STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 25-E-0193 – In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR in Relation to Complaint Procedures - Appeal by Le Havre Owners Corp. of the Informal Decision Rendered in Favor of Consolidated Edison Company of New York, Inc., (184689).

COMMISSION DETERMINATION

(Issued and Effective August 19, 2025)

INTRODUCTION

The Public Service Commission (Commission) received an appeal from Le Havre Owners Corp. (hereinafter Complainant) from an informal review decision (Decision) dated March 18, 2025. In the Decision, the Informal Hearing Officer (IHO) found that Complainant's meters were accurate, and that Consolidated Edison Company of New York, Inc. (Con Edison or Company) accurately billed Complainant's account. For the reasons discussed below and based on the record before us, the Commission affirms the decision with respect to the accuracy of the meters, but remands the matter to the IHO for further consideration of the accuracy of the billing.

BACKGROUND

Complainant is a non-residential customer of Con Edison in Queens, New York. Complainant opened an account with Con Edison in February 1998. Complainant's demand was initially not metered, and its account was initially billed on Service Classification (SC) 2 - small non-residential.[1] On July 19, 2021, Con Edison installed an Advanced Metering Infrastructure

[1] Correspondence to Con Edison (sent September 12, 2024).

meter (AMI meter or smart meter), which is capable of measuring demand and usage.[2] In July and August 2021, Complainant's AMI meter registered peak demand exceeding 10 kilowatts (kW).[3] In accordance with Con Edison's tariff, Con Edison changed Complainant's service classification to SC 9 in September 2021.[4]

On November 17, 2021, Complainant filed a complaint with Con Edison requesting a meter test. Complainant stated that the demand measurements were extremely high and that the meter may not have been capable of "providing proper registration" of demand because the total usage in kilowatt-hours (kWh) was relatively low.[5] Con Edison performed an in-field meter test inspection on December 2, 2021, and found that it was recording at 99.9 percent of accuracy,[6] within the regulatory limits of 98 to 102 percent.[7] Con Edison did not provide this report to DPS or Complainant until September 24, 2024, after the IHO requested it.

Complainant filed a complaint with the Office of Consumer Services (OCS) on December 2, 2021, asserting that the Company "failed to respond in a reasonable amount of time," and requesting that the accuracy of the demand meter be investigated.[8] OCS ordered a joint referee "in-shop" meter test,

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[2] Con Edison Records (received September 12, 2024).

[3] Id.

[4] Id.; PSC No. 10 – Electricity, Third Revised Leaf No. 444. Pursuant to the tariff, if an account's maximum demand is measured at over 10 kW for two consecutive months, the account is transferred to SC 9. PSC No. 10 – Electricity, Fourth Revised Leaf No. 401.

[5] Initial Complaint to OCS (received December 2, 2021).

[6] Con Edison Records (received September 12, 2024).

[7] Department of Public Service 16 NYCRR §92 Operating Manual (published March 14, 2003), p. 16 (Part 92 Operating Manual).

[8] Initial Complaint to OCS (received December 2, 2021).

wherein the meter is removed from the premises and tested in a shop for the accuracy of its demand and usage measurements, and the on-site meter is replaced with a new meter. On December 13, 2021, DPS and Con Edison performed the in-shop meter test and found that the demand in kW registered at 100.04 percent accuracy, and the usage in kWh registered at 99.9 percent accuracy.[9] These results indicate the meters are within the regulatory accuracy limits.[10]

On December 23, 2021, Complainant requested that an "in-field" referee test of the newly installed meter be conducted, where the meter is tested in situ while still attached to Complainant's premises. OCS denied this request pursuant to the Part 92 Operating Manual, which gives OCS discretion to not perform field inspections inside customer premises.[11] OCS determined that a field inspection in this case would be unsafe due to the COVID-19 pandemic.[12]

On January 23, 2023, pursuant to another OCS order, OCS and Con Edison conducted an in-field referee test of the meter installed at Complainant's premises. This test found that the usage in kWh registered at 100.15 percent accuracy, again within regulatory limits; however, they did not test the demand function of the meter.[13] On February 3, 2023, OCS issued a closing letter, finding that the meter is operating within acceptable limits and that no adjustments were warranted.[14]

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[9] Shop Demand Test (December 13, 2021); Shop Referee Test (December 13, 2021).

