Consolidated Edison Company
of New York, Inc.
4 Irving Place
New York, NY 10003-0987

May 17, 2023

Honorable Michelle L. Phillips
Secretary
State of New York Public
Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Re: CASE 21-E-0259 – In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR in Relation to Complaint Procedures - Appeal by Amalgamated Housing Corporation et al. UtiliSave LLC of the Informal Decision Rendered in Favor of the Consolidated Edison Company of New York, Inc. (017800).

Dear Secretary Phillips:

In accordance with the Appeal Determination for case 21-E-0259, Consolidated

Edison Company of NY, Inc. hereby confirms that it has:

1. Provide a refund to the limited number of Complainants, as directed by the IHO.

Sincerely,

Michael Camello

Con Edison

Excelsior Hotel – Service classification billed SC8 until 12/31/19. Received adjustment (see J076 below).

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*                              VOUCHER HISTORY                              *
*                                [redacted]                                 *
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POSTED  F-DATE  T-DATE  SVC CODE  REA  SRC   VOUCH AMT  VOUCH DESCRIPTION
012920                      J004       M      7136.53  DB-REFUND TO CUST
012920  022119  012920   E  J074   06  M       962.02  CR-INTRST- MISC
012920  122818  051419   E  J076   40  M      6174.51  UNRECOVERABLE AMOUNT


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*                           ACCOUNT CSR INFORMATION                           *
*                              [redacted]                                     *
********************************************************************************
ACCT REP- [redacted]       338 EMPLOYEE NO- 84512 TELEPHONE NO- [redacted]
FUNCTIONAL AREA- 82 CORP CUSTOMER GRP A

                    * * * *   LISTED ORDERS   * * * *
RETIRED REFERRAL  TYPE GEN DEPT CPS CNTRL# 40029545808 INPT EMP# [redacted]
                  INPT DTE 012920    APP EMP# 00000
        REMARKS:  PLS OLD REFUND CHECK OF 7136.53 FOR PICK UP BY D [redacted]
                  COMP DTE 013020 COMP CODE COMP COMP EMP# 17361
                  FLD CFR 00000 FLD DTE  NONE  AUTO CANC
          ACTION: CK PULLED FOR PICK UP
  REFERBK ACTION:  NONE


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Isabella Geriatric Center - Service classification billed SC8 until 12/27/19. Received adjustment (see J076 below).

VOUCHER HISTORY

[redacted]

POSTED	F-DATE	T-DATE	SVC	CODE	REA	SRC	VOUCH AMT	VOUCH DESCRIPTION
010720				J004		M	17370.93	DB-REFUND TO CUST
010720	061318	010720	E	J074	06	M	2783.74	CR-INTRST- MISC
010720	042518	022619	E	J076	40	M	14587.19	UNRECOVERABLE AMOUNT

ACCOUNT CSR INFORMATION

[redacted]

ACCT REP- [redacted] 345 EMPLOYEE NO- [redacted] TELEPHONE NO- [redacted]
FUNCTIONAL AREA- 84 CORP CUSTOMER GRP C

* * * * LISTED ORDERS * * * *

NOTE REFERRAL TYPE CNTRL# 40010513996 INPT DTE 011020 DROP DTE 071020
TIME: 06:39A PERM: N
LTR,MAIL:REFUND CHECK#0200073190 ($17370.93) RELEASED TO RC.
CASE#7005385A.

INPUT EMP - D [redacted] EMP NO - [redacted]
FUNCTIONAL AREA - 85 CORP CUSTOMER GRP D

International House - Service classification billed SC8 until 1/10/20. Received adjustment (see J076 below).

VOUCHER HISTORY [redacted]

POSTED	F-DATE	T-DATE	SVC	CODE	REA	SRC	VOUCH AMT	VOUCH DESCRIPTION
020420				J004		M	10310.85	DB-REFUND TO CUST
020420	010919	020420	E	J074	06	M	1011.88	CR-INTRST- MISC
020420	010919	010920	E	J076	40	M	9298.97	UNRECOVERABLE AMOUNT

ACCOUNT CSR INFORMATION

49-4064-6100-1000

ACCT REP- [redacted] 228 EMPLOYEE NO- [redacted] TELEPHONE NO- [redacted]

FUNCTIONAL AREA- 85 CORP CUSTOMER GRP D

* * * * LISTED ORDERS * * * *

RETIRED REFERRAL TYPE GEN DEPT CPS CNTRL# 40030523333 INPT EMP# [redacted]

INPT DTE 013020 APP EMP# 00000

REMARKS: HOLD CHECK FOR PICK UP BY D. [redacted] $10,310.85

COMP DTE 020320 COMP CODE COMP COMP EMP# 17361

FLD CFR 00000 FLD DTE NONE AUTO CANC

Jewish Home and Hospital - Service classification billed SC8 until 1/11/20. Received adjustment (see J076 below).

