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January 31, 2022

Michael Steifman
UtiliSave, LLC
129 West 27th Street, 11th Floor
New York, New York 10001

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

Subject: Informal Hearing Decision Case 021386
Urban Glass/New York Contemporary Glass Center, Inc.
647 Fulton Street
Brooklyn, New York 11217

Dear Michael Steifman and Michael Camello:

An informal hearing in the above referenced case was held by telephone conference call on October 15, 2021. Tara DeBlasie and Steve Knowlton of UtiliSave LLC (UtiliSave) represented Urban Glass/NY Contemporary Glass Center, Inc. (Urban Glass or the complainant). Jeremy Feliciano represented Consolidated Edison Company of New York, Inc. (Con Edison or the utility). Based on all the information presented in this case, and the applicable rules and regulations, I find that additional adjustments to charges billed on the complainant's account for service during the disputed period are warranted.

Background

Urban Glass is a large commercial customer of Con Edison which has maintained a non-residential account for electric service in Brooklyn New York, since March 24, 2013.

On January 14, 2021, UtiliSave contacted the Department of Public Service Office of Consumer Services (OCS) on behalf of the complainant to file a complaint against Con Edison. The complainant stated that they were not able to resolve a billing dispute with the utility regarding the responsibility for the charges backbilled on the complainant's account for the period from October

2013 to June 2019. UtiliSave stated that "in October 2013, Con Edison during field inspection replaced the meter at premises and erroneously changed the meter multiplier from 800 to 160. For almost six years, Con Edison continued to bill the ratepayer using the multiplier of 160. Finally, in June 2019, Con Edison discovered the multiplier error during field inspection and rebilled the customer for six years of erroneous bills. While the utility has since revised its billing such that payment is now only due for the period between 2018 and 2019, all such billing associated with the meter multiplier error must be cancelled. Indeed, the utility was clearly on notice of the issue since 2013, having itself created the error at that time. It thus lost all rights to bill in 2014." On April 9, 2021, OCS opened the case and forwarded the complainant's submissions to the utility and directed it to address the complainant's concerns.

On May 7, 2021, Con Edison provided its response to OCS, wherein it stated that the reason for the back bill in question was due to an incorrect meter multiplier which was discovered during a meter inspection on June 11, 2019. The utility contended that "this clerical error resulted in a gross under billing that was not realized until the company investigated in June 2019." The utility argued that the consultant "mischaracterizes the facts and misinterprets actual awareness of a condition causing under billing. The original billing was in the amount of $138,542.03. The total back bill was $658,213.23. The Company limited the back bill to 12 months by removing $408,732.87. In addition, $30,873.00 was removed as a conservation credit leaving $92,040.70." The utility maintained the position that no further credit adjustments were warranted.

On May 18, 2021, OCS issued an initial closing letter wherein it stated that based on OCS' review of the documentation provided by both UtiliSave and Con Edison, OCS has found that "the account adjustment as outlined by Con Edison is correct. The backbilling was limited to 12 months, as the error would constitute a utility deficiency. As such, we find no further adjustments are warranted."

On May 26, 2021, UtiliSave submitted further arguments regarding the utility's backbilling on the account and requested account records and inspection reports relevant to the matter of the complaint for review. OCS submitted the complainant's submissions and requests to the utility. On July 2, 2021, Con Edison provided its available requested documentation to OCS, and stated that the utility maintained the position that the complainant was backbilled properly.

On August 11, 2020, OCS issued an additional closing letter wherein it stated that based on OCS' review of the documentation provided by both UtiliSave and Con Edison, OCS has found that "the account adjustment as outlined by Con Edison is correct. The backbilling was limited to 12 months, as the error would constitute a utility deficiency. As such, we find no further adjustments are warranted." On August 19, 2020, UtiliSave stated that they disagreed with OCS' determination and requested an informal hearing on behalf of the complainant.

Complainant's position

The complainant maintained the position that Con Edison had been aware of the circumstance, error, or condition that caused the underbilling on the account since October 2013 when it conducted a field investigation and exchanged the meter in question. The utility underbilled the

customer based on an incorrect meter multiplier due to the utility's errors. For almost six years Con Edison continued to bill the complainant using the incorrect multiplier, noting said multiplier on each customer bill and representing to the customer that its billing was correct. Con Edison violated the Commission's backbilling regulations because the regulations prohibited the utility from issuing a backbill more than six months prior to when it became aware of the circumstance, error, or condition that caused the underbilling, and all backbilling associated with the meter multiplier error must be cancelled.

