STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

CASE 97-G-0171 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures --Appeal by Franconia Village of the Informal Decision Rendered in Favor of Consolidated Edison Company of New York, Inc., filed in C 26358 (771269)

CASE 98-G-0191 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures --Appeal by Herbert Albert of the Informal Decision Rendered in Favor of Consolidated Edison Company of New York, Inc., filed in C 26358 (781214)

CASE 99-G-0979 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures --Appeal by Excelsior Management of the Informal Decision Rendered in Favor of Consolidated Edison Company of New York, Inc., filed in C 26358 (974141)

CASE 98-G-1372 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures --Appeal by 119-121 West 104 Realty/Phipps Houses Services of the Informal Decision Rendered Partially in Favor of Consolidated Edison Company of New York, Inc., filed in C 26358 (876854)

COMMISSION DETERMINATION
(Issued and Effective March 9, 2001)

These four cases have been consolidated on appeal because all concern the same issue and utility.[1] The first three

---

[1] On appeal and throughout the course of their complaints, Franconia Village, Excelsior Management, and 119-121 West 104 Realty have been represented by Urac Corp., a consultant, while Herbert Albert has been represented by Utility Check Ltd., a different consultant. The informal decisions in the complaints of Franconia Village and Herbert Albert were by the same hearing officer; the informal decisions in the cases of 119-121 West 104 Realty and Excelsior Management were by another hearing officer.

cases are appeals by Franconia Village, Herbert Albert, and Excelsior Management, complainants, from separate informal review decisions dated January 30, 1997, December 15, 1997, and July 12, 1999, respectively, each in favor of Consolidated Edison Company of New York, Inc. (Con Edison or the utility). The last case is an appeal by 119-121 West 104 Realty/Phipps Houses Services (119-121 West 104 Realty), complainant,[2] of an informal review decision dated September 16, 1998 partly in favor of complainant and partly in favor of Con Edison, the utility. Each complainant, the owner of at least one multiple dwelling, sought rebilling for gas service at the utility's Service Classification (SC) No. 12, Dual-Fuel Interruptible Service, from the introduction of this rate in March 1988.[3] In the cases of Franconia Village, Herbert Albert, and Excelsior Management, each account was originally billed on the utility's firm gas heating rate, SC No. 3, and was transferred to SC No. 12 after complainant requested service on (and, in the case of Herbert Albert, completed required changes necessary to qualify for) the interruptible rate. In the case of 119-121 West 104 Realty, the account was transferred to SC No. 12 only after the hearing officer found complainant qualified for service on that rate at the time the complaint was made.

In three of the four cases, Franconia Village, Herbert Albert, and Excelsior Management, the informal decisions upheld the billing. In the remaining case, 119-121 West 104 Realty, the hearing officer found that when complainant had first requested

[2] Phipps Houses Services was the managing agent for the customer, 119-121 West 104 Realty.

[3] Franconia Village has separate accounts for two multiple dwellings, one located at 44-55 Kissena Boulevard, Flushing, and the other at 43-57 Union Street, Flushing. Herbert Albert has an account for a multiple dwelling located at 220 East 54th Street in Manhattan; Excelsior Management has an account for a multiple dwelling located at 340 West 55th Street in Manhattan; and Phipps Houses Services has one account for two multiple dwellings located at 119 and 121 West 104th Street in Manhattan.

SC No. 12 on December 4, 1995, complainant qualified for the rate at that time, and therefore directed the utility to rebill complainant at SC No. 12 but only back to December 4, 1995; consistent with the other three informal decisions, the hearing officer rejected this complainant's claim that it was entitled to rebilling for the six-year period preceding December 4, 1995. The utility did not appeal this decision. Complainants Franconia Village, Herbert Albert and Excelsior Management appeal seeking rebilling back to the 1988 effective date of SC No. 12. Complainant 119-121 West 104 Realty seeks rebilling for a six-year period preceding its complaint and the effective date from which the hearing officer directed rebilling, December 4, 1995. For the reasons discussed below, we deny complainants' appeals, except that the informal decision in the case of Herbert Albert is modified and to that extent the appeal is granted.

BACKGROUND

SC No. 12

On March 18, 1988, the utility's new interruptible service rate, SC No. 12, became effective. Under this classification, qualifying customers can obtain advantageous rates provided they maintain dual-fuel facilities and agree to switch to an alternative fuel (usually oil) when the outdoor temperature falls below a level designated by the utility, such as 20^0 F. They are also subject to additional charges, such as double the applicable rate per therm of gas required under the SC No. 12 tariff, if gas is consumed during periods when the temperature is below the designated level.

