any part of the gas, electric or steam service at a premises used in whole or in part as his or her residence where:

> (i) the distribution utility's effective tariff specifies a residential rate for such service; provided, however, that no person who is supplied service to an entire multiple dwelling or for the common areas of a multiple dwelling as defined in the Multiple Dwelling Law or the Multiple Residence Law, shall be considered a residential customer solely because the distribution utility's effective tariff specifies a residential rate.
>
> (ii) such service is primarily used for his or her residential purposes and the customer has so notified the utility;
>
> (iii) the utility knows or reasonably should have known that any of such service is provided through a single meter to both units of a two-family dwelling, as defined in section 11.8.

According to Commission regulations, a "non-residential customer" is a person or other entity who is not a residential customer as defined in §11.2. In Case 11-G-0056, which addressed similar issues, the Commission explained that "[a]bsent any evidence to the contrary, a multiple-family dwelling, even if owner-occupied, could reasonably be considered a commercial property since

[3] PSL § 52(2)(a).
[4] PSL § 52(3)(a).

the potential exists for one or more of the individual units to be used for rental and/or income generating purposes."[5]

Here, according to Commission regulations, the complainant, as the customer of record for the gas account and the electric account, does not meet the definition of "residential customer" in Commission rules, regardless of whether this property is a two-family or a three-family dwelling. Con Edison supplies electric service and gas service to the property through two electric meters and two gas meters, both of which record service supplied to areas outside of the complainant's dwelling. Therefore, this service arrangement does not conform to the requirement that service to both units of a two-family dwelling is provided through a single meter to be "residential;" and no person is considered a "residential customer" if the service is supplied to the entire property (as service is supplied to the entire dwelling for the gas account) or to common areas of the property (as service is supplied to the halls for the electric account). The complainant stated that the apartment on the second floor of the property is rented. An inspection revealed that the first floor apartment is vacant. Thus, while the complainant may reside in one dwelling at this property, it cannot be said that the Con Edison accounts in their name, which measure service outside the complainant's dwelling, are used in whole for the complainant's residence. The complainant operates a business at the property, namely the renting of dwelling, which is not completely separately metered. Therefore, it does not appear the complainant's electric service and gas service are used primarily for the complainant's residential purposes. Accordingly, the Commission's Part 13 non-residential rules are applicable to the complainant's gas and electric services.

Commission regulations do not specify to what service classification a utility should assign a customer's account, but do make clear that the utility's tariff specifies the service classification applicable to an account based on the characteristics of service provided. The utility's tariff, once approved and filed with the Commission, is the set of rules the utility must follow in order to provide service in New York State.

The service classification rate applicable for the gas account in question:

The gas meter for third floor apartment records service supplied for cooking gas to the third floor apartment, and for hot water and heat service to first floor, second floor and third floor apartments at the property. Here, Con Edison's gas tariff, Leaf 237[6], provides the following:

[5] Case 11-G-0056, Appeal by Peter and Thomas Brown of the Informal Decision Rendered in Favor of The Brooklyn Union Gas Company d/b/a National Grid, Commission Determination (issued May 24, 2016), p. 5.
[6] PSC No:9 Gas, Leaf 237, effective date 10/01/10

SERVICE CLASSIFICATION NO. 3

RESIDENTIAL AND RELIGIOUS - HEATING FIRM SALES SERVICE

Availability of Service - Continued
All residential uses and purposes where gas is used for space heating, when the gas is supplied directly by the Company: (Continued)

(3) for the operation of building equipment for the common benefit of the occupants in a two or three-family dwelling or building or for redistribution to residential tenants or occupants for cooking when the piping is arranged for supply of service through a single meter of one of the flats or apartments, provided, however, that on or after October 24, 1991, or at the expiration of a lease or rental agreement for the flat or apartment entered into on or before October 24, 1991, whichever is later, service will be supplied under this Service Classification only when the piping is arranged for the supply of service through the meter of the owner's flat or apartment in the dwelling or building. Where gas is used for both space heating requirements in a two or three-family dwelling and is redistributed for non-heating uses and purposes within individual flats or apartments in a two or three-family dwelling, the account must be established in the name of the owner.