After the hearing UtiliSave submitted a supplemental paper wherein it re-stated its position and arguments. UtiliSave also argued that Case 95-E-0581 and Case 06-E-1084 as referenced by the utility are inapplicable to the dispute in the present case. UtiliSave stated that it "respectfully request[s] that OCS find Con Edison's backbill to be in violation of Commission regulations, and order Con Edison to cancel the backbill in its entirety." Below are extracts from the submission:

> Upon information and belief, UrbanGlass began receiving service from Con Edison on or about March 24, 2013 with the meter (Meter 1), which had a multiplier of 800... Con Edison exchanged Meter 1 on April 18, 2013, and the new meter (Meter 2) also had a multiplier of 800… Con Edison exchanged Meter 2 on October 28, 2013, and the new meter (Meter 3 or Disputed Meter) should have had a multiplier of 800 but had a multiplier of 160... Urban Glass subsequently complained to Eugene Finas, a supervisor in Con Edison's Account and Personal Services Department, that their billing seemed inaccurate. Con Edison supervisor advised Urban Glass that the paperwork on the exchange from Meter 2 to the Disputed Meter showed that the prior meter multiplier was 800, that the new meter multiplier was 160, that the removal information was correct, and the billing was correct… For the next five years Urban Glass consistently received estimated bills from Con Edison, despite making monthly telephone calls to Con Edison requesting that the utility visit the premises to read its meter and provide accurate billing… Con Edison ultimately exchanged the Disputed Meter with an AMI meter (Meter 4) on June 11, 2019. Despite the Con Edison supervisor's earlier assurances that the Disputed Meter's multiplier and resulting bills were correct, the Inspection Report associated with Meter 4 installation showed that the Disputed Meter's multiplier was incorrect. Con Edison thus issued backbill dated October 8, 2019.
>
> ARGUMENTS:
>
> **1. Con Edison violated the Public Service Commission's regulations by rendering the backbill more than 6 months after it became aware of the condition that caused the underbilling.**
>
> The issue that caused the underbilling and led to Con Edison's issuance of a backbill was an incorrect meter multiplier. Con Edison actually became aware of the circumstance or condition that caused the underbilling when it exchanged Meter 2 for the defective Meter. This is evident because Con Edison itself removed Meter 2, installed the Defective Meter in its place, and set the meter multiplier for the Defective Meter at different value than Meter 2. This is also evident because Con Edison noted on the paperwork related to the exchange that the multiplier for Meter 2 was 800, but the multiplier for the Defective Meter was 160. Therefore, pursuant to 16NYCRR §13.9(b)(1) and §13.9(c)(1), Con Edison

should have issued a backbill to Urban Glass based on the incorrect multiplier no more than six months after it installed the Defective Meter in or around October 2013, i.e. no later than April 2014. The backbill should have only covered the period between October 2013 and April 2014… In sum, UtiliSave has provided evidence in support of Urban Glass's contention that the utility had notice of the meter multiplier discrepancy in 2013, 2016, 2017, and 2018, and Con Edison has provided zero evidence in support of its contention that it lacked notice until the June 2019 inspection and exchange.

2. Con Edison violated the Commission's regulations by failing to conduct meter tests and/or inspections after Urban Glass's November 2013 complaint.

Had Con Edison complied with the Commission regulation and conducted the on-site complaint test, it would have once again discovered that the Defective Meter had a multiplier of 160 and would have been earlier precluded from issuing the backbill… In sum… Con Edison violated Commission regulations by failing to conduct an on-site complaint test after Urban Glass's November 2013 complaint, and Con Edison has provided zero evidence that it complied with the regulation. Had Con Edison complied with the regulations, it would have discovered the meter multiplier deficiency after October 2013, but before June 2019.

3. Con Edison violated Commission precedent by assessing late payment charges on the backbill.

As the informal hearing officer is aware, Con Edison has begun issuing late payment charges to Urban Glass based on failure to pay this backbill… Upon further review of Case 95-E-0581, the Commission has not applied this treatment to other customers that received backbills…Of course, the Commission and Con Edison cannot grant undue or unreasonable preference to some customers by exempting them from late payment fees stemming from certain backbills but extending similar exemption to Urban Glass... Likewise, the Commission and Con Edison cannot unjustly discriminate against Urban Glass by assessing those late fees in violation of Commission precedent. As the record clearly shows that Urban Glass did not tamper with the meter, and that the backbill was solely a result of Con Edison's deficiency, Urban Glass cannot be assessed late fees on the backbill, even if OCS finds the bill to be valid. Therefore, we respectfully request that OCS order Con Edison to cancel the late payment charges.