Prior to the introduction of the SC No. 12 rate on March 18, 1988, Con Edison published a notice of the proposed SC No. 12 tariff in The New York Times in December 1987 and January 1988, pursuant to 16 NYCRR §270.70.[4] The newspaper

---

[4] Section 270.70 states in part, "Whenever a change is proposed to any schedule filed with the commission, a notice to the public of such proposed change shall be published once in each week for (continued)

notice stated that Con Edison proposed to replace interruptible gas rates SC No. 5, SC No. 6, SC No. 10, and SC No. 11 with the new SC No. 12 rate, and that the new rate was being offered "to all customers with dual-fuel facilities capable of supplying the entire requirements of the facility on either gas or fuel oil." The notice also indicated that, subject to eligibility requirements and restrictions, customers would be able to select from among five priorities of interruptible service under the new rate, Priorities A, B, C, D, and E. Further, the notice stated the order of interruption (E, D, C, B, and A), the eligibility requirements for each priority of interruptible service, and that the rates for each priority will be set "at some relationship to the price of the customer's alternate fuel."[5]

In addition to the required newspaper notice, Con Edison contacted each dual-fuel customer then being billed on the pre-existing interruptible rates, SC No. 5, SC No. 6, SC No. 10, and SC No. 11, to inform them about the new SC No. 12 interruptible rate and obtain a signed service application for the priority they selected under SC No. 12. Also, at the time of

---

(continued)
four successive weeks in a newspaper having general circulation in each county containing territory affected by the proposed change, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect." Section 270.70 also requires that the newspaper notice "must be made in a form and manner designed to be seen and understood by the customers affected by the proposed change" and completed prior to the date the change becomes effective.

[5] The new rate, authorized by Special Permission Order G-2609 on February 24, 1988, was designed to eliminate certain inconsistencies related to the structure and requirements of the prior interruptible service rates and enable Con Edison to retain and build its interruptible gas load by offering competitive rates to all customers with dual-fuel facilities regardless of type of fuel oil used or size. In SC No. 12, the utility provided a single dual-fuel rate to replace the various pre-existing rates of this type.

the March 1988 introduction of SC No. 12 service, Con Edison initiated a mail campaign to inform SC No. 2 and SC No. 3 customers known to be dual-fuel customers about the availability of SC No. 12 service. The letter used in the utility's mail campaign contained essentially the same information as the newspaper notice.[6]

Informal Complaints

Each customer complained, first to the utility and then to this agency, that it was not properly advised of the availability of SC No. 12, and qualified for SC No. 12 billing from the introduction of this rate in March 1988. Complainants asserted that Con Edison knew or should have known of their use of dual-fuel equipment from the time service was initiated and they were placed on SC No. 3, and that the utility’s failure to notify them of the availability of SC No. 12 in March 1988 violated Public Service Law (PSL) §§65(3) and 66(12). Complainants contended that this meant that they were entitled to backbilling on SC No. 12, consistent with the Commission determination in Bronxwood.[7]

The utility disagreed, maintaining that it had met contemporaneous requirements for providing notification to existing customers of optional rates when it published a notice of the proposed SC No. 12 tariff in The New York Times in December 1987 and January 1988, and that in March 1988 it carried out an outreach program to notify SC No. 2 and SC No. 3 customers known to be using dual-fuel equipment of the availability of

[6] The case files contain a copy of the newspaper notice submitted by the utility and several examples of the letter mailed to known dual-fuel users, which were submitted by one consultant, Urac Corp. (it had been sent, as part of the utility’s mail campaign, to other customers who were the consultants’ clients).

[7] Case 90-E-0996, In the Matter of the Dispute Between Bronxwood Home for the Aged, Inc. and Con Edison, Order Directing Rebilling, Opinion No. 92-9 (issued April 16, 1992); rehearing denied, Opinion No. 92-9(A)(issued July 15, 1992).

SC No. 12 service. The utility also asserted that three of the customers were transferred to SC No. 12 upon providing proper service applications, and that one customer(119-121 West 104th Realty) was denied SC No. 12 service because the dual-fuel equipment did not qualify for this rate.