[10] Part 92 Operating Manual, p. 16.

[11] Id., p. 25-26.

[12] OCS response (sent December 23, 2021).

[13] Meter Installation Findings (sent January 23, 2023).

[14] OCS Closing Letter (sent February 3, 2023).

On February 5, 2023, Complainant requested an informal review, claiming that the meter tests were not conducted in accordance with Commission Regulations, and that Complainant was not in possession of the January 23, 2023 meter test results.[15] OCS granted the request for an informal review on May 21, 2024, stating that the complaint concerns a "Meter Test Validity Dispute."[16]

During the informal review, Complainant initially argued that the December 13, 2021 meter test was improper because it was conducted in-shop instead of in-field.[17] Furthermore, because the meter was subsequently discarded, Complainant alleged that they were entitled to a 5 percent lost-meter adjustment.[18] Complainant further argued that the January 23, 2023 in-field meter test did not comply with Title 16, Part 92 of the New York Codes, Regulations and Rules (NYCRR) Section 7(e)(iv), because the meter was tested at higher loads than Complainant's local operating conditions.[19]

Con Edison argued that all meter tests demonstrated that the meters functioned within regulatory accuracy limits, and thus no adjustments were warranted.[20] Con Edison also argued that testing the meter in-shop was proper due to the health and safety issues caused by the COVID-19 pandemic.[21]

Complainant submitted a reply to Con Edison's argument, asserting, without providing evidence in support, that

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[15] Request for Informal Review (received February 5, 2023).

[16] OCS Letter Granting Request for Informal Review (sent May 21, 2024).

[17] Complainant Informal Review Position (received July 19, 2024).

[18] Id.

[19] Id.

[20] Con Edison Informal Review Position (received July 24, 2024).

[21] Id.

the COVID-19 pandemic was "over in 2020" and thus did not pose a safety issue.[22] Complainant also cited to multiple consumer complaint proceedings which indicated that the burden of proof is on the Utility, pursuant to the Public Service Law (PSL).[23]

On September 25, 2024, the IHO ordered another referee test of the meter be conducted, this time requiring that the demand register be tested.[24] The IHO stated that demand must be tested in-shop, since AMI meters cannot be tested in-field. The meter was tested in-shop on December 17, 2024, and was found to be within regulatory limits, with demand in kW registering 100.01 percent accuracy and usage in kWh registering 100.08 percent accuracy.

Between September 12, 2024, and January 27, 2025, there was a back-and-forth correspondence between the IHO, the DPS Office of Rates and Tariffs (ORT), Con Edison, and Complainant. The IHO initially requested that Con Edison explain how monthly demand is registered and calculated for Complainant's account.[25] In response, Con Edison only stated that the demand charge is necessary to maintain facilities with sufficient capacity, and did not otherwise answer the IHO's question.[26] The IHO again asked how monthly demand is registered and calculated, as well as for explanations of the meaning of the terms "Cumulative Demand," "Peak Demand," and "Contract Demand" as found in Complainants bills ranging from July 2021 through August 2024, and any relevant tariff leaves.[27] Con

[22] Complainant Informal Review Reply (received July 24, 2024).

[23] Id.

[24] Demand Meter Test Order (sent September 25, 2024).

[25] IHO Information Request I (sent September 12, 2024).

[26] Con Edison Response I (received September 24, 2024).

[27] OCS Information Request II (sent September 24, 2024).

Edison responded with a more in-depth answer on September 25, 2024, explaining how demand is calculated, and that the term "Cumulative Demand" is largely phased out, "Peak Demand" is the peak registered demand for a billing period, and "Contract Demand" is the total minimum monthly charge for the account if the account is subject to such charge pursuant to its rate.[28] Con Edison also provided Tariff Leaf 445.