4. If Con Edison failed to maintain meter records responsive to this complaint, this failure should be construed against the utility.

For over two years, and throughout these proceedings, UtiliSave has requested that Con Edison to provide it with all documentation related to meter tests and field visits conducted at the subject premises between October 2013 and June 2019. Except for the materials provided with its July 2020 reply to the complainant, Con Edison has provided no other documentation in response to these requests, and, in its emails to the informal hearing officer, dated 20, 2021, Con Edison represented that it has no other notes or information regarding the meter at this premises… It, thus, appears, from Con Edison's own admission, that it violated the Commissions by failing to maintain records sufficient to identify the meters which affected the accuracy of Urban Glass's billing. To the extent that these

documents would have been used to prove that Con Edison was actually aware of the meter multiplier discrepancy, their failure to retain the documentation should be construed against them.

Also, below are excerpts from the submission provided on October 29, 2021, by Urban Glass' director, Jeff Bush:

> I, JEFF BUSH, am the Director of Finance of Complainant UrbanGlass/New York Contemporary Glass Center Inc. ("Urban Glass") and state under penalty of perjury that:
>
> 1. I have been the Director of Finance of Complainant Urban Glass since January 2011.
>
> 2. Urban Glass began taking electric service from Consolidated Edison Company of New York, Inc. ("Con Edison") at 647 Fulton Street, Brooklyn, NY 11217 (the "property") on or about March 24, 2013.
>
> 3. On or about October 28, 2013, Urban Glass installed a new meter at the property. This new meter had a multiplier/constant of 160 compared with the old meters' multiplier/constant of 800.
>
> 4. After the meter was installed in 2013, and until the meter was replaced in or around June 2019, I personally called Con Edison's customer service department asking the utility to visit the property and inspect the meter because Urban Glass consistently received estimated bills, and because the bills appeared inaccurate. I made these phone complaints at least once every few months between 2013 and June 2019.
>
> 5. Upon information and belief, Brian Kibler, a former Urban Glass employee, also made similar telephone complaints to Con Edison's customer service department.
>
> 6. Upon information and belief, Con Edison exchanged the October 2013 meter with an AMI device in or around June 2019.
>
> 7. In or around October 2019, Con Edison sent Urban Glass a letter explaining that the October 2013 meter multiplier was incorrect and that it had underbilled Urban Glass based on the incorrect multiplier from October 2013 to June 2019. Con Edison issued a backbill based on the correct multiplier covering the period between July 2018 and June 2019.
>
> 8. Urban Glass retained Utilisave, LLC to dispute this backbill with Con Edison, and this matter is now before the New York State Public Service Commission's Department of Public Service ("DPS").

Utility's position

Con Edison stated that the utility respectfully disagreed with the position of the complainant's representative, and it stands by its initial position that the utility properly backbilled and limited the backbill to 12 months, and that no further adjustments are warranted.

The customer's complaint is regarding the backbill they received for service provided from October 27, 2013, through June 11, 2019. The reason for the back bill was due to an incorrect

meter multiplier which was discovered during a meter inspection. This was a clerical error that was not realized until the utility physically inspected the meter six years later in June 2019.

Con Edison disagreed with the complainant's position regarding the utility's actual awareness of the condition causing underbilling before the inspection on June 11, 2019. Con Edison stated that at the time when the meter in question was installed, the utility was not aware of this error. Con Edison stated that despite UtiliSave's position, the utility was not aware of the meter issue until it physically inspected the meter. Con Edison argued that the actual physical inspection of the meter is what allows the company to become aware of the condition, and to correct the condition or errors. In its position, Con Edison referred to the Commission's precedent in Case 95-E-0581. Con Edison stated that despite UtiliSave's arguments, a meter reading does not constitute a physical inspection of the meter and does not constitute actual awareness of the meter condition and referred in its position to the Commission precedent in Case 06-E-1084.

Con Edison stated that it limited the back bill to twelve months, which is fair and in accordance with Commission regulations and Commission prior case precedent. Con Edison stated that in addition, the utility removed $30,873.00 as a conservation credit for the disputed period.