Thus, according to the utility's tariff, Service Classification No.3 (residential and religious - heating) is applicable for the complainant's gas account, established in the owner's name, for gas supplied for hot water and heating service to all apartments at the property (notwithstanding whether the property is a two- or three-family dwelling). The complainant's gas account is eligible for residential rates under Service Classification No.3 (SC-3). The utility must reassign the complainant's gas account to the more applicable service classification, SC-3. Therefore, adjustments to the rate classification and charges billed are required.

The service classification rate applicable for the electric account in question:

The electric meter for the third floor apartment records service supplied to the third floor apartment, to the apartment space on the first floor, and to common areas/halls of the property in question. Here, Con Edison's electric tariff, Leaf 391[7], provides the following:

SERVICE CLASSIFICATION NO. 1 – Continued
RESIDENTIAL AND RELIGIOUS

Special Provisions

(A) The Company's electric service under this Service Classification will be metered and furnished directly to a Customer of the Company for the Customer's own use upon the individual application of such Customer. The Customer may not remeter (or submeter), resell, assign or dispose of the electric service to any tenant or occupant of the premises except as provided herein. Service under this Service Classification is available:

To any single-family dwelling or building or to any individual flat or apartment in a multiple-family dwelling or building or portion thereof occupied as the home, residence or sleeping place of the Customer or an employee of the Customer, including also the following:

(1) Electric service used for portions of, or equipment in, a two or three-family dwelling or building enjoyed in common by all the residents thereof (for example, halls, stairs, cellar, oil burner, and similar conveniences), when the wiring is arranged for supply of service through a single meter of one of the flats or apartments, provided, however, that on or after October 24, 1991, or at the expiration of a lease or rental agreement for the flat or apartment entered into on or before October 24, 1991, whichever is later, service will be furnished under this Service Classification only when the wiring is arranged for the supply of service through the owner's flat or apartment in the building or dwelling.

[7] PSC No:10 Electric, Leaf 391, effective date 11/01/2011

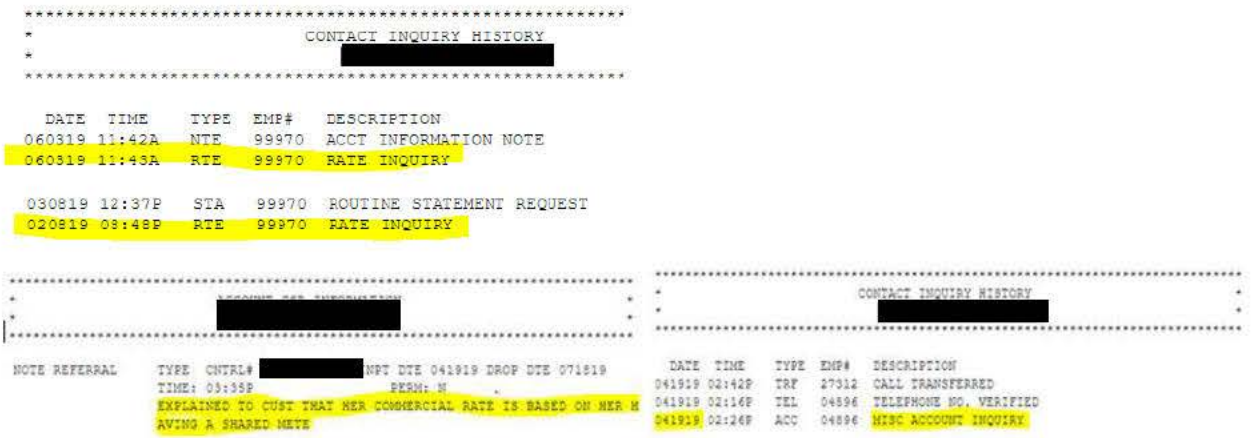
Thus, according to the utility's tariff, Service Classification No.1 (residential and religious) is available for electric service to two- or three-family dwellings or buildings when service is supplied to halls or other common areas, when wiring is arranged through the owner's apartment, and the account is established in the owner's name.

The complainant's electric account is eligible for residential rates under Service Classification No. 1 (SC-1). The utility must reassign the complainant's electric account to the more applicable service classification, SC-1. Therefore, adjustments to the rate classification and charges billed are required.