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*                              VOUCHER HISTORY                                  *
*                                 [redacted]                                    *
*******************************************************************************

POSTED  F-DATE  T-DATE  SVC CODE  REA  SRC   VOUCH AMT  VOUCH DESCRIPTION
022720                      J004       M     39513.11  DB-REFUND TO CUST
022720  030419  022720   E  J074   06  M      3618.13  CR-INTRST- MISC
022720  011019  011020   E  J076   40  M     35894.98  UNRECOVERABLE AMOUNT
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*******************************************************************************
*                          ACCOUNT CSR INFORMATION                            *
*                                 [redacted]                                  *
*******************************************************************************
ACCT REP- [redacted]   395 EMPLOYEE NO- [redacted] TELEPHONE NO- [redacted]
FUNCTIONAL AREA- 84 CORP CUSTOMER GRP C

                    * * * *   LISTED ORDERS   * * * *
RETIRED REFERRAL  TYPE GEN DEPT CPS CNTRL# 30058515636 INPT EMP# [redacted]
                  INPT DTE 022720    APP EMP# 00000
         REMARKS: PLEASE HOLD $39,513.11 FOR PICKUP BY MS. [redacted].
                  COMP DTE 022820 COMP CODE COMP COMP EMP# [redacted]
                  FLD CFR 00000 FLD DTE  NONE  AUTO CANC
```

Jewish Home and Hospital - Service classification billed SC8 until 12/7/19. Received adjustment (see J076 below).

VOUCHER HISTORY

[redacted]

POSTED	F-DATE	T-DATE	SVC	CODE	REA	SRC	VOUCH AMT	VOUCH DESCRIPTION
013020				J004		M	746.46	DB-REFUND TO CUST
013020	010719	013020	E	J074	06	M	81.62	CR-INTRST- MISC
013020	010719	120919	E	J076	40	M	664.84	UNRECOVERABLE AMOUNT

ACCOUNT CSR INFORMATION

[redacted]

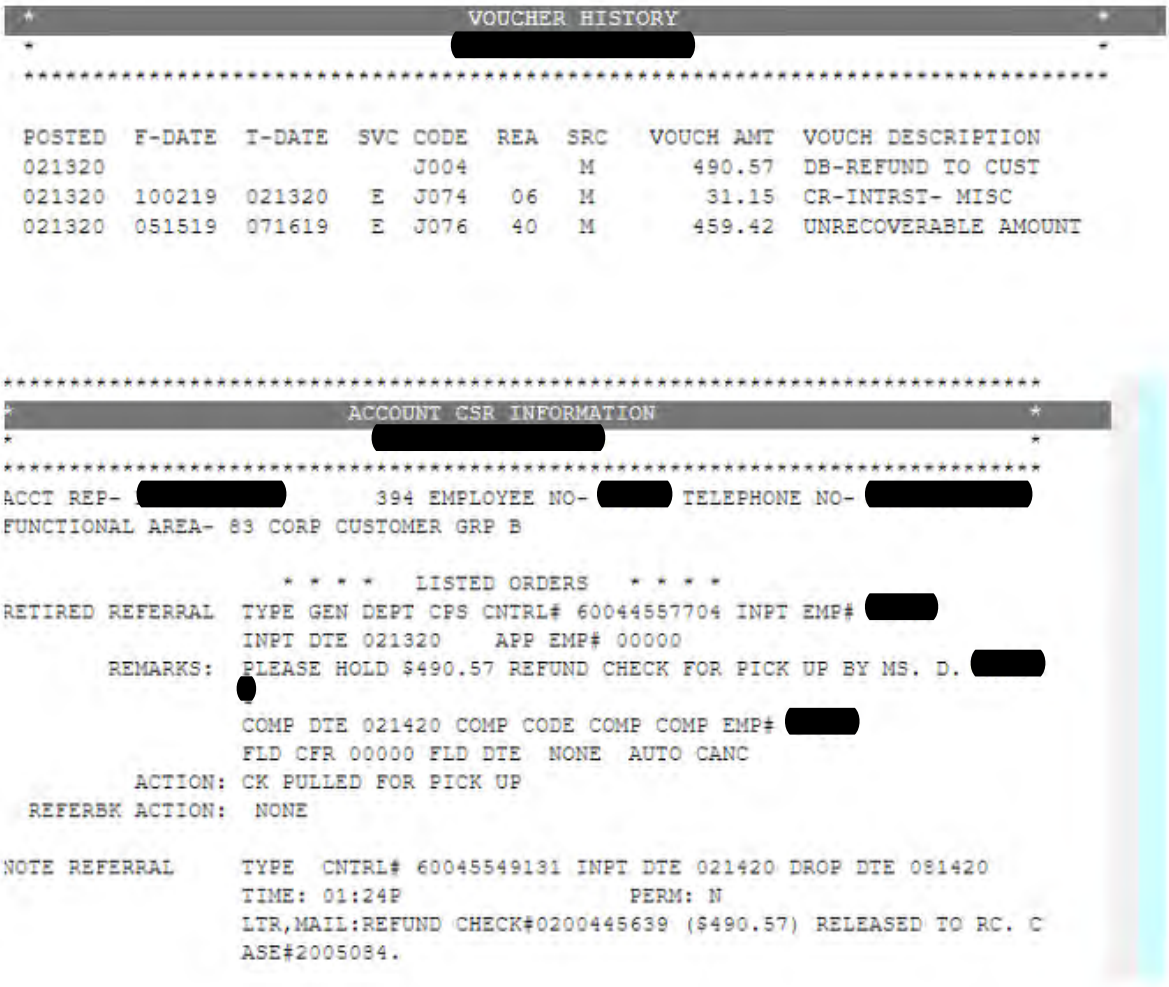
ACCT REP- [redacted] 345 EMPLOYEE NO- [redacted] TELEPHONE NO- [redacted]
FUNCTIONAL AREA- 84 CORP CUSTOMER GRP C

* * * * LISTED ORDERS * * * *

NOTE REFERRAL TYPE CNTRL# 40036529482 INPT DTE 020520 DROP DTE 080520
TIME: 09:37A PERM: N
LTR,MAIL:REFUND CHECK#0200303154 (746.46) RELEASED TO RC. CA
SE#

INPUT EMP - D [redacted] EMP NO - [redacted]
FUNCTIONAL AREA - 85 CORP CUSTOMER GRP D

Maimonides Medical Center - Service classification billed SC8 until 2/15/20. Received adjustment (see J076 below).



VOUCHER HISTORY

[redacted]

POSTED	F-DATE	T-DATE	SVC	CODE	REA	SRC	VOUCH AMT	VOUCH DESCRIPTION
021320				J004		M	490.57	DB-REFUND TO CUST
021320	100219	021320	E	J074	06	M	31.15	CR-INTRST- MISC
021320	051519	071619	E	J076	40	M	459.42	UNRECOVERABLE AMOUNT

ACCOUNT CSR INFORMATION

[redacted]

ACCT REP- [redacted] 394 EMPLOYEE NO- [redacted] TELEPHONE NO- [redacted]
FUNCTIONAL AREA- 83 CORP CUSTOMER GRP B

* * * * LISTED ORDERS * * * *

RETIRED REFERRAL TYPE GEN DEPT CPS CNTRL# 60044557704 INPT EMP# [redacted]
INPT DTE 021320 APP EMP# 00000
REMARKS: PLEASE HOLD $490.57 REFUND CHECK FOR PICK UP BY MS. D. [redacted]
COMP DTE 021420 COMP CODE COMP COMP EMP# [redacted]
FLD CFR 00000 FLD DTE NONE AUTO CANC
ACTION: CK PULLED FOR PICK UP
REFERBK ACTION: NONE

NOTE REFERRAL TYPE CNTRL# 60045549131 INPT DTE 021420 DROP DTE 081420
TIME: 01:24P PERM: N
LTR,MAIL:REFUND CHECK#0200445639 ($490.57) RELEASED TO RC. C
ASE#2005084.

United Hebrew - Service classification billed SC8 until 2/12/20. Received adjustment (see J076 below).

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*                              VOUCHER HISTORY                                  *
*                                [redacted]                                     *
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POSTED  F-DATE  T-DATE  SVC CODE  REA  SRC   VOUCH AMT  VOUCH DESCRIPTION
030220                      J004       M     34055.65  DB-REFUND TO CUST
030220  022519  022920    E J074   06   M      3056.10  CR-INTRST- MISC
030220  011019  021120    E J076   40   M     30999.55  UNRECOVERABLE AMOUNT


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*                            ACCOUNT CSR INFORMATION                            *
*                                [redacted]                                     *
********************************************************************************
ACCT REP- [redacted]     269 EMPLOYEE NO- [redacted] TELEPHONE NO- [redacted]
FUNCTIONAL AREA- 84 CORP CUSTOMER GRP C

                    * * * *   LISTED ORDERS   * * * *
NOTE REFERRAL     TYPE  CNTRL# 50064516892 INPT DTE 030420 DROP DTE 090420
                  TIME: 12:09P                PERM: N
                  LTR,MAIL:REFUND CHECK#0200628029 ($34,055.65) RELEASED TO RC
                  . CASE#NOT ASSIGNED
                  .

              INPUT EMP - D [redacted]            EMP NO - [redacted]
