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April 13, 2023

Douglas DiCeglio
Utility Rate Analysis Consultants
156 Scranton Avenue
Lynbrook, New York 11563

Michael Camello
Con Edison
4 Irving Place, 9th Floor
New York, New York 10003

Subject: Informal Review Decision
Complaint # 019790
Estimated Bill

Dear Mr. DiCeglio and Mr. Camello:

An Informal Review was conducted in the above referenced complaint filed by Wavecrest Management[1] against Consolidated Edison Company of New York, Inc. (Con Edison or the utility). The review was performed in accordance with the Public Service Commission's Consumer Complaint Procedures.[2] Based on all the information presented, I find that the utility billed the complainant's account properly.

Background

The complainant represents a superintendent's apartment in a multifamily building in Bronx, New York. The complainant has received electric service at this location since

[1] Utility Rate Analysis Consultants (URAC) represented the complainant throughout the complaint procedure.
[2] 16 NYCRR §§12.1-12.12.

2005. Con Edison bills the account under service classification SC 1 Residential and Religious.[3]

Records shows that from September 3, 2015 to May 4, 2018 there were four periods of cancelations of estimated bills followed by rebills based on actual meter readings:

Date of actual Meter reading	Period of cancelation	Number of months/per period	Canceled use kWh	Rebilled use kWh
9/3/2015 3/8/2016	9/3/2015-3/8/2016	5	7498	7073
5/5/2016				
7/6/2016	7/6/2016-3/8/2017	7	8392	4262
3/8/2017	3/8/2017-11/1/2017	7	3926	5858
11/1/2017 5/4/2018	11/1/2017-5/4/2018	5	3843	8283

On September 18, 2019, Con Edison installed a new electric meter; the old meter was not tested. After the meter exchange all meter readings were actual.

In a letter dated March 31, 2020 and addressed to Con Edison, the complainant wrote the following:

> This account appears to have been backbilled for the following periods:
> 9/3/15 to 3/8/16, 7/6/16 to 3/8/17, 3/8/17 to 11/1/17, and 11/1/17 to 5/4/18
>
> In order to confirm that the billing was done in accordance with the backbilling regulations please provide the following:
> 1. A copy of the letter sent to the customer advising them that Con Edison was issuing the back-bills
> 2. Copies of all contacts with the customer during the disputed period
> 3. Copies of the COR's reports which include all AIO's, AIL's, errors messages, rejected readings etc...
> 4. All meter reports and tests
> 5. An explanation as to why it was necessary to backbill

[3] Light, heat, and power, when supplied directly by the Company 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, an employee of the Customer, or a tenant of the Customer in a multifamily dwelling converted from rent inclusion to direct metering provided the tenant has a Rent Increase Exemption pursuant to rules of the State Division of Housing and Community Renewal; PSC No.10 Electricity, Leaf 387 Effective 2/1/2017.

6. A complete billing statement of the account covering all disputed periods

If during your preparation of this information you discover that the billing was inappropriate, we request that it be refunded with interest in accordance with the interest regulations. However, we still require the above requested information.

The complainant contacted the Department of Public Service, the Office of Consumer Services (OCS) on March 31, 2020 and requested the billing records from September 13, 2015 to May 4, 2018.

OCS wrote the following to the complainant on April 15, 2022:

> Upon review of Con Edison's responses dated April 30, 2020 (received May 1, 2020) and July 9, 2020, we determined that the first two disputed periods of September 3, 2015 to March 8, 2016 and July 6, 2016 to March 8, 2017 were downwardly adjusted upon receipt of actual readings. As overestimated billing was downwardly adjusted, even if this is a case of utility deficiency, the accounts were adjusted appropriately, and no further adjustments are warranted.
>
> However, for the remaining two billing periods, March 8, 2017 to November 1, 2017 and November 1, 2017 to May 4, 2018, we have determined that this is actually one period of multiple consecutive estimated billing which violates Part 13 estimated reading and backbilling rules. Con Edison has provided no further documentation that supports its position that the billing was performed in accordance with its tariff language or Public Service Law regulations. As this is the case, Con Edison is directed to refund the billing for the entire billing period from March 8, 2017 to May 4, 2018.