Complainant then responded, requesting additional clarification regarding the accuracy of billing for Complainant's account during the billing period from July 1, through July 31, 2024. Specifically, Complainant requested that Con Edison explain why the demand charged for this billing period was 16.09 kW, while the meter information that Complainant received from Con Edison's website registered a maximum demand on July 23, 2024, as 17.94 kW; and why the "Contract Demand" for this period was 17.2 kW, but was otherwise not charged for in the bill.[29] The IHO forwarded this question to Con Edison, as well as additional questions regarding how demand is registered and calculated.[30]

Con Edison responded, stating that the July 2024 bill's demand charge of 16.09 kW was based on demand reading from "May 3, 2023 [sic]," and that the "Contract Demand" value of 17.2 kW is the minimum monthly charge, based on "39% of contract demand amount," which is compared to the actual demand.[31] Con Edison also stated that the previous explanation of how demand is registered only applied to "Type-3 meters,"

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[28] Con Edison Response II (received September 25, 2024).

[29] Complainant Information Request III (received September 26, 2024); Complainant Correspondence (received September 28, 2024).

[30] OCS Information Request III (sent September 30, 2024).

[31] Con Edison Response III (received October 9, 2024).

then explained how AMI meters calculate demand in a different fashion through fine-grain records of energy consumption and centralized analysis of such data.[32]

On December 19, 2024, the IHO forwarded an additional information request, drafted by ORT, to Con Edison.[33] The IHO asked for additional information about how the demand for the July 2024 bill was calculated and for clarification regarding any discrepancies, a detailed breakdown of the July 2024 bill, an explanation of how the meter constant was determined, where in Con Edison's tariff the maximum monthly demand calculation is, whether the Company changed its formula to calculated billed demand, and Complainant's rate structure. Con Edison responded to most of these questions the following day.[34] However, neither ORT nor Complainant found these answers satisfactory, and both requested follow-up information from the Company.[35] The IHO directed Con Edison to respond to these follow-up questions.[36] Both ORT and Complainant took issue with Con Edison's statement that it did not change its billing formula: Complainant claimed that since October 2023, the Company stopped billing customers' demand to the nearest tenth of a kW, rounded down, and instead billed demand to the nearest hundredth of a kW, rounded down;[37]

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[32] Id.

[33] IHO Information Request IV (sent December 19, 2024).

[34] Con Edison Response IV (received December 20, 2024).

[35] Complainant Reply to Information Request IV (received December 21, 2024); Staff Reply to Information Request IV (sent January 17, 2025); IHO Correspondence with Con Edison (sent January 27, 2025).

[36] IHO Correspondence with Con Edison (sent January 17, 2025).

[37] E.G., if the peak registered demand for a month were 12.368 kW, then the demand billed prior to October 2023 would have been 12.3 kW, and after October 2023, 12.36 kW. Demand was never rounded up.

based on Complainant's claim, DPS ORT requested that the Company provide further clarification.[38]

On January 27, 2025, Con Edison responded to these requests for additional information via email with the following:

> Con Edison will not be providing any further information on this case as we feel the repeated follow ups after the informal review have been excessive seeing as there were three separate meter/demand tests that took place during the span of this complaint.
>
> Please render a decision.[39]

Complainant filed their final response on the informal hearing record the following day, stating that Complainant is "expanding [their] request for a refund of all charges," and that Con Edison has not supplied any evidence that "the charges billed are accurate."[40]

On March 18, 2025, the IHO rendered their informal decision. The IHO identified the issues in the case as whether: (1) the meters were accurate, (2) the meter tests were proper, and (3) the Company accurately billed Complainant's account.[41] Regarding the first and second issues, the IHO found that the meters were accurate based on the many tests conducted, and that the meter tests were conducted in compliance with the law and Commission regulations.[42] Regarding the third issue, the IHO found that Complainant did not provide evidence that the billing

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[38] Complainant Reply to Information Request IV (received December 21, 2024); Staff Reply to Information Request IV (sent January 17, 2025).