              FUNCTIONAL AREA - 85 CORP CUSTOMER GRP D
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Northern Westchester Hospital Center - Service classification billed SC8 until 1/25/20. Received adjustment (see J076 below).

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*                              VOUCHER HISTORY                                  *
*                                [redacted]                                     *
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POSTED  F-DATE  T-DATE  SVC CODE  REA  SRC   VOUCH AMT  VOUCH DESCRIPTION
030220                      J004       M     18431.32  DB-REFUND TO CUST
030220  040819  030220    E J074   06   M      1580.97  CR-INTRST- MISC
030220  012419  012420    E J076   40   M     16850.35  UNRECOVERABLE AMOUNT


*******************************************************************************
*                            ACCOUNT CSR INFORMATION                          *
*                               [redacted]                                    *
*******************************************************************************
ACCT REP- [redacted]  397 EMPLOYEE NO- [redacted] TELEPHONE NO- [redacted]
FUNCTIONAL AREA- 84 CORP CUSTOMER GRP C

                    * * * *   LISTED ORDERS   * * * *
NOTE REFERRAL     TYPE  CNTRL# 50064517138 INPT DTE 030420 DROP DTE 090420
                  TIME: 12:14P                  PERM: N
                  LTR,MAIL:REFUND CHECK#0200628065 ($18431.32) RELEASED TO RC.
                   CASE#NOT ASSIGNED.
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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 21-E-0259 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR in Relation to Complaint Procedures - Appeal by Amalgamated Housing Corporation et al. UtiliSave, LLC of the Informal Decision Rendered in Favor of Consolidated Edison Company of New York, Inc. (017800).

COMMISSION DETERMINATION

(Issued and Effective April 24, 2023)

BY THE COMMISSION:

INTRODUCTION

The Public Service Commission (hereinafter "Commission") received an appeal by Utilisave, LLC on behalf of a significant number of ratepayers (hereinafter "Complainants"), from an informal hearing decision dated December 29, 2020, in favor of Consolidated Edison Company of New York, Inc. (hereinafter "Con Edison" or "the Company"). The Informal Hearing Officer (hereinafter "IHO") ruled that Con Edison properly determined that the accounts in question were, and continue to be, properly served under its electric Service Classification No. 8. The IHO also denied Complainants' request for a six-year retroactive refund. For the reasons discussed below, the Commission affirms the IHO's decision and determines that there is no basis in either law or fact for Complainants' appeal.

BACKGROUND

The main issue in this case is whether Complainants, who are a group of more than one hundred owners or managers of multi-unit residential buildings, have been assigned to the correct electric service classification.

A. Regulatory Background

Pursuant to Public Service Law §65(5), electric corporations are empowered to establish "...classifications of service based upon the quantity used, the time when used, the purpose for which used, the duration of use or upon any other reasonable consideration, and providing schedules of just and reasonable graduated rates applicable thereto..."

The Department of Public Service (DPS) regulations further provide that "[a]s a prerequisite to accepting an applicant as a customer, and providing service, a utility may require the applicant to file a written service application containing information sufficient to establish the applicant's identity and responsibility for the premises as either the owner or occupant, the correct service classification, and who controls access to the meter(s) if not the customer."[1] Moreover, "...if the customer's use of service or equipment changes in the future, the customer must notify the utility of these changes, in order to assure that the customer is properly billed."[2]

As required by the DPS regulations, the first step in receiving electric service, either residential or non-residential, from any utility, is the filing of an application of service.[3] This requirement is echoed in Con Edison's Tariff.[4] If there is a change in use, the burden is on the customer to notify Con Edison.[5] Pursuant to DPS regulations, the utility is required to provide "the service

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[1] 16 NYCRR §13.2(a)(3)(i).

[2] 16 NYCRR §13.2 (b)(2)(i).

[3] See, 16 NYCRR 11.3 Applications for residential service; see also, 16 NYCRR 13.2 Applications for service.

[4] PSC No. 10, Leaf 80, Rule 9.1.1 Customer's Eligibility for Service.

[5] Id.