Specifically, each complainant's account had been placed on SC No. 3 for firm gas service at the time of service commencement (in each case this predated the introduction of SC No. 12 in March 1988).[8] Complainants Franconia Village and Excelsior Management were transferred to SC No. 12 for interruptible gas service when they notified the utility that they qualified for the rate (September 15, 1994, in the case of Franconia Village's two accounts, and November 30, 1994, in the case of Excelsior Management's account). Complainant Herbert Albert's account, however, was not transferred to SC No. 12 until more than a year after the original request. Herbert Albert's initial letters of June 29 and July 18, 1994 sought retroactive assignment to SC No. 12 back to the effective date of that rate (March 1988); in response to both letters, the utility merely stated that complainant did not qualify for the rate, and provided no explanation of what complainant needed to do to qualify for SC No. 12 going forward. However, after the customer complained to this agency on August 31, 1994, the utility conducted an inspection on September 29, 1994, and found that complainant's dual-fuel equipment did not qualify for SC No. 12. The utility so informed complainant by letter dated October 13, 1994, and provided a contact name and telephone number for complainant. Complainant applied in writing for SC No. 12 on September 15, 1995 and was transferred to the rate, effective September 21, 1995. (Information in the file suggests that the

[8] Franconia Village's two accounts were established on January 7, 1983 and July 19, 1984; Herbert Albert's account was established on August 25, 1975; Excelsior Management's on October 1, 1984; and 119-121 West 104 Realty's on August 7, 1984.

delay from September 29, 1994 to September 15, 1995 was due to the timing of complainant's building's board meeting, at which the decision was made to go ahead with SC No. 12 service.)

The utility refused to transfer 119-121 West 104 Realty to SC No. 12 prospectively in response to its complaint, and did not do so until after issuance of the informal review decision in favor of complainant.

Informal Decisions

The hearing officers concluded in each case that Con Edison, which had published newspaper notice of the proposed SC No. 12 rate prior to first offering that rate, and which had sent letters to known dual-fuel users, the customers most likely to benefit from the rate, informing them of its availability, was not required to rebill complainants at SC No. 12 for any period prior to their actual request for that rate.[9] In the case of Herbert Albert, the hearing officer found that complainant's appearance on a list of known dual-fuel equipment users receiving gas service at SC No. 2 or SC No. 3 (both firm rates) as of January 31, 1988, who were contacted by the utility about SC No. 12 in March 1988, was compelling evidence that the utility had indeed contacted complainant about the availability of SC No. 12 at that time. With respect to 119-121 West 104 Realty, the hearing officer found that the account qualified for SC No. 12 at the time complainant first notified the utility of its eligibility for the rate, and directed rebilling at SC No. 12 from December 4, 1995. This decision was based on a utility inspection report of December 4, 1997. The utility inspection found that although this complainant had two separate gas water heaters on the same line as the dual-fuel boiler, the dual-fuel

[9] In the Excelsior Management informal decision, the hearing officer relied on the finding in Case 93-G-1118, Appeal by Long Island Lighting Company of the Informal Decision Rendered in Favor of Carlton Bay Condominiums, Marpas Associates, Wallace Holding Corp., and Roosevelt Blvd. Realty Corp., Commission Determination (issued May 8, 1998).

boiler was capable of providing both heat and hot water service when the utility required the interruption of gas supplied to the gas water heaters.

POINTS ON APPEAL

On appeal, all complainants assert the following:

The hearing officer erred in not recognizing that inadequate notice was given complainants of the availability of SC No. 12, since the utility knew or should have known that each complainant had dual-fuel equipment, and therefore the utility should have sent complainants the letter it sent to other known dual-fuel customers.

The hearing officer erred in failing to give proper consideration to two provisions of the Public Service Law, §§65(3) and 66(12)(d), which complainants allege required that if some customers were sent letters notifying them of the availability of SC No. 12, all other similarly situated customers, including complainants, should have received such letters also.[10] In this regard, complainant Herbert Albert disputes the hearing officer's conclusion that the utility provided sufficient evidence to show that he had indeed been sent a letter notifying him of the SC No. 12 rate in approximately March 1988); this complainant urges that the hearing officer's in camera review of Con Edison's March 1988 list of known dual-fuel customers was improper, as this list had not been granted confidential status by this agency's Records Access Officer, and,

---

[10] Complainants assert that the utility would have come across customer information obtained when service was requested, including the service application, that would have indicated the use of dual-fuel equipment in their cases, and therefore should have sent them the letter targeted to customers known to have such equipment. Franconia Village, in particular, argues that an adverse inference should be drawn from the utility's failure to produce complainant's service application. Complainants' arguments in support of the assertion that the utility knew or should have known of their use of dual-fuel equipment are stated more fully and addressed in our determination (infra, pp. 12-14).

without such status, complainant should not have been deprived of the right under 16 NYCRR §12.8 to see any information provided by the utility to the hearing officer.

In addition, the following complainants make these arguments:

Herbert Albert argues that Con Edison's refusal of retroactive rebilling at SC No. 12 in complainant's case was discriminatory because the utility allegedly settled similar complaints by making adjustments in favor of other customers.[11] Further, Herbert Albert asserts that it was Con Edison's denial of the complainant's June 29