Con Edison appealed OCS' determination in this case and requested an Informal Review.

Complainant

The complainant stated the following on February 16, 2023:

> This responds to Con Edison's email and the abridged billing history that was provided. Our request made it clear that the period we were seeking on account number [redacted] was from September 2015 to May 2018. Con Edison provided the periods 4/6/16 to 6/6/16, skipped from 6/6/16 to 1/5/17, and then provided 1/5/17 to 6/5/18. The "skipped" information is still required. In addition, it is clear by the cut and paste that Con Edison has information prior to 4/6/16 and is unwilling to provide. Since the information is available Con Edison should not rely on the six-year statute of limitation which focuses on refund periods and not document requests. If it is available, it is required to be provided. OCS has access and therefore, we request that OCS document whether it is available or not. Therefore, please direct Con Edison to provide the period between 6/6/16 and

1/5/17 and the earlier period from September 2015 to June 2016 since it appears to be available.

The complainant stated the following on February 19, 2023:

BACKGROUND
On March 31, 2020, a complaint was filed with Con Edison detailing four separate occasions that this residential account was backbilled from 9/13/15 to 5/4/18. When Con Edison did not respond in any reasonable period of time, we were forced to utilize the NYS Public Service Commission's complaint process. A case was filed on April 28, 2020, and accepted the same day. The case stalled in the Office of Consumer Services for two years. The record confirms that Con Edison just refused to address the merits of the complaint. Fed up with Con Edison's complete disregard for the requirements of the complaint process, OCS rendered an initial decision on April 15, 2022. That decision is being appealed by Con Edison.

POSITION
Con Edison's appeal should be denied as procedurally deficient. Con Edison's appeal should be denied as it failed to properly address this complaint at the initial level or even when the initial complaint was filed with its office. Because of its less than legal actions, it took away complainants right to proper due process and only addressed the complaint after it was unhappy with the initial decision. This cannot be accepted by the Office of Consumer Service (OCS) or the NYS Public Service Commission (PSC). A complaint, by law and to conform to the requirements of proper due process, has three steps. In this case the initial step became pointless because Con Edison ignored its requirement and responsibility to address the complaint. Its appeal should be denied because whatever it is presenting now should have been presented at the initial level. To do otherwise would condone Con Edison improper actions and violate complainants right to the three-step process thereby violating complainants right to proper due process. Facts about the billing Con Edison has maintained, in the little effort they put into this case, that complainant did not provide access on numerous occasions which was the cause of the original estimates and the subsequent corrections. The first period in dispute was 9/3/15 to 3/8/16. During this period Con Edison maintains that the cause of the estimates for the periods ending 10/5/15, 11/3/15, 12/7/15, 1/6/16 and 2/5/16 it was access denied. However, the MNOTS provided do not show any no access references for 10/5/15, 12/7/15 or 2/5/16. There is nothing to indicate a problem with access nor why Con Edison estimated these billing periods.



As per 16 NYCRR §11.13 (a) Con Edison should not have rendered bills on 10/5/15, 12/7/15 or 2/5/16. It violated this regulation. In addition, as per 16 NYCRR §11.13 (b) it took no reasonable action to obtain a meter reading after the second billing cycle or 11/3/15. Con Edison just ignored PSC regulations like it did when it did not respond to this complaint at the initial level or upon the filing of the complaint with their office. The second period in dispute was 7/6/16 to 3/8/17. During this period Con Edison maintains that the cause of the estimates for the periods ending 8/4/16, 9/2/16, 10/4/16, 11/2/16, 12/6/16, 1/5/17 and 2/6/17 was access denied. However, the MNOTS provided do not show any no access references for 8/4/16, 10/4/16, 12/6/16 and 2/6/17. There is nothing to indicate a problem with access nor why Con Edison estimated these billing periods.



For the reasons stated above the billing during this period violated the Home Energy Fair Practices Act. The third period in dispute was 3/8/17 to 11/1/17. During this period Con Edison has taken the same position – no access was the reason for the estimates. However, the MNOTS do not reflect that no access was an issue for the 4/6/17, 6/5/17, 8/3/17 and 10/3/17 bills.