classification(s) on which the charges were based" on every bill sent to a customer.[6]

Relevant to the issues raised by Utilisave in this case are Con Edison's Tariff provisions related to Service Classification No. 8 and No. 9. Service Classification No. 8 (SC 8) "Multiple Dwellings-Redistribution" is applicable to "[l]ight, heat, and power for multiple dwellings where the Customer's initial requirements are expected to be in excess of 10 kilowatts, subject to the Common Provisions and Special Provisions of this Service Classification."[7] The Special Provisions of Service elaborate on which customers can take service under SC 8.[8] Service Classification No. 9 (SC9) "General-Large" is applicable to "[l]ight, heat, and power for general uses where the Customer's initial requirements are expected to be in excess of 10 kilowatts subject to the Common Provisions and Special Provisions of the Service Classification."[9] The Special Provisions provide additional requirements for customers to take service under SC 9.[10]

B. Factual And Procedural Background

The factual and procedural history of this case is voluminous, so only the relevant facts are recited herein. Complainants are a group of approximately 106 multiple-dwelling building owners in the Con Edison service territory. This group

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[6] 16 NYCRR 13.11(b)(3).

[7] PSC No. 10, Leaf 431, Service Classification No. 8 Multiple Dwellings – Redistribution, Effective 02/20/2012.

[8] PSC No. 10, Leaf 442, Service Classification NO. 8 – Continued Multiple Dwellings – Redistribution, Effective 05/12/2014.

[9] PSC No. 10, Leaf 444, Service Classification NO. 9 General – Large, Effective 02/20/2012.

[10] PSC No. 10, Leaf 456, Service Classification NO. 9 – Continued General – Large, Effective 03/01/2014.

of customers consists of 60 master-metered rental apartment buildings, one dormitory building, and 45 master-metered rental, cooperative, and condominium buildings.[11] Utilisave argues that these customers are all served incorrectly under Service Classification No. 8 (SC8) and that these accounts are more properly served under Service Classification No. 9 (SC9).

The origin of this case dates back to at least as far as 2018. At that time, Utilisave attempted to get one account, Hampshire House, changed from SC 8 to SC 9. The Office of Consumer Services (OCS) was involved in this dispute.[12] Ultimately, the scope of that case was expanded to include an additional 153-164 accounts which Utilisave argued were properly served under SC 9 rather than SC 8. At the conclusion of that case, Con Edison agreed to transfer seven accounts from SC 8 to SC 9.[13] OCS closed the Hampshire House case on February 27, 2020; the Complainant did not request an informal hearing and did not appeal.

Throughout this proceeding, the parties have exchanged a multitude of correspondence:

- July 14, 2021, letter from Utilisave to OCS rebuttal to Con Edison's June 21, 2021 response;
- June 21, 2021, letter from Con Edison to Secretary Phillips responding to Utilisave's appeal;
- June 4, 2021, letter from Alicia Sullivan to the parties granting Con Edison's request for an

[11] Appeal of Informal Hearing Decision Against Multiple Consolidated Edison Co. Electric Customers Pursuant to Complaint No. 017800 (dated April 12, 2021), p. 3.

[12] See, Case 837691.

[13] Informal Hearing Request (dated May 11, 2020), p. 2.

extension of time to file a response to Complainants' appeal;

- May 24, 2021, letter from Con Edison to Utilisave objecting to Utilisave's request for discovery and oral argument;
- May 18, 2021, letter from Alicia Sullivan to the parties granting Con Edison's request for an extension of time;
- May 17, 2021, letter from Utilisave requesting oral argument;
- May 14, 2021, letter from Utilisave to Con Edison requesting documents;
- May 14, 2021, letter from Utilisave to Con Edison containing interrogatories;
- May 14, 2021, letter from Con Edison to Alicia Sullivan requesting an extension of time to file a response to Complainants' appeal;
- April 30, 2021, letter from Con Edison to Secretary Phillips in response to Utilisave's Petition for a Declaratory Ruling;
- April 29, 2021, letter from OCS to the parties acknowledging Utilisave's appeal;
- April 16, 2021, letter from OCS to the parties acknowledging Utilisave's appeal;
- April 13, 2021, email from Con Edison to Utilisave regarding request for additional information;
- April 12, 2021, email from Utilisave to Con Edison requesting additional information;
- April 9, 2021, letter from Utilisave to Secretary Phillips containing a Petition for Declaratory

Ruling Concerning the Retention of Tariff Documents;

- April 8, 2021, email from Utilisave to OCS and Con Edison regarding request for information;