[39] Con Edison Correspondence (received January 27, 2025).

[40] Complainant Correspondence (received January 28, 2025).

[41] Case 25-E-0193, Informal Review Decision (filed March 21, 2025), p. 8.

[42] Id., p. 9-11.

was inaccurate, and that Con Edison met its burden of proof that it billed Complainant's account accurately.[43] The IHO also found that Complainant's demand was properly billed at one tenth of a decimal since the smart meter was installed.[44]

POINTS ON APPEAL

Complainant appealed the IHO's decision on March 20, 2025.[45] Complainant argued that the IHO made a mistake in fact and law by stating that Con Edison met its burden of proof that the account was billed accurately. Complainant argued that Con Edison's refusal to answer ORT's and Complainant's follow up questions in the Company's January 27, 2025 correspondence demonstrated that Con Edison was not supporting its position.[46] Complainant further alleged that Complainant provided evidence that Con Edison did not bill Complainant's account correctly.[47]

Next, Complainant argued that the IHO made a mistake in fact by finding that Con Edison has rounded the demand down to the nearest tenth of a kW when calculating the demand charge.[48] Complainant provided new evidence to the record: their bill from July 3 to August 2, 2023, and their bill from October 30 to December 1, 2023. Both bills presented the total demand accurate to the hundredth decimal, but the earlier bill was rounded down to the tenth decimal.[49] Complainant alleged that this change would allow Con Edison to increase its profits by

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[43] Id., p. 12.

[44] Id., p. 12.

[45] Case 25-E-0193, Complainant Appeal of Informal Decision (filed March 20, 2025).

[46] Id., p. 2.

[47] Id., p. 4.

[48] Id.

[49] Id., p. 5.

collecting that hundredth of a decimal more from demand-rate customers.[50]

On April 21, 2025, Con Edison responded to the appeal.[51] Con Edison argued that Complainant stopped challenging the accuracy of the meters, and that Complainant's only issue on appeal is whether the Company needed to receive Commission approval to bill customers based on their demand accurate to the hundredth decimal.[52] Regarding the decimal places, Con Edison argued that this issue is not properly before the Commission in this proceeding because it was raised for the first time at the informal review stage, and not in the initial complaint.[53] The Company further argued that the change in the number of decimal places did not require Commission approval, and that the change in decimal places would not increase Con Edison's profits through the revenue decoupling mechanism.[54]

DETERMINATION

1. The issues properly before the IHO

The Commission's consumer complaint process has three objectives: "to ensure that all parties have an opportunity to be heard, to build a factual and legal complaint record, and to promote administrative efficiency by only escalating complaints to the Commission where the parties have failed to resolve their dispute informally."[55] The scope of a consumer complaint

[50] Id., p. 4.

[51] Case 25-E-0193, Con Edison's Response to Appeal (filed April 21, 2025).

[52] Id., p. 1.

[53] Id., p. 5.

[54] Id., p. 5-6.

[55] Case 24-G-0260, Appeal by Vyse Avenue Associates, LP of the Informal Decision Rendered in Favor of Con Edison, Commission Determination (issued September 25, 2024), p. 4.

proceeding is "limited to the specific dispute at hand between a utility and its customer."[56]

The Commission's consumer complaint process consists of three stages. First, if a customer cannot resolve a dispute with their utility, they may file a complaint with OCS.[57] During this initial stage, the customer includes facts supporting their position, the utility responds, and OCS Staff investigates the complaint, requesting additional information from the utility as needed.[58]

The second stage is the informal review or informal hearing. Informal reviews and hearings "provide an additional layer of independent examination of a dispute, and provide detailed factual and legal explanations for how a dispute is resolved."[59] The administrative record is further developed during this stage of the review. The IHO has broad investigatory powers to "[o]rder utilities to provide copies of information in their possession and state the form in which certain information is to be provided" and "inquire into all matters related to the case."[60]

Furthermore, the parties to an informal review have the right to "examine the evidence and arguments submitted by the other party and to submit a response" to such evidence.[61] Parties can also request information relevant to the complaint

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[56] Case 21-E-0527, Appeal by Mordy Sohn of the Informal Decision Rendered in Favor of Con Edison, Commission Determination (issued January 3, 2024), p. 32.