Regarding required adjustments to the charges billed on the accounts:

In any billing dispute the utilities are not required to provide a refund for overbilling beyond six years from the date of the inquiry. The Commission Order on "Netting" (Cases 99-E-0387 et. al.), stated that "the six-year refund period has long been a fixture of our practice... The refund period in any litigated situation extends back a maximum of six years from a filing of a complaint.[8]" Based on the precedents set by the Commission,[9] the utility is not required to provide a retroactive rate adjustment before the date of the customer's inquiry regarding the rate accuracy.

Although the complainant claimed that since 2010, they were continuously questioning the rates on the account, there are no records available to support this claim. This complaint was filed on February 7, 2023. Based on the availability of records, according to the record retention rules, the available account records of the complainant's rate inquiry are shown below:



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**********************************************************
*                        CONTACT INQUIRY HISTORY
*                                 [redacted]
**********************************************************

  DATE  TIME    TYPE  EMP#   DESCRIPTION
060319 11:42A   NTE   99970  ACCT INFORMATION NOTE
060319 11:43A   RTE   99970  RATE INQUIRY

030819 12:37P   STA   99970  ROUTINE STATEMENT REQUEST
020819 08:48P   RTE   99970  RATE INQUIRY
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**********************************************************************
*                                                                    *
*                                 [redacted]                         *
*                                                                    *
**********************************************************************

NOTE REFERRAL     TYPE  CNTRL# [redacted] NPT DTE 041919 DROP DTE 071819
                  TIME: 03:35P              PERM: N
                  EXPLAINED TO CUST THAT HER COMMERCIAL RATE IS BASED ON HER H
                  AVING A SHARED METE
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**********************************************************************
*                        CONTACT INQUIRY HISTORY                     *
*                                 [redacted]                         *
**********************************************************************

  DATE  TIME    TYPE  EMP#   DESCRIPTION
041919 02:42P   TRF   27312  CALL TRANSFERRED
041919 02:16P   TEL   04596  TELEPHONE NO. VERIFIED
041919 02:26P   ACC   04596  MISC ACCOUNT INQUIRY
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Based on the available records, and consistent with the Commission's regulations and orders, I find that the utility must rebill the gas account retroactively, at the appropriate residential rates,

[8] Cases 99-E-0387, 00-E-0934, 00-E-0935 The Commission Order on "Netting" and Statute of Limitations, issued May 30, 2002.

[9] See Case 08-E-1108, Appeal by Westchester Reform Temple of the Informal Decision Rendered in Favor of Consolidated Edison Company of New York, Inc., Commission Determination (issued December 17, 2012), Case 05-E-1212, Appeal by Mr. Nelson Yan of the Informal Decision Rendered in Favor of Consolidated Edison Company of New York, Inc., Commission Determination (issued July 18, 2008); Case 02-E-1160, Appeal by John Iannuzzi of the Informal Decision Rendered in Favor of Consolidated Edison Company of New York, Inc., Commission Determination (issued May 23, 2003); Case 10-G-0028, Lawrence Towers, Commission Determination on Remittal (May 25, 2017).

from February 8, 2019 (the earliest date Con Edison recorded a "rate inquiry"), and the electric account from April 19, 2019 (the earliest date Con Edison recorded a "rate inquiry") to the present, and apply the appropriate respective credit adjustments to the accounts with applicable interest on the overpayment. The complainant should note that Con Edison's non-residential rates are not necessarily lower than its residential rates for all time periods.

2023 Bill Relief Credit (Phase 2):

On January 19, 2023, in Case 14-M-0565,[10] the Commission approved Phase 2 of the Electric and Gas Bill Relief Program. In compliance with the Commission order to implement the program requirements, on February 1, 2023, in the utility's electric tariff Leaf 89, and gas tariff Leaf 77, the following language was added for Phase 2 of the Electric and Gas Bill Relief Program:[11]

> Subject to the conditions in the Commission's order issued January 19, 2023, in Cases 14-M-0565 et al. ("Phase 2 Order"), residential or small-commercial Customers (as defined in the Phase 2 Order) who have eligible arrears and did not receive a bill credit under the Phase 1 Electric and Gas Bill Relief Program will receive a one-time bill credit under the Electric and Gas Bill Relief Program towards arrears balances from bills for service through May 1, 2022.