- March 15 – April 7, 2021, email exchange between Utilisave and the New York State Archives regarding request for information related to Service Classifications;
- February 26, 2021, letter from Records Access Officer to Utilisave responding to Freedom of Information Law request;
- February 18, 2021, letter from OCS to the parties extending the deadline to file an appeal at the request of Utilisave;
- February 9, 2021, FOIL request from Utilisave to the Department of Public Service related to the "consideration, creation and implementation of the SC-8 tariff...";
- January 4, 2021, letter from OCS to the parties extending the deadline to file an appeal, as requested by Utilisave;
- November 30, 2020, letter from Con Edison to the parties regarding Utilisave's November 23 letter;
- November 23, 2020, letter from Utilisave to Con Edison and OCS detailing "Outstanding Issues";
- November 13, 2020, letter from Records Access Officer responding to Utilisave's FOIL request;
- November 11-12,2020, email exchange between the parties regarding follow-up questions from Utilisave and answers thereto from Con Edison;

- July 6, 2020, letter from OCS to the parties granting request for an informal hearing;
- June 30, 2020, letter from OCS to the parties containing initial determination;
- May 11, 2020, letter from Utilisave to OCS requesting an informal hearing;
- May 6, 2020, letter from Utilisave to OCS requesting an informal hearing;
- April 23, 2020, letter from Con Edison to OCS responding to Utilisave's complaint;
- April 6, 2020, letter from Utilisave to OCS supplementing Complaint;
- March 23, 2020, letter from Utilisave to OCS filing Complaint against Con Edison;
- January 3, 2020, letter from Con Edison to Utilisave regarding the limited accounts transferred from SC 8 to SC 9;
- December 5, 2019, letter from Con Edison to Utilisave regarding the limited accounts transferred from SC 8 to SC 9 and denying the transfer of additional accounts;
- April 9, 2019, letter from Con Edison to OCS regarding the Hampshire House complaint – denying transfer from SC 8 to SC 9;
- April 9, 2019, letter from Con Edison to Utilisave regarding the Hampshire House complaint – denying transfer from SC 8 to SC 9;
- January 23, 2019, letter from Con Edison to OCS regarding the Hampshire House complaint – interim response regarding transfer from SC 8 to SC 9;

- June 27, 2018, letter from Utilisave to Con Edison appealing denial of service classification switch request; and
- March 20, 2018, letter from Utilisave to Con Edison requesting transfer of Hampshire House account from SC 8 to SC 9.

An informal hearing was held on October 30, 2020. The informal hearing decision was issued by the IHO on December 29, 2020. The informal hearing decision determined that, other than the accounts that Con Edison had already transferred from SC 8 to SC 9, the remaining Complainants were not entitled to be transferred.

POINTS ON APPEAL

By letter dated April 12, 2021, the Complainants appealed the IHO's determination.[14] On appeal, Complainants argued that: (1) the IHO made mistakes of fact; (2) the IHO made mistakes of laws; (3) the IHO did not consider evidence presented at the hearing; and (4) that new facts or evidence not available at the time of the hearing have become available and could affect the decision on the complaint.[15]

Specifically, Complainants contend that the IHO made a mistake in law by failing to compel Con Edison to provide answers to written interrogatories and document requests. Complainants argue that the IHO made a further mistake in law by finding that prior Commission determinations cited by Utilisave were not applicable to this case. Complainants allege that the

[14] Appeal of Informal Hearing Decision Against Multiple Consolidated Edison Co. Electric Customers Pursuant to Complaint No. 017800 (dated April 12, 2021).

[15] Id. at 2.

IHO made a mistake of fact in determining who the customers on these accounts are.

Additionally, Complainants argue that the IHO failed to consider evidence regarding the Home Energy Fair Practice Act (HEFPA), Con Edison's previous billing policies, and prior Commission determinations related to refunds.

Finally, Complainants argue that they acquired additional evidence that was not available at the time of the hearing – namely, information from one of the accounts that they allege should be transferred from SC 8 to SC 9.