Additionally, on October 20, 2022, Con Edison provided responses to the informal hearing officer's request for information. The informal hearing officer questioned what the notation "rerendered bill inquiry" in the account inquiry history referred to, and Con Edison responded that "the notations in the inquiry history listed as "rerendered bill inquiry," could refer to a representative receiving a call about bills sent to the customer or a representative entering bills on the account." When the informal hearing officer asked the utility to confirm if the notations on the account listed as "repair am meter" were meter operation group requests to replace/exchange/repair a broken or defective AMR device, which could be a possible cause of rejected readings and estimated bills, Con Edison responded "Yes."

Analysis

The central issue to be addressed in this case is whether the complainant is responsible for the charges backbilled on their account for service received for the period from October 27, 2013, to June 11, 2019. For the reasons stated below, I find that additional adjustments to the charges backbilled to the complainant's account are warranted.

The complainant argued that Con Edison actually became aware of the circumstance or condition that caused the underbilling when it exchanged the meter at the premises and set the inaccurate meter multiplier on October 27, 2013. The complainant argued that according to Commission regulations, the utility may not render a backbill more than six months after the utility became aware of the circumstance, error or condition that caused the underbilling, and therefore the utility may not render a backbill after April 2014. The complainant also argued that late payment charges were not warranted. The complainant stated that Con Edison should cancel the backbill charges entirely and eliminate all associated late fees assessed on the account.

The utility argued that it did not become aware of the circumstance, error or condition caused the underbilling on the account from 10/2013 to 06/2019 until the meter at the premises was inspected on 06/11/19. The utility asserted that it properly backbilled and limited the backbill in question to twelve months in accordance with the backbilling regulations and that no further adjustments are warranted.

According to the utility's records, electric service on the account was established on 03/24/13, and the meter on the account had a multiplier of 800. On 10/27/13, the utility exchanged the meter at the premises, and erroneously set a meter multiplier of 160 in the system instead of 800. On 06/11/19, during a meter inspection at the premises, the utility corrected the meter multiplier issue. Due to the inaccuracy of the meter multiplier in the system, the account was underbilled for service from 10/27/13 to 06/10/19. On 10/08/19, the utility notified the complainant that their account was underbilled for service used since 10/27/13 and that the utility already rebilled the account and limited the backbill to 12 months. To note, this letter had confusing information: although the notification was regarding backbilling on the account for the period from 10/27/13 to 06/10/19, in the letter there was noted a total balance of $116,912.21, which included not only the backbill amount for the period from 06/14/18 to 06/10/19, but also included billing from 06/11/19 to 10/06/19.

According to the utility's records, the total original billing for the disputed period, from 10/23/13 to 06/10/19, was in the amount of $138,542.03. The total rebilled charges were $658,213.23. Therefore, total backbilled charges for the disputed period were in the amount of $519,671.20. On 10/04/19, Con Edison limited the backbill to a twelve-month period by removing $408,732.87, the backbilled charges for the period from 10/23/13 to 06/14/18. Therefore, it left a total of **$110,938.33** in backbilled charges for the period from 06/14/18 to 06/10/19.
Additionally, on 12/19/19, the utility applied a conservation credit of **$30,873.00** to the account.

Regarding billing for service on the complainant's account during the disputed period:

In regard to the billing issued during the disputed period, the utility's account records show that Con Edison billed the account based on estimated billing throughout the entire disputed period. Also, during the disputed period the utility records have repeated notations that "meter reading rejected." The utility records also have notations that the complainant had contacted the utility regarding estimated billing on the account. Below are examples of the records of the complainant's contacts with the utility:

```
                    * * * *   LISTED ORDERS    * * * *
                  TYPE  CNTRL# 68135533715 INPT DTE 051518 DROP DTE 111118
                  TIME: 09:58A                  PERM: N
                  JEFF CALLED REGARDING RECEIVING ESTIMATED BILLS BC HE RECEIV
                  ES NYC FUNDING FOR
                  UTILITY USE.  I ADVISED THE CUST THAT ACCESS IS NOT AN ISSUE
                  , HOWEVER, THE READ
                  ING WERE REJ.  WILL BE ACTUAL SO CUST CAN GET ACTUAL READING
                  S
```

and

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NOTE REFERRAL     TYPE  CNTRL# 68260521380 INPT DTE 091718 DROP DTE 031719
                  TIME: 10:05A                  PERM: N
                  MR BUSH REQUESTED TO SPEAK WITH CAROLYN SCULLY, I ASKED IF
                  HERE WAS ANYTHING T
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Thus, it can be clearly seen even from these utility records that the utility knew that access to the meter was not an issue and that the estimated billing was due to actual meter readings that were rejected by the utility system. Based on the evidence and information available, the underbilling for the disputed period was due to a utility deficiency.