Thus, regardless of the service classification assigned, and the service rates billed, both residential and small non-residential accounts were qualified to receive a bill credit if they met the program requirements. Under this program, a one-time credit was to be applied automatically to eligible customer accounts for unpaid COVID related balances accrued through May 1, 2022, if they met the program requirements. However, the utility's account records show that neither the complainants' electric nor their gas account had arrears on May 1, 2022:

Account #: [redacted]

DATE POSTED	# DAYS	Bill Date	KWHR Usage	Con Edison Charges	THERM Usage	Con Edison Charges	Total Billing Charges	Other Charges, Adj & Credits	$ PAYMENT	$ BALANCE
05/19/22									-141.37	0.00
04/21/22	29	04/20/22	368	140.14			140.14	0.02		141.37
04/05/22									-142.00	1.21

Account #: [redacted]

DATE POSTED	# DAYS	Bill Date	KWHR Usage	Con Edison Charges	THERM Usage	Con Edison Charges	Total Billing Charges	Other Charges, Adj & Credits	$ PAYMENT	$ BALANCE
05/19/22									-359.29	0.00
04/21/22	21	04/20/22			177	359.29	359.29			359.29
04/05/22									-1,181.70	0.00

Therefore, the accounts in question did not meet the program requirements, and therefore were not eligible to receive the Bill Relief Program credit.

[10] Case 14-M-0565 et al.

[11] PSC No.9 Leaf 77 issued effective 02/01/2023; PSC No.10 Leaf 89 issued effective 02/01/2023.

Regarding the installation of AMI (smart) meters:

In Case 15-E-0050[12] the Commission approved Con Edison's plan to install AMI, or smart meters in New York City and Westchester County. The installation of smart meters was addressed in the Commission Case 23-M-0661. In compliance with this order, on March 1, 2024, the utility made a modification in its tariff regarding AMR/AMI meter opt-out.[13] PSC No.9-Gas Leaf 76.2 and PSC No.10-Electric, Leaf 63.2, provide the same language as follows:

Access to Premises

If a Customer opts out of AMR or AMI metering, as applicable, or refuses to permit installation of such metering, and, thereafter, the Company has no access to the meter on four consecutive bi-monthly cycle reading dates, the Customer or access controller will be required to provide the Company with access to install, or re-install, an AMR or AMI meter at the Company's discretion. As an alternative, where practicable, a Customer, at Customer expense, can furnish, install, and maintain the facilities necessary to accept outdoor metering.

AMR/AMI Meter Opt-Out and Refusal to Permit Installation of an AMR/AMI Meter

(1) For purposes of this General Rule only, a Customer refuses to permit the Company to install an AMI meter when the Company and/or its duly authorized representative(s) has made at least five attempts to install a meter and (1) the Customer does not grant the Company or its duly authorized representative access to the Customer's premises to install or replace a meter, (2) the Company is unable to safely access the location where a meter is to be installed or replaced due to an obstruction on the Customer's property, or (3) a defect or condition in the Customer's installation or equipment prevents the Company from installing or replacing a meter. The Company and/or its duly authorized representative(s) are not required to make five attempts to install an AMI meter if a Customer provides verbal and/or written notice to the Company and/or its duly authorized representative(s) prior to the completion of the five meter installation attempts that the Customer will not allow the installation of an AMI meter.

If a Non-residential Customer refuses to permit the Company to install an AMI meter, the Company will attempt to read the meter manually monthly and render bills monthly, as described in General Rule 10.3. The monthly bills will contain an incremental charge, per electric account or combined electric and gas account, at the charge specified in General Rule 17.1.f. If the Company is scheduled to manually read a meter of a Customer, but does not attempt to read the meter, the incremental charge will be waived. In addition, the Company shall have all other remedies against such a Customer as are provided under this tariff or at law, as applicable.

Therefore, the utility's tariff allows residential customers to affirmatively opt-out of smart meter installation. However, the utility's tariff is silent regarding the right for non-residential customers to opt-out of smart meter installation. The tariff provides that if a non-residential customer effectively refuses to permit Con Edison to install an AMI meter, Con Edison may assess fees to the customer as if they had opted out of AMI installation.