On June 21, 2021, Con Edison submitted a response to Utilisave's appeal. In this response, Con Edison reiterated the positions that it had been making throughout the complaint process. It argues that the end use of the electricity is the correct basis for determining the service classification. Additionally, Con Edison notes that not only does HEFPA not apply to owners of non-residential buildings, but it is not relevant to the determination of service classification. Regarding the case law that Complainants allege the IHO ignored, the utility argues that not only did the IHO not ignore the case law, but that the case law supports the determination that the Complainants are being billed under the correct service classification. Con Edison also argued that the Complainants are not entitled to a refund going back six years, largely due to the fact that the Complainants have an obligation to notify the utility if and when there is a change in a customer's service and the Complainants here did not do so. Finally, Con Edison argued that the requests for additional information were not relevant.

DETERMINATION

The primary issues in this case are: (1) whether the enumerated accounts are entitled to a change in service classification; and (2) whether Complainants are entitled a six-year refund. The Commission determines that, based on the limited relevant information provided by Complainants, the accounts are not entitled to a transfer from SC 8 to SC 9. Additionally, Complainants are not entitled to a six-year refund. Finally, the Commission determines that the Complainants' allegations that the IHO made errors of fact and law are without merit. For the reasons discussed below, the Commission denies the Complainant's appeal and affirms the IHO's determination.

1. The end use of electricity, not the type of customer, is key to determining the correct Service Classification applicable to Complainants.

This case is easily resolved by the plain language of Con Edison's tariff. Under that tariff, it is abundantly clear that Complainants are eligible to take service under SC8 and are not eligible to be served under SC9.

Complainants allege that the owners/managers of the master-metered multiple dwelling buildings, rather than the tenants, are Con Edison's customers. Following that logic, Complainants argue that because the owners/managers of the master-metered multiple dwelling buildings are themselves non-residential customers, the use of electricity is non-residential. Based on their interpretation, Complainants claim that SC 9, which applies to non-residential end-use electric service, not SC 8, which applies to residential end-use electric

service, is the proper service classification for the enumerated accounts.[16]

The language of SC8, however, directly controverts Complainant's argument that being building owners excludes them from that classification. That classification, entitled "Multiple Dwellings – Redistribution," contains an eligibility provision that states, in part:

> Electric service will be furnished under this Service Classification only if, and as long as, each of the following conditions is satisfied:
>
> (1) *The Company's Customer is the owner or building lessee of the multiple dwelling served hereunder.*
>
> (2) The building is used and occupied predominantly for residential purposes.
>
> (3) Electric service is purchased hereunder to serve the electric requirements of substantially all of the residential tenants in the premises served.[17]

The tariff is clear, then, that an SC8 customer is the owner or lessee of a multiple-dwelling building, regardless of whether the owner or lessee itself is "residential" or "non-residential." Inasmuch as Complainants admit that they are owners of multiple-dwelling residential buildings, they are undoubtedly "customers" for the purposes of SC8.

Complainants, moreover, state that their buildings are used for predominantly residential purposes and that they are providing electricity to their residential tenants. Their circumstances, then, precisely match the qualifications for receiving electric service under SC8.

Other key tariff language also supports the conclusion that SC8 is the correct classification for Complainants. The SC8 Special Provisions further state:

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[16] Appeal, p. 10.

[17] Tariff, Leaf 442, Special Provision (C)(1)-(3) (emphasis added).

> The Company's electric service under this Service Classification will be metered and furnished directly to a Customer of the Company upon the individual application of such Customer. The Company will only furnish electric service to any Customer *for the purpose of redistributing such electric service to any tenants or occupants of the premises* where:
>
> (1) in residential buildings, the internal wiring was installed prior to January 1, 1977;
>
> (2) the service is submetered pursuant to Rider G; or
>
> (3) the service is furnished to an assisted living facility or senior living facility …[18]