In addition, records from another account located in the same meter room, provided during discovery, reveal that Con Edison did have access on 4/6/17, 6/5/17, 8/3/17 and 10/3/17. Why then were those bills estimated? It is Con Edison's burden to prove it adhered to the tariff and the Home Fair Energy Act. It has not done so. The last period in dispute 11/1/17 to 5/4/18 has the same issues as all the other periods mentioned above. There was clearly utility neglect in applying

the Home Fair Energy Acts requirements and the estimating and meter reading tariff requirements to the bills rendered.

The Initial Decision

The initial decision erred from the start by determining this residential SC 1 account falls under 16 NYCRR §13. The account falls under Part 11 better known as the Home Energy Fair Practices Act. Regardless, the decision found the following: 9/3/15 to 3/8/16 and 7/6/16 to 3/8/17 For these two periods the initial decision found:

> Upon review of Con Edison's responses dated April 30, 2020 (received May 1, 2020) and July 9, 2020, we determined that the first two disputed periods of September 3, 2015 to March 8, 2016 and July 6, 2016 to March 8, 2017 were downwardly adjusted upon receipt of actual readings. As overestimated billing was downwardly adjusted, even if this is a case of utility deficiency, the accounts were adjusted appropriately, and no further adjustments are warranted.

The claim that “even if this is a case of utility deficiency, the accounts were adjusted appropriately” because they were downwardly revised, is not supported by PSC regulations or the tariff. As we demonstrated above, a utility deficiency caused the original overbillings. 16 NYCRR 145.2 states:

> A customer overpayment is defined as payment by the customer to the utility in excess of the correct charge for electric service supplied to the customer which was caused by erroneous billing by the utility.

While in the aggregate Con Edison lowered the overall charges, some of the cycle bills were downwardly revised while others were upwardly revised. Bulk billing cannot be a method used to circumvent backbilling or interest regulations. Upward or downward revision must be determined for each individual bill and then that bill must be examined using the appropriate regulations. Prorating the bulk bills and comparing it to the original bills reveals that the 12/7/15, 1/6/16, 2/5/16, 12/6/16, 1/5/17 and 2/6/17 were entitled to interest as complainant paid in excess of the correct charge due to utility’s erroneous billing. The 8/5/16 and 9/2/16 were upwardly revised in violation of 16 NYCRR §11.14 (a) commonly referred to as the 6 month rule and are entitled to a refund with interest. Below are our figures.

02/05/16	03/08/16	32	$ -	$ 173.19		not a backbill
01/06/16	02/05/16	30	$ 336.06	$ 162.36	$ 173.70	interest applicable
12/07/15	01/06/16	30	$ 274.96	$ 162.36	$ 112.60	interest applicable
11/03/15	12/07/15	34	$ 300.29	$ 184.01	$ 116.28	interest applicable
10/05/15	11/03/15	29	$ 67.32	$ 156.95	$ (89.63)	backbill within 6 months
09/03/15	10/05/15	32	$ 82.41	$ 173.19	$ (90.78)	backbill within 6 months
		187	$ 1,061.04	$ 1,012.05		
09/03/15	03/08/16	187	$ 1,012.05			

02/06/17	03/08/17	30	$ -	$ 87.27		not a backbill
01/05/17	02/06/17	32	$ 350.97	$ 93.09	$ 257.88	interest applicable
12/06/16	01/05/17	30	$ 287.13	$ 87.27	$ 199.86	interest applicable
11/02/16	12/06/16	34	$ 317.66	$ 98.91	$ 218.75	interest applicable
10/04/16	11/02/16	29	$ 71.35	$ 84.36	$ (13.01)	backbill within 6 months
09/02/16	10/04/16	32	$ 80.10	$ 93.09	$ (12.99)	backbill within 6 months
08/04/16	09/02/16	29	$ 66.65	$ 84.36	$ (17.71)	backbill outside 6 months
07/06/16	08/04/16	29	$ 65.56	$ 84.36	$ (18.80)	backbill outside 6 months
		245	$ 1,239.42	$ 712.73		
07/06/16	03/08/17	245	$ 712.73			

With regard to the periods from 3/8/17 to 11/1/17 and 11/1/17 to 5/4/18 the decision found:

> However, for the remaining two billing periods, March 8, 2017 to November 1, 2017 and November 1, 2017 to May 4, 2018, we have determined that this is actually one period of multiple consecutive estimated billing which violates Part 13 estimated reading and backbilling rules. Con Edison has provided no further documentation that supports its position that the billing was performed in accordance with its tariff language or Public Service Law regulations.