Decision:

Based on a thorough review of the available evidence and facts in this case, applicable Commission rules and regulations, and orders, I find that **(1) a)** the utility properly established the complainant, the owner of the property, as the customer of record on the electric account, and defined the service to this account as "non-residential" due to the fact that wiring the third floor apartment is arranged to supply electric service to common areas of the property; and **b)** according to the utility tariff,

[12] Case 15-E-0050, Proceeding on Motion of the Commission as to Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service, Order (issued December 21, 2016).
[13] PSC No.9 Leaf 76.2, issued effective 03/01/2024; PSC No.10 Leaf 63.2 issued effective 03/01/2024.

the complainant's electric account qualifies for the service classification SC-1 and adjustments to the charges billed to this account are required; **(2) a)** the utility properly established the complainant, the owner of the property, as the customer of record on the gas account, and defined the service to this account as "non-residential" due to the fact that the piping for the third floor apartment is arranged to supply gas service (hot water and heating) to the entire property; and **b)** according to utility's tariff, the complainant's gas account qualifies for the service classification SC-3, and adjustments to the charges billed to this account are required; **(3)** the accounts in question were not eligible to receive the 2023 NYS Bill Relief credit, as neither account had arrears on May 1, 2022, per program requirements; and **(4)** the customer of record on the service accounts for the third floor apartment is a "non-residential" customer, and is not permitted to opt-out of smart meter installation.

Con Edison is directed to complete the following:

Electric account:

1) Change the electric service classification to SC-1 while the complainant resides at the premises;
2) Rebill the electric account, for the period from February 8, 2019 (the earliest date for a rate inquiry on record) to the present, to SC-1 rates, and calculate the applicable interest on the overpayments.

Gas account:

3) Change the gas service classification to SC-3 while the complainant resides at the premises;
4) Rebill the gas account for the period from April 19, 2019 (the earliest date for a rate inquiry on record) to the present, to SC-3 rates, and calculate the applicable interest on the overpayments.
5) Additionally, the utility shall place a note in its system that the third floor apartment is the owner's apartment with gas meter service supplied outside the apartment, and electric meter service supplied outside the apartment, and that no tenant may be the customer of record on the electric or gas accounts for the third floor apartment, unless the owner changes the wiring and piping at the premises, and Con Edison verifies that the gas meter and the electric meter for the third floor apartment record service supplied only for the third floor apartment. If the complainant moves from the premises, the utility may reassign the complainant's accounts to non-residential service classifications.

Finally, it should be noted that the challenges the complainant encountered with the service classification assignment at their property largely stem from an unresolved shared meter condition. It is the complainant's responsibility as the property owner to correct the shared meter condition. Doing so should help the complainant to avoid similar issues reoccurring in the future.

If either party disagrees with this decision, that party may file an appeal with the Commission within fifteen (15) days of the date of this decision. The utility is to notify me in writing of its compliance with the directive above within 20 days of the date of this decision**.** If the utility appeals this decision, it must affirmatively state whether it disagrees with the direction of a refund or credit to the complainant. An appeal does not automatically stay the utility's compliance with this decision.

Appeal Procedure

If you believe that this decision is incorrect, you may appeal to the Commission. The basis for an appeal to the Commission is limited to one or more of the following grounds

(1) The hearing officer made a mistake in the facts in the case or in the laws or regulations which affected his or her decision; or

(2) The hearing officer did not consider evidence presented at the hearing or review, which resulted in an unfavorable decision; or

(3) New facts or evidence, not available at the time of the hearing, have become available, and could affect the decision on the complaint.

If you choose to appeal, your appeal must be in writing and must contain an explanation of the facts or conclusions in the decision with which you disagree, the reasons for your disagreement, the relief or remedy sought from the Commission, and documentation of your position or legal arguments supporting your position.

The appeal should be filed within fifteen (15) days after the informal hearing or review decision is mailed and may be filed electronically or by regular mail. To file electronically, e-mail your appeal to the Secretary of the Public Service Commission Michelle L. Phillips, at:
Secretary@dps.ny.gov.
If you are using regular mail, send your appeal letter to:

Michelle L. Phillips, Secretary
Public Service Commission
Three Empire State Plaza
Albany, New York 12223

A copy of the appeal letter should also be sent to the opposing party. Appeals of Informal Hearing Decisions become a matter of public record and are listed on the Commission's website. Both your appeal letter and the informal hearing decision will be available to members of the general public (subject to limited redaction in the case of residential customers).

The Commission may make a determination on your appeal, reject it, return the case to the informal hearing officer for additional consideration, order a formal evidentiary hearing on the complaint or take such other action as it deems appropriate.

Sincerely,

/s/ Marina Milyutkina
Informal Hearing Officer
Office of Consumer Services