Complainants are clearly redistributing electric service to their tenants. They have not stated, moreover, that any of their buildings were not initially wired before January 1, 1977. As Con Edison succinctly observed, "[p]ut simply, the tariff requires service under SC8 for customers that redistribute electricity to tenants and occupants of the premises where the building is used for residential purposes."[19] That description precisely fits the facts of this case. Consequently, Complainants are correctly being served under SC8.

At the same time, it is equally obvious that Complainants do not qualify for service under SC9. The language of SC 9, General – Large, provides that:

> "The Company's electric service under this Service Classification will be metered and furnished directly to the Customer of the Company upon the individual application of such Customer; provided, however, that the Customer may redistribute or furnish electric service to:
>
> (1) the Customer's nonresidential tenants or nonresidential occupants in the building or premises; or
>
> (2) the Customer's residential tenants or occupants in the building or premises during the

[18] Tariff, Leaf 442, Special Provision (A)(1)-(3) (emphasis added).

[19] Con Edison response to appeal, at 4 (June 21, 2021).

> period between construction or substantial renovation of the building wiring and the installation of submetering authorized as specified in Rider G..."[20]

Based on the information provided by Utilisave, the accounts at issue do not serve nonresidential tenants or nonresidential occupants in the building or premise, nor are the accounts currently in the period between construction or substantial renovation of the building wiring and the installation of submetering. Instead, the accounts are multiple dwelling buildings that are used and occupied predominantly for residential purposes. Therefore, the Commission determines that the IHO was correct in the decision that the accounts at issue do not qualify for the SC 9 rate.

The Commission also determines that the IHO correctly declined to base her decision on the cases cited by Complainants. The cases are factually distinguishable, and the Commission determines that they are neither binding nor persuasive in the instant case.

2. Complainants were not entitled to discovery.

Complainants allege that "[t]he IHO mistakenly failed to require Con Edison to provide information that was necessary to decide the complaint."[21] Complainant further alleges that "...the regulations permitted the IHO to compel Con Edison to provide answers..."[22] Complainants' interpretation of the regulations is incorrect and is not supported by controlling case law.

First, it is axiomatic that Complainants are not entitled to discovery in this, or any other, consumer complaint proceeding. Indeed, controlling case law from the Third

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[20] Tariff, Leaf 456.

[21] Appeal, p. 4.

[22] Appeal, p. 6.

Department states "[d]ue process considerations do not require the full panoply of procedural tools available to civil litigants in an administrative proceeding." *Sinha v. Ambach*, 91 AD2d 703 (3d Dept. 1982). Similarly, the Court of Appeals held that "[i]t is settled, however, that there is no general constitutional right to discovery in...administrative proceedings." *Miller v. Schwartz*, 72 NY2d 869, 870 (1988). More recently, the Third Department acknowledged "[d]espite petitioners' assertion that they needed supporting data to verify the information and calculations that respondent relied upon, parties have no right to discovery in administrative proceedings." *National Energy Marketers Ass'n v. New York State Public Service Commission*, 167 Ad3d 88, 96 fn. 1 (3d Dept. 2018), citing, *Miller v. Schwartz*. As Complainants were not entitled to discovery in this case, the Commission finds that Complainants' arguments regarding the alleged failure of the IHO to require Con Edison to turn over information or answer question is completely without merit.

Likewise, the applicable Commission regulations do not provide for discovery. 16 NYCRR 12.1(c) states "[t]he utility may be required by staff to provide copies of bills, billing statements, field reports, written documents, or other information in the possession of the utility which may be necessary to make a decision on the complaint." In other words, DPS Staff, not the parties, is entitled to demand information. Although Complainants rely on this language to support their argument, this language is discretionary and, moreover, does not create any obligation on the part of the IHO. Furthermore, the information Complainants requested was far outside the scope of this section. Ultimately, it is up to the IHO, and not Complainants, to determine what information is necessary to make a decision on the complaint.