While the reference to 16 NYCRR §13 is wrong, the principles of 16 NYCRR §11 are the same and as such we agree with the initial decision that Con Edison has not met its burden of proof and as such the initial decision should stand.

Summation

Con Edison's actions both in the original and corrected billing of complainant and its lack of response to this case cannot be accepted by the Commission. They have not detailed how they complied with the Home Fair Energy Act as it pertains to rendering estimated bills. They have not addressed how they complied with complainants right to have its meter read each month. They have not addressed why interest is not applicable as per 16 NYCRR §145. They did not address this complaint in a reasonable amount of time when it was brought to their attention on March 31, 2020.2 They did not address this complaint at the first stage of the

complaint process in violation of 16 NYCRR §12.1 (c. We await the informal determination in this case.

Utility

Con Edison stated the following on April 30, 2020,

> In response to your complaint filing dated April 28th, 2020, we reviewed the aforementioned account and determined that although the account is under a personal name, Wavecrest Management has received all invoicing and communications pertaining this account and would like to sincerely apologize for the delay in authorization. The information requested in your inquiry dated March 31st, 2020 is as follows: We have reviewed the aforementioned account and found all adjustments made were in accordance with our right to upwardly/downwardly revise estimated bills when an actual reading was not obtained. A review of your request is listed below. 1. A copy of the letter sent to the customer advising them that Con Edison was issuing the back bills. a. No letter found. The bill message serves the purpose of notification of estimated and/or adjusted bills. 2. Copies of all contacts with the customer during the disputed periods. a. No communications found. 3. Copies of the COR's reports which include all AIO's, AIL's, error messages, rejected readings, etc… a. Meter Reading Report enclosed. AIOS, MNOT's on page 4. 4. All meter reports and test. a. No test was requested by neither customer nor the utility. 5. An explanation as to why it was necessary to backbill. a. Con Edison reserves the right to revise any under/overestimated bills which resulted from no access to our meter. 6. A complete billing statement of the account covering all disputed period. a. See page 3.

Con Edison stated the following on April 27, 2022:

> Dear Secretary,
>
> In accordance with 16 NYCRR §12.13 Con Edison appeals the Informal Hearing Decision rendered on April 15, 2022,[4] in the matter of Wavecrest Management against Con Edison (019790). The basis for this appeal is that the Informal Hearing Officer (IHO) incorrectly applied rule 13.8 estimated billing and 13.9 backbilling. The IHO's application of estimation provision 13.8 (1) (i), access to the meter, limitations on the number of estimates, does not apply in this circumstance and its improper application is a direct result of this appeal. Meter read reports showing no access support the estimated billing being allowable under rule 13.8. As a direct result of the misapplication of rule 13.8 the Company finds no violation of rule 13.9. We contend that this finding was in error and the decision should be reversed.

Con Edison stated the following on February 13, 2023:

[4] On April 15, 2022, OCS issued decision not Informal Hearing Officer.

On March 31, 2020, the Company received the consultant's inquiry disputing the backbilling that occurred on the aforementioned account for the periods of "*9/3/15 to 3/8/16, 7/6/16 to 3/8/17, 3/8/17 to 11/1/17 and 11/1/17to 5/4/18*" and requested copies of the information below:

- Letter sent to the customer advising of back bill
- Copies of customer contacts during the disputed period
- Copies of system errors (AILs, AIOs, MNOTS, rejected readings…)
- Meter reports and testing
- Explanation of why backbilling was necessary
- Complete billing statement covering all disputed periods

The Company responded to the consultant's request for review and documentation on April 30, 2020. During our review, we confirmed the original billing for the disputed period(s) was rendered in accordance with the meter reading and estimated bill regulations of § 13.8. We found that the issuance of backbills during the disputed period(s) to correct over/under-estimated conditions was also rendered in accordance with the backbilling regulations of § 13.9. On July 7, 2020, Staff instructed the utility to provide further clarification/explanation to address the consultant's backbilling concerns, which the Company responded to on July 9, 2020. In this response the Company stated:

"The aforementioned account was on a bi-monthly meter reading schedule, where the customer elected to have a different marketer, therefore preventing bi-monthly billing and requiring off-cycle estimates.