[57] Sixteen NYCRR §12.1(a).

[58] Sixteen NYCRR §12.1(a), (c), (d), (e); see also Case 21-E-0527, supra (issued January 3, 2024), p. 4.

[59] Id., p. 5.

[60] Sixteen NYCRR §12.8(a)(1)(i), (a)(4).

[61] Sixteen NYCRR §12.7(b)(3).

possessed by the other party.[62] Pursuant to these regulations, the IHO has limited discretion to develop the record in directions related to but not directly alleged by the initial complaint, so long as all parties have the opportunity to respond to any introduced evidence. This power promotes fairness and administrative efficiency,[63] since consumers submitting initial complaints may not know the source of alleged wrongdoing, only the perceived effects. Therefore, the Commission's process grants IHOs the discretion to pursue such closely related issues during the course of their review.

For the third stage of the consumer complaint process, if either party disagrees with the IHO's determination, they can petition for an appeal to the Commission. The appeal must be based on one or more of the following grounds: (1) "[t]he hearing officer or reviewer made a mistake in the facts in the case or in the interpretation of laws or regulations which affected his or her decision"; (2) "[t]he hearing officer or reviewer did not consider evidence, presented at the hearing or review, which resulted in an unfavorable decision"; and/or (3) "[n]ew facts or evidence, not available at the time of the hearing or review, have become available which would have affected the decision on the complaint."[64] The Commission can either "uphold, change, reject or return the decision to the informal hearing officer or reviewer for additional consideration."[65]

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[62] Sixteen NYCRR §12.7 (b)(4).

[63] Sixteen NYCRR §12.8(a) ("informal hearing officers and reviewers shall conduct fair and impartial hearings or reviews.")

[64] Sixteen NYCRR §12.13(b).

[65] Sixteen NYCRR §12.14(b).

The Commission's consumer complaint process was created to allow for full development of evidence for the record.[66] Likewise, it ensures that any issues raised during the process are fully developed and investigated before such issues are before the Commission. As such, issues cannot be raised by any party for the first time on appeal.[67]

a. The accuracy of the meters

This complaint began in 2021 as a claim that the newly installed AMI meter serving Complainant's account was inaccurate. After an in-shop and an in-field meter test, OCS found in an initial determination that the meters were accurate. Complainant requested an informal review claiming that the meter tests were conducted improperly. During the informal review, the meter was tested again, and once again it was found to be accurate. Based on this extensive record, the IHO determined that Complainant's meters were all accurate, and that the tests were conducted properly. While the meter accuracy is not at issue on appeal, the Commission finds that the accuracy of the meters was properly before the IHO, and upholds the IHO's determination that Complainant's meters were accurate and properly tested in accordance with the law.

b. The accuracy of the billing

During the informal review process, the IHO inquired into the accuracy of the demand billing. This inquiry included

[66] See 16 NYCRR §§12.1(d), (e), 12.6, 12.7(a)(2), (6), (b), 12.8(a), (c).

[67] See Case 24-C-0663, Appeal by Patricia Walsh of the Informal Decision Rendered in Favor of Verizon Communications, Inc., Commission Determination (issued February 18, 2025), p. 10-11; see also Case 24-C-0663, supra, Order Denying Petition for Rehearing (issued July 21, 2025).

the company's methodologies to store, calculate, and charge for registered customer demand.

In their investigation, the IHO requested information from Con Edison about how monthly demand is registered and calculated, clarification on terms in Complainant's bills, laws, regulations, and tariff leaves that support Con Edison's methodology, and clarification for apparent discrepancies in the demand charged versus the demand registered. In total, the IHO sent four requests for information (including the request prepared by DPS ORT), and one request for additional information as a follow-up to the fourth information request.