A similar conclusion must be drawn regarding Complainants' citation to 16 NYCRR §12.8(a)(1)(i). Sixteen NYCRR §12.8(a)(1)(i) provides "[i]nformal hearing officers and reviewers shall conduct fair and impartial hearings or reviews, and may, in carrying out this responsibility order utilities to provide copies of information in their possession and state the form in which certain information is to be provided." This language is discretionary; it is not mandatory for the IHO to request information from the utility. Thus, this section does not entitle the parties to demand that the IHO request information from other parties.

The Commission therefore determines that the IHO did not make a mistake or law of fact by not requiring Con Edison to respond to Utilisave's overbroad and burdensome discovery requests.

3. None of the Complainants are entitled to a six-year refund.

Utilisave argues that Complainants are entitled to a six-year refund based on the difference in cost of service of SC 8 versus SC 9.

For the large majority of Complainants who the Commission has determined are not eligible for service under SC 9, the issue of a refund is moot.

The limited number of accounts that Con Edison agreed to switch from SC 8 to SC 9 are not entitled to a six-year refund. Con Edison has accurately pointed out that it is the responsibility of the customer to notify the utility if there has been a change in service.[23] As discussed by the IHO, the Commission has previously determined that the inclusion of service classification on a customer's bill is sufficient

[23] Tariff, Leaf 81.

notice.[24] As the customers do not deny that they received this notice, the Commission determines that IHO was correct in determining that they were not entitled to 6-year refunds.

4. There is no evidence that Con Edison is applying the Tariff in an inconsistent manner in violation of PSL §66 or that the Tariff is wrought with ambiguities.

Utilisave alleges that Con Edison is applying the Tariff in an inconsistent manner in violation of PSL §66 and that the Tariff is wrought with ambiguities.[25] In support of this claim, Utilisave refers to a different, irrelevant, service classification. Service classification 4, before it was merged with SC 9, applied to "Commercial and Industrial Redistribution." As the accounts at issue do not provide service to commercial or industrial end users, this service classification would have been inapplicable even if it had not merged with SC 9. The Commission declines to find that Con Edison is applying the Tariff in an inconsistent manner based on the merging of these service classifications.

Complainants cite to Case No. 06-E-0371 to further support their assertion that Con Edison treats similar customers differently and alleges that the Complainants in this case are analogous to the Complainants in that case. However, that is an incorrect interpretation of that case. Con Edison correctly points out that the Commission "...concluded that the Company's billing of the customer for electricity at SC 9 from inception of service until the Customer received approval to submeter was

[24] Case No. 10-E-0610, Appeal by Central Synagogue of the Informal Decision Rendered in Favor of Consolidated Edison Company of New York, Inc., Commission Determination (Issued December 22, 2015).

[25] Appeal, p. 16.

appropriate."[26] This is clearly a reflection of subpart 2 of SC 9, described above. As the facts of the case cited to by Complainants clearly reflects the accurate application of the special provisions of SC 9, Complainants argument that Con Edison applies its tariffs inconsistently is without merit.

5. The so-called new facts do not change the determination of this case.

Complainants argue that new evidence, not available at the time of the hearing or review, has become available.[27] However, this is a misunderstanding of the regulation. Just because one of the Complainants did not turn over the evidence to Utilisave until after the IHO issued a decision does not render it new evidence. It must have been unavailable not only to Utilisave, but to the Complainant itself. Therefore, the Commission determines that the IHO's determination should not be reversed based on this evidence. Instead, that Complainant should notify Con Edison in writing, as required by the Tariff, of facts that would support a prospective change in its service classification.[28]

CONCLUSION

The Commission determines that the IHO did not make an error in fact or in law. The Commission directs Con Edison, within 30 days of the date this determination is issued, to:

1. Provide a refund to the limited number of Complainants, as directed by the IHO; and

[26] Con Edison Response, p. 14.

[27] Appeal, p. 28.

[28] Tariff, Leaf 80.

2. File with the Secretary of the Public Service Commission documentation that the Company has complied with the Commission's directives.