9/3/2015 to 3/8/2016 and 7/6/2016 to 3/8/2017:

The Company was unable to gain access to our meter which resulted in estimated bills based on the customers historical energy use. The readings obtained on March 8th, 2016, and again on March 8th, 2017, showed the customer's actual usage was less than the estimated bill and the account was revised to correct an overestimated condition as required by regulation.

3/8/2017 to 11/1/2017 and 11/1/2017 to 5/4/2018:

The Company was unable to gain access to our meter which resulted in estimated bills based on the customers historical energy use. The readings obtained on November 1st, 2017[5] and again on May 4th, 2018, showed the customer's actual usage was higher than the estimated bills and the account was revised to correct an underestimated condition. The Company made attempts to access our meter which were documented in our original response, as required by regulation, and also followed no access regulations with the mailed notifications documented below.

[5] Error in year corrected. Original July 9, 2020 submission incorrectly stated November 1, 2018.

DATE	TRAN TYPE	EMP#	MODE	TO	DISP	DATE	CODE	DESCRIPTION
042018	INQY PNAT	99926	G		MAIL	042018		PRE N/A NTC - TENANT
102017	INQY PNAT	99926	G		MAIL	102017		PRE N/A NTC - TENANT
092017	INQY PNAT	99926	G		MAIL	092017		PRE N/A NTC - TENANT

On April 15, 2022, nearly two years later, Staff issued the directive listed below:

> "Upon review of Con Edison's responses dated April 30, 2020 (received May 1, 2020) and July 9, 2020, we determined that the first two disputed periods of September 3, 2015, to March 8, 2016, and July 6, 2016, to March 8, 2017, were downwardly adjusted upon receipt of actual readings. As overestimated billing was downwardly adjusted, even if this is a case of utility deficiency, the accounts were adjusted appropriately, and no further adjustments are warranted. However, for the remaining two billing periods, March 8, 2017, to November 1, 2017, and November 1, 2017, to May 4, 2018, we have determined that this is actually one period of multiple consecutive estimated billing which violates Part 13 estimated reading and backbilling rules. Con Edison has provided no further documentation that supports its position that the billing was performed in accordance with its tariff language or Public Service Law regulations.
>
> As this is the case, Con Edison is directed to refund the billing for the entire billing period from March 8, 2017, to May 4, 2018, with applicable interest within fifteen (15) days from the date of this determination or request an Informal Review with a detailed explanation of why it disputes this determination."

The directive provided by Staff does not take into account the customer's responsibility to provide access. Throughout the disputed period, the Company not only made continuous attempts to obtain access to the meter, but also adhered to the no access procedure as documented in our original and subsequent responses. Staff provided a blanket statement that the consecutive estimated billing was in violation of Part 13 without regard to any of the supporting documentation provided by the Company nor was any specific violation cited in their findings. In our responses, the Company proved the attempts to obtain access to the meter, as well as documented the mailings in which the no access procedure was enforced. The directive by Staff is inconsistent with Public Service Law § 65 (2) which requires the Company to receive compensation for the utility services it furnishes and continues to codify the consultant's baseless claims which entitles their clients to free electric service.

Analysis

The issues raised by the complaint are:

1. The utility's compliance with 16 NYCRR § 11.13 Meter readings and estimated bills;
2. The applicability of 16 NYCRR § 145 Interest on customer overpayments to electric utilities;
3. The violation of due process of 16 NYCRR § 12.1 Complaints and questions; and
4. The applicability of backbilling rules of 16 NYCRR § 11.14.

The utility's compliance with 16 NYCRR § 11.13 Meter readings and estimated bills.

16 NYCRR §11.13(a) permits issuance of estimated bills:

> (a) A utility may render an estimated bill for any billing period if:
> (1) the estimated bill is calculated in accordance with a procedure approved by the commission and clearly states that it is based on an estimated reading; and
> (2) the distribution utility has made a reasonable effort to obtain an actual meter reading.

To determine whether the utility implemented the appropriate estimation method, the disputed billing was reviewed. Bills issued after the meter exchange on September 18, 2019 were based on actual meter readings and are not in dispute. These bills can be used as a base line for comparison with the disputed bills to see if a pattern of use exists. From September 18, 2019 to May 14, 2022 the average actual use was 34.6 kWh/day. During the disputed period of September 3, 2015 to May 4, 2018 the average use was 29.1 kWh/day. This comparison shows that the disputed bills fall within the complainant's pattern of use and were fair. While no copies of the disputed bills were examined it has been the utility's standard practice to state on every bill whether the reading was actual or estimated.

According to Con Edison, the account was on a bi-monthly reading schedule due to an ESCO subscription and "requiring off-cycle estimates". The chart[6] below shows that Con Edison followed a bi-monthly reading schedule. Every bi-monthly period had one estimated reading and either one actual reading or one failed attempt to obtain an actual meter reading because of no access. This pattern broke during period number four due to adverse weather conditions. This circumstance falls under provision (3) of 16 NYCRR §11.13 (a):

> Circumstances beyond the control of the distribution utility made an actual reading of the meter extremely difficult

An attempt to obtain an actual reading when access to the meter was denied can be construed as a "reasonable effort to obtain an actual meter reading" as required by 16

[6] See data in Con Edison's email dated 5/19/2022 (Meter Reading Report dated 4/29/2020).

NYCRR §11.13 (a) (2). I find that the utility complied with the provisions (1), (2) & (3) of the said rule and the issuance of estimated readings was therefore justified.

The meter is a cumulative device, any over or underestimated reading is automatically corrected when the next actual reading is obtained. Overall, the billing from September 3, 2015 to September 18, 2019 was verified by two actual readings obtained on September 3, 2015 and September 18, 2019. The complainant was billed only for the service they used and that was registered by the meter.

There is nothing in 16 NYCRR §11.13 Meter readings and estimated bills or in the tariff that prohibits the utility from rebilling the account based on actual meter readings or mandates cancellation of estimated bills.

Period	Date of reading	Actual(a) Estimated (e)	No access to the meter (no/ac)
	9/3/2015	**a**	
1	10/5/2015	e	
	11/3/2015	e	No/ac
	12/7/2015	e	
	1/6/2016	e	No/ac
	2/5/2016	e	
	3/8/2016	**a**	
2	4/6/2016	e	
	5/5/2016	**a**	
	6/6/2016	e	
	7/6/2016	**a**	
	8/4/2016	e	
	9/2/2016	e	No/ac
	10/4/2016	e	
	11/2/2016	e	No/ac
	12/6/2016	e	
	1/5/2017	e	No/ac
	2/6/2017	e	
	3/8/2017	**a**	
3	4/6/2017	e	
	5/4/2017	e	No/ac
	6/5/2017	e	
	7/5/2017	e	No/ac
	8/3/2017	e	

	9/1/2017	e	No/ac
	10/3/2017	e	
	11/1/2017	**a**	
4	12/5/2017	e	
	1/4/2018	e	Ad.w[7]
	2/5/2018	e	
	3/7/2018	e	Ad.w
	4/7/2018	e	
	5/4/2018	**a**	

The applicability of 16 NYCRR § 145 Interest on customer overpayments to electric utilities

In a case 91-M-0667 the Commission stated the causes of erroneous billing which warrant the issuance of interest on the overpayment:

Section 145.2 - Standards

> A customer overpayment is defined as payment by the customer to the utility in excess of the correct charge for electric service supplied to the customer which was caused by erroneous billing by the utility. [any of the following]:
>
> (a) A meter registering more than 2 percent fast;
> (b) Use of incorrect watthour meter constant;
> (c) Incorrect service classification, provided the information supplied by the customer was not deficient;
> (d) Billing based on a switched meter condition where the customer is billed on the incorrect meter;
> (e) Meter turn-over, i.e., billing for a complete revolution of a meter which did not occur; and
> (f) Any delay in refunding payment to a customer pursuant to Parts 98 or 100 of these rules.[8]

The complaint file contains *no information regarding the causes of erroneous billing* as stated in (a) thru (f) of the above Commission case. Residential rules permit the issuance of estimated bills. A comparison of the actual and the disputed average of monthly use showed that the billing was fair, not erroneous.

The violation of due process of 16 NYCRR § 12.1 Complaints and questions

[7] Adverse weather condition prevented the utility from obtaining a meter reading.
[8] Case 91-M-0667 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, Chapter II, Electric Utilities; III, Cas Utilities; IV, Steam Utilities; V, Water-works Corporations and VI, Telephone and Telegraph Corporations. Issued June 3, 1992.

The complainant asserted that the case stalled in the Office of Consumer Services for two years and that Con Edison refused to address the merits of the complaint. For this reason, Con Edison's appeal should be denied.

On March 31, 2020 the complainant contacted OCS with the letter where he requested information from Con Edison and stated that if the utility finds billing errors, they should issue a refund. A request for information from the utility is not a complaint. Webster's online dictionary defines a complaint as "a formal allegation against a party." By analogy, the complaint against the utility is the allegation of a billing error which was not presented in the complainant's initial filing. A month later, on April 30, 2020, Con Edison responded to complainant's questions. The utility response contained a billing and meter reading history of the account to which any account holder has access through the Con Edison web portal. The complainant requested additional information on November 16, 2022 and on February 16, 2023, stating the following:

> Please direct Con Edison to provide the period between 6/6/16 and 1/5/17 and the earlier period from September 2015 to June 2016 since it appears to be available.

OCS closed the complaint on April 15, 2022 and on May 4, 2022 the complaint was accepted by the Informal Hearing Unit for review. On February 19, 2023, the complainant filed an Informal Review Position wherein they finally alleged violations of "due process" of HEFPA rules which constitutes the complaint. The Commission rules of 16 NYCRRR §12.1 state:

> Once a customer has filed a complaint and provided basic information to the Commission's Office of Consumer Services so the complaint can be investigated… The utility may be required by staff to provide copies of bills, billing statements…[9]

Here, a request for information came before filing the complaint. The request for information was processed as a complaint which was in violation of the Commission rules. Accordingly, I find that the complainant's request to deny the utility's appeal has no merit.

The applicability of backbilling rules of 16 NYCRR § 11.14 Backbilling on residential accounts

The complainant argued "The 8/5/16 and 9/2/16 were upwardly revised in violation of 16 NYCRR §11.14 (a) commonly referred to as the 6-month rule and are entitled to a refund with interest." 16 NYCRR §11.14 (a) states:

> No utility shall charge a residential customer for service rendered more than six months prior to the mailing of the first bill for service to the residential customer unless the failure of the utility to bill at an earlier time was not due to the neglect of the utility or was due to the culpable conduct of the customer.

[9] 16 NYCRRR §12.1 (c) Complaint submissions.

The above rule limits the backbilling of new customers as it specifically states, “first bill for service.” The complainant has received service since 2005. 16 NYCRR §11.14 (a) is not applicable here.

Another backbilling rule of 16 NYCRR §11.14 (b) states:

> A utility may not adjust upward a bill previously rendered to a residential customer after 12 months from the time the service to which the adjustment pertains was provided unless: …

Records provided in the Background Section show that between September 2015 and May 2018 there were four periods of billing adjustments: two periods of downward adjustments that were beneficial and two periods of upward adjustments where the utility assessed additional charges. The periods of upward adjustments did not exceed 12 months. The utility complied with the above mentioned rule.

Based on the above review, the utility billed the complainant’s account properly.

Determination

Con Edison billed the complainant’s account properly, and no further adjustments are warranted.

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, your appeal letter should be addressed 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/ Tatyana Benyaguyeva

Tatyana Benyaguyeva
Informal Hearing Officer
Office of Consumer Services