These inquiries into the accuracy of Complainant's billing are directly related to the initial complaint regarding the accuracy of the meter. Complainant's smart meter measures their use and demand. The meter's readings are then transmitted to the utility, which processes the data and sends the customer a corresponding bill. The information most customers see when they file a complaint is merely the final bill. As such, to a customer filing a complaint, challenging the accuracy of their meter is indistinguishable from challenging the accuracy of the billing.[68]

Here, Complainant filed their complaint after Con Edison installed a smart meter at their property, changed their service classification to SC 9, and started charging Complainant for demand. Complainant could have reasonably believed that any alleged overcharges were solely due to the new meter, not knowing that the new AMI meter may also require different usage and demand reporting infrastructure like centralized databases, and different calculations compared to the former meters; those

[68] For example, an IHO or OCS staff member would reasonably order a meter test in cases where the initial complaint alleges that bills are inaccurate.

differences, not the meter itself, could be the cause of alleged inaccuracies. Therefore, the accuracy of Complainant's billing was sufficiently related to the accuracy of Complainant's meters that the IHO had discretion to investigate whether the bills were accurate. Both parties also had an opportunity to present their evidence and arguments regarding Complainant's billing to the IHO. The Commission concludes that the issue of billing accuracy was properly before the IHO.

c. The number of decimal places in the demand charge

In contrast to the billing accuracy, the number of decimal places to which the Company rounds down the demand billing was not properly at issue before the IHO. Complainant first raised this issue in response to Con Edison's answers to the fourth information request. Complainant initially used this issue to claim that Con Edison's billing formula changed, and to state without further evidence or elaboration that this change increased Con Edison's profits. ORT only asked for further clarification. Only on appeal, does Complainant introduce evidence, in the form of bills, showing that the Company increased its accuracy of demand charge to the hundredth of a kW in October 2023.[69] Likewise, only on appeal does Complainant articulate their argument that this would increase Con Edison's profits.[70]

Commission regulations only allow appeals based on new evidence if such evidence was not available at the time of the review.[71] The evidence and arguments Complainant raises on

[69] Case 25-E-0193, Complainant Appeal of Informal Decision (filed March 20, 2025), p. 5.

[70] Id., p. 4.

[71] Sixteen NYCRR §12.13(b)(3).

appeal were available during the time of the informal review, however Complainant did not sufficiently raise such issues at that stage of the process.

Complainant claims that the IHO made a mistake of fact when they stated that Complainant's demand was billed accurate to one tenth of a decimal, rounded down, since the smart meter was installed. However, the IHO did not identify this as an issue in their review.[72] While the IHO was apparently incorrect in this finding, this issue was still not sufficiently raised or part of their determination.

As such, the Commission dismisses this claim as not properly a part of this consumer complaint proceeding.

2. The IHO made a mistake of fact regarding billing accuracy

The IHO found that the billing was accurate, and that Con Edison "provided the necessary information to support their position that it billed the account based on accurate readings and according to the utility's tariff."[73] The IHO based this on the formulas the Company provided in response to some of the information requests, relevant portions of the Con Edison tariff, and cross-references with Complainant's bills. However, there were two issues in the record which the IHO did not address.

First, there were alleged billing discrepancies on the record that Con Edison did not adequately respond to. The July 2024 bill charged Complainant for peak demand of 16.09 kW, while Complainant claims that the peak demand for that month was 17.94

[72] Case 25-E-0193, Informal Review Decision (filed March 21, 2025), p. 8.

[73] Id., p. 12.

kW based on data downloaded from the Con Edison website.[74] When asked to explain this discrepancy, Con Edison initially claimed that the demand charge was based on a reading from May 3, 2023, over a year prior to the month in question.[75] When asked to elaborate further and to provide actual meter readings demonstrating the billed demand, Con Edison did not provide any additional relevant data, stating "[t]he customer was billed 16.09 KW,"[76] and then later refused to respond to additional IHO requests for clarification.[77] Thus, this discrepancy was not fully resolved during the informal review proceeding.