Regarding the responsibility for backbilled charges on the account for the disputed period:

The Commission's regulations for limitation on the backbilling period in 16 NYCRR §13.9(c)(1) provide:

> (1) When the failure to bill at an earlier time was due to utility deficiency, a utility shall not bill a customer for service rendered more than 12 months before the utility actually became aware of the circumstance, error or condition that caused the underbilling, unless the utility can demonstrate that the customer knew or reasonably should have known that the original billing was incorrect.

As established earlier, the complainant's account was underbilled for service during the disputed period due to the utility's deficiency. Thus, according to the regulations on the limitation regarding the backbilling period, the utility not allowed to backbill for more than the twelve months of service before the utility actually became aware of the circumstance, error or condition that caused the underbilling.

The Commission's regulations for limitations on the time when backbilling may be rendered in 16 NYCRR §13.9(b)(1) provide:

> (1) A utility shall not render a backbill more than six months after the utility actually became aware of the circumstance, error or condition that cause the underbilling, unless a court extends the time to render a backbill.

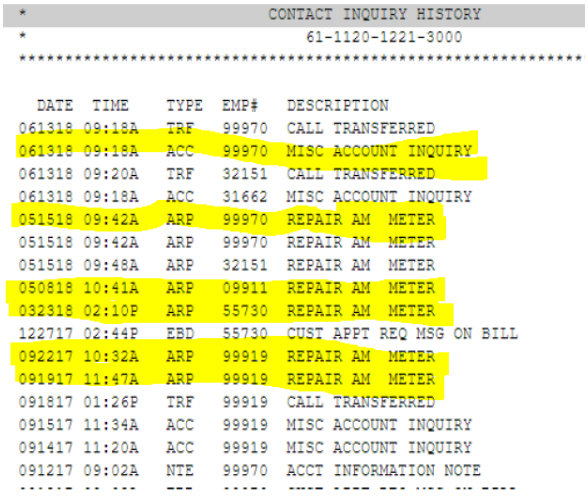
Thus, according to the regulations for limitations on the time when backbilling may be rendered, the utility is barred from rendering a backbill more than six months after the utility actually became aware of the circumstance, error or condition that cause the underbilling.

Con Edison previously admitted that the utility's deficiency was responsible for underbilling during the disputed period and stated that it limited the backbill for the period in question to twelve months. However, Con Edison argued that it did not became aware of the circumstance, error or condition that caused the underbilling until 06/11/19, when it physically inspected the meter at the premises. The complainant (Urban Glass's director) contended that they called the utility multiple times during the disputed period to complain regarding billing inaccuracy and to request a meter inspection:

> **After the meter was installed in 2013, and until the meter was replaced in or around June 2019, I personally called Con Edison's customer service department asking the utility to visit the property and inspect the meter because Urban Glass consistently received estimated bills, and because the bills appeared inaccurate. I made these phone complaints at least once every few months between 2013 and June 2019.**

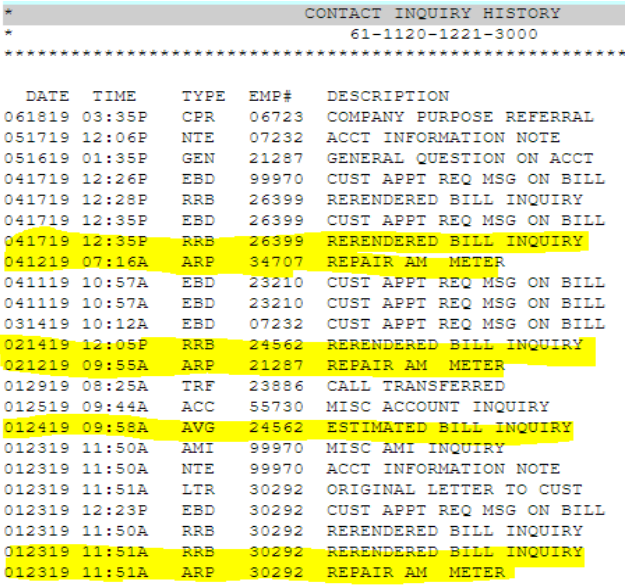
Here, regarding the point of awareness, the Commission held in Janoff and Olshan[1] that "to hold that a utility actually becomes aware of the source of underbilling only after inspecting the customer's meter when it already has reliable information to make this judgment, would allow the utility to delay inspecting a customer's meter and undermine the intent of the back-billing rules to render timely billing." In Janoff and Olshan[2] the Commission found that the utility had sufficient knowledge to conclude that the complainant was being underbilled after the complainant contacted the utility and provided notice that it was using service and not being billed. Given these circumstances, the Commission held that "although a meter inspection would have indicated the exact nature of the meter defect, this was not necessary for the utility to conclude that a meter problem was the cause of the underbilling." Therefore, the Commission concluded "that because the utility did not issue the backbill within six months, required under Section 13.9(b)(1), of the telephone discussion with complainant on [date], the utility is barred from billing for any service prior to that date."

Now, contrary to the utility's statements that it did not become aware of underbilling on the account due to meter issues until 06/11/19, the utility's account records show otherwise. Below are screenshots of the utility's Contact Inquiry History on the account:



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*                          CONTACT INQUIRY HISTORY
*                               61-1120-1221-3000
************************************************************

  DATE  TIME    TYPE  EMP#   DESCRIPTION
061318 09:18A   TRF   99970  CALL TRANSFERRED
061318 09:18A   ACC   99970  MISC ACCOUNT INQUIRY
061318 09:20A   TRF   32151  CALL TRANSFERRED
061318 09:18A   ACC   31662  MISC ACCOUNT INQUIRY
051518 09:42A   ARP   99970  REPAIR AM  METER
051518 09:42A   ARP   99970  REPAIR AM  METER
051518 09:48A   ARP   32151  REPAIR AM  METER
050818 10:41A   ARP   09911  REPAIR AM  METER
032318 02:10P   ARP   55730  REPAIR AM  METER
122717 02:44P   EBD   55730  CUST APPT REQ MSG ON BILL
092217 10:32A   ARP   99919  REPAIR AM  METER
091917 11:47A   ARP   99919  REPAIR AM  METER
091817 01:26P   TRF   99919  CALL TRANSFERRED
091517 11:34A   ACC   99919  MISC ACCOUNT INQUIRY
091417 11:20A   ACC   99919  MISC ACCOUNT INQUIRY
091217 09:02A   NTE   99970  ACCT INFORMATION NOTE
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*                          CONTACT INQUIRY HISTORY
*                               61-1120-1221-3000
************************************************************

  DATE  TIME    TYPE  EMP#   DESCRIPTION
061819 03:35P   CPR   06723  COMPANY PURPOSE REFERRAL
051719 12:06P   NTE   07232  ACCT INFORMATION NOTE
051619 01:35P   GEN   21287  GENERAL QUESTION ON ACCT
041719 12:26P   EBD   99970  CUST APPT REQ MSG ON BILL
041719 12:28P   RRB   26399  RERENDERED BILL INQUIRY
041719 12:35P   EBD   26399  CUST APPT REQ MSG ON BILL
041719 12:35P   RRB   26399  RERENDERED BILL INQUIRY
041219 07:16A   ARP   34707  REPAIR AM  METER
041119 10:57A   EBD   23210  CUST APPT REQ MSG ON BILL
041119 10:57A   EBD   23210  CUST APPT REQ MSG ON BILL
031419 10:12A   EBD   07232  CUST APPT REQ MSG ON BILL
021419 12:05P   RRB   24562  RERENDERED BILL INQUIRY
021219 09:55A   ARP   21287  REPAIR AM  METER
012919 08:25A   TRF   23886  CALL TRANSFERRED
012519 09:44A   ACC   55730  MISC ACCOUNT INQUIRY
012419 09:58A   AVG   24562  ESTIMATED BILL INQUIRY
012319 11:50A   AMI   99970  MISC AMI INQUIRY
012319 11:50A   NTE   99970  ACCT INFORMATION NOTE
012319 11:51A   LTR   30292  ORIGINAL LETTER TO CUST
012319 12:23P   EBD   30292  CUST APPT REQ MSG ON BILL
012319 11:50A   RRB   30292  RERENDERED BILL INQUIRY
012319 11:51A   RRB   30292  RERENDERED BILL INQUIRY
012319 11:51A   ARP   30292  REPAIR AM  METER
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As can be seen in these records, the utility's "Contact Inquiry History" during the disputed period contains continuous notations of "estimated bill inquiry," "rerendered bill inquiry," and "repair am meter." In response to the informal hearing officer's questions regarding the meaning of the notations of "rerendered bill inquiry" and "repair am meter," Con Edison stated that "rerendered bill inquiry" "could refer to a representative receiving a call about bills sent to the customer or a representative entering bills on the account," and confirmed that "yes," the notations "repair am meter" were requests from the Meter Operation Group to replace/exchange/repair a

[1] Case 93-E-0754, Appeal by Long Island Lightning Company of the Informal Decision Rendered in Favor of Janoff and Olshan, Commission Determination (issued December 8, 1995).

[2] Case 93-E-0754, supra, Commission Determination (issued December 8, 1995).

broken/defective AMR device, which could be the cause of rejected readings and result in estimated bills.

Here, the utility records indeed show that the complainant, as they claimed, constantly contacted Con Edison with a "balance owed question" or "bill inquiry." The utility records show that Con Edison was placing requests for meter repair as early as 09/2017, and on 03/2018, 05/2018, 06/2018, and as late as on 01/23/19 and again on 02/12/19 and 04/17/19. Thus, according to the utility's records, Con Edison was notified by the complainant regarding the estimated and inaccurate billing, and was made aware of the meter problem well before 06/11/19.

Here, according to the utility's records, as late as 02/12/19, the utility once again had a request of "repair am meter" and on 02/14/19 had a "rerendered bill inquiry." Therefore, as of 02/14/19 the utility had sufficient information and knowledge to conclude that the account was not being billed properly for service because the meter was not working properly. However, only four months later, on 06/11/19, the utility performed a meter inspection, during which it identified the exact issue with the meter. Almost eight months later, on 10/04/19, Con Edison completed re-billing on the account and rendered a backbill, and on 10/08/19, it notified the complainant regarding underbilling on the account and issued a backbill for service during the disputed period. In addition, I would like to point out, the utility also failed to follow Commission regulations 16 NYCRR §13.14(b), which require that the utility perform a meter inspection as soon as possible and within of 60 calendar days upon a reasonable customer request or notification from any reasonable source that service may not be correctly metered.

Therefore, in view of all the available evidence and according to the applicable regulations, I find that because the utility did not issue the backbill within six months from the date of when the utility knew of the meter issue on 02/12/19, as required under Section 13.9(b)(1), the utility is barred from billing for any service prior to that date. The complainant is responsible only for the charges backbilled after 02/12/19. Accordingly, any charges backbilled for service received before 02/12/19 should be cancelled. However, the complainant is still responsible for the original estimated billing up to 02/12/19. Regarding the complainant's responsibility for the original estimated bills, the Commission held in Green Park Sussex[3] that "a utility's rates remain applicable to its customers independent of the utility's metering and billing practices. Also, a utility's failure to abide by its metering and billing regulations does not mean that a customer is entitled to any free service when the amount of gas the customer used can be determined with some degree of accuracy." In Green Park Sussex, the Commission found that a customer must pay for service and is not entitled to a windfall for estimating billing.

The utility already previously cancelled all backbilled charges for the period before 06/14/18. Therefore, the utility is additionally required to cancel all backbilled charges for the period from 06/14/18 to 02/12/19. Below is a screenshot of the utility's records showing how the complainant's account was initially billed and how it was re-billed for service for the period from 06/14/18 to 06/11/19:

[3] Case 17-G-0005, Appeal by Green Park Sussex, Inc of the Informal Decision Rendered in Favor of Consolidated Edison Company of New York, Inc., the Commission Determination (issued November 21, 2017).

Initially Billed vs Re-Billed

T-DATE	M-DATE	CD	E-CONS	E-BIL-AMT
060719	061819	ME	13600	2055.00
050819	051719	ME	8000	1357.37
041619	051619	VB	13600	2232.34
031119	051619	ME	12160	1882.41
020719	051619	ME	11200	1942.33
010819	051619	ME	8000	1074.25
121818	012219	VB	4160	645.73
120718	012219	ME	12320	1905.42
110518	012219	ME	11840	1910.88
100518	011819	ME	11040	1906.98
090618	011819	ME	11040	1737.29
080818	011819	SK	15200	2642.28
080718		CV	0	0.00
072718		SK	0	0.00

T-DATE	M-DATE	CD	E-CONS	E-BIL-AMT
061119		EX	0	0.00
061019	081919	VB	1600	576.88
060719	080719	ME	68000	10076.98
050819	080719	ME	40000	6646.10
041619	080719	VB	68000	10934.56
031119	080619	ME	60800	9209.18
020719	080619	ME	56000	9521.42
010819	080619	ME	40000	5239.97
121818	080119	VB	20800	3158.70
120718	080119	ME	61600	9332.87
110518	080119	ME	59200	9366.09
100518	080119	ME	55200	9332.50
090618	080119	ME	55200	8478.54
080818	080119	SK	76000	18984.27
080718		CV	0	0.00
071118	080119	SK	68000	12632.52
071018		SK	0	0.00

Based on the account records and my calculations, for the <u>period from 06/14/18 to 02/12/19</u>:

1) the utility initially billed the account in the amount of **$14,068.77** = ($2,642.28 + $1,737.29 + $1,906.98 + $1,910.88 + $1,905.42 + $645.73 + $1,074.25 +$1,942.33 + ($1,882.41 /31day * 5day)).
2) the utility re-billed the account in the amount of **$87,532.23** = ($12,632.52 + $18,984.27 +$8,478.54 + $9,332.50 + $9,366.09 + $9,332.87 +$3,158.70 + $5,239.97 + $9,521.42 + ($9,209.18 /31day * 5day)).

For the period from 06/14/18 to 02/12/19, the complainant is responsible only for the amount of the initially estimated bills ($14,068.77). The difference between the total rebilled charges ($87,532.23) and the original estimated charges ($14,068.77), is the backbilled charge (**$73,463.46**) for the period from 06/14/18 up to 02/12/19, which must be cancelled.

Regarding late payment charges (LPC) on the account:

UtiliSave argued that all LPC, billed on the account for the unpaid balance associated with backbilled charges in question, should be cancelled entirely, because according to the rule NYCRR 13.10(2) and the precedent discussed in Case 95-E-0581, the utility was not allowed to apply LPC for the unpaid balance associated with backbilled charges. Here, the consultant misinterpreted the applicability of the referenced regulations. The regulations provide that when the utility calculates backbills for unmetered service received through tampered equipment, LPC would also be imposed on the amount of the backbills. In Case 95-E-0581, the Commission clarified that such calculation of a backbill with LPC penalized the customers whose proper billing was not rendered at the time service was used due to theft of service (tampered equipment). The backbills for all other situations are calculated without calculating and applying LPC. However, it is important to understand that after the backbill was issued, it became the balance of the prior bill for service, and according to NYCRR 13.10(1), LPC would be issued going forward if the bill was not paid within 20 calendar days of the date that the payment was due.

However, I find that the LPC should be cancelled for different reasons. Here, the utility previously voluntarily waived LPC (in total of $3,405.99) posted to the account before 12/10/19, stating that it did not properly calculate the backbill. The LPC that had not been waived had been posted on the account from 01/09/20 through 01/10/22, for the unpaid balance ($63,120.13) of the revised backbill as of 12/19/19. However, considering the additional amount of unwarranted backbilled charges ($73,463.46), there should be no arrears on the account for the revised bills issued as of 12/19/19. Therefore, all LPC posted on the account from 01/09/20 to 01/10/22 (a total of **$8,439.74**) are not warranted and must be cancelled as well.

Finally, on 12/11/19 the utility issued a conservation credit of $30,873.00 to the revised backbill. This conservation credit cannot be reduced or canceled now, because the utility is time-barred to make any upward adjustment on this voluntarily unrecoverable credit adjustment. Thus, the conservation credit stands as it was originally issued.

Decision

Based on a thorough review of the available evidence and facts in this case, applicable Commission rules and regulations, and the utility tariff, I find that backbilled charges for service received up to 02/12/19 are not warranted and that additional adjustments to charges billed on the account are required.

The utility is directed to:

1) Cancel all backbilled charges for service from 06/14/18 to 02/12/19 ($73,463.46);
2) Cancel all LPC posted on the account from 01/09/20 to 01/10/22 ($8,439.74); and
3) Issue a refund for any overpayment on the account with the appropriate interest calculated from the date when the payment was made (01/16/20) and overpayment occurred, to the date when the refund is actually issued.

The utility is to notify me in writing of its compliance with the directive above within twenty (20) days of the date of this decision. 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.

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