Second, Con Edison failed to adequately respond to the IHO's requests for information regarding how billing is calculated in its December 20, 2024 response, and refused to respond at all to the IHO's follow-up questions.[78] These questions included a request to break down the calculations in Complainant's July 2024 bill and for information on how Con Edison determines what the meter constant should be for demand calculations.[79]

Pursuant to PSL §43(2)(b), the burden of proof in a consumer complaint proceeding is on the utility. Con Edison did not meet its burden of proof that the billing was accurate because the Company failed to provide sufficient data or responses to refute Complainant's claims. Thus, the IHO made a mistake in fact in their conclusion that the Utility met its

[74] Complainant Information Request III (received September 26, 2024); Complainant Correspondence (received September 28, 2024).

[75] Con Edison Response III (received October 9, 2024).

[76] Con Edison Response IV (received December 20, 2024).

[77] Con Edison Correspondence (received January 27, 2025).

[78] Con Edison Response IV (received December 20, 2024); Con Edison Correspondence (received January 27, 2025).

[79] Con Edison Response IV (received December 20, 2024).

burden of proof because the record was insufficient to support such a conclusion.

The Commission remands this decision to the IHO to develop the record further. In their inquiry, the IHO should pursue information requests relevant only to the issue of the accuracy of Complainant's billing. Complainant's service classification, and whether the billing should be charged to the rounded-down tenth of a decimal or the hundredth of a decimal, were not properly before the IHO. Questions about these issues are not relevant to this proceeding.

c. The Powers of the IHO and the Utility's duties under the PSL and Commission Regulations

In the informal review process, the IHO has the power to "Order utilities to provide copies of information in their possession and state the form in which certain information is to be provided"[80] and "Question participants directly and inquire into all matters related to the case."[81] As stated above, this provides the IHO with discretion, including the discretion to determine what is and is not a "matter related to the case."[82] It is not the regulated utility's role to make such a determination.

The Company failed to adequately respond to the IHO's inquiries. Moreover, on January 27, 2025, it repudiated the IHO's request for additional information by stating, "Con Edison will not be providing any further information on this case," claiming that the "repeated follow ups after the informal review

[80] Sixteen NYCRR 12.8(a)(1)(i).

[81] Sixteen NYCRR 12.8(a)(4).

[82] Id.

have been excessive."[83] This statement was incorrect: at the time, the informal review process was ongoing, and the IHO had requested Con Edison's response. This statement is unacceptable and may constitute a violation of the Commission's Regulations.

Pursuant to PSL §25(2), all public utility companies must "obey and comply with every provision of this chapter and every order or regulation adopted under authority of this chapter so long as the same shall be in force." Failure to comply with the law may subject the Company to limited penalties. Likewise, under PSL §25-a, the Commission has the power to assess limited civil penalties against combination gas and electric corporations for violations of the PSL and Commission regulations and orders adopted pursuant to the PSL.

The Commission will not exercise its discretion to impose fines or other punitive measures against the Company in this proceeding because the Part 12 consumer complaint process is the improper forum to do so.[84] Regardless, Con Edison is directed to comply with Commission Regulations, Orders, and the PSL, which includes responding adequately to information requests and inquiries of the IHOs of the Department of Public Service. Failure to do so may subject the company to penalties.

CONCLUSION

First, the Commission determines that Complainant's meters were accurate for all relevant periods at issue in this proceeding, and that their testing was conducted in compliance with the PSL and Commission Regulations. Second, the Commission rejects the IHO's determination regarding the number of decimals

[83] Con Edison Correspondence (received January 27, 2025).

[84] PSL §25-a(2); see also 24-E-0470, Appeal by Sleepy Hollow Country Inn of the Informal Decision Rendered in Favor of New York State Electric & Gas Corporation, Commission Determination (issued April 29, 2025), p. 15.

to which the Company rounds down its demand charge, because such issue was not properly before the IHO. This issue is thus dismissed from this claim. Third, the Commission determines that the IHO made a mistake of fact by rendering a determination on whether Complainant's billing was accurate because such issue was not sufficiently supported by the factual record. The sole issue of the accuracy of Complainant's billing is returned to the IHO for further development of the record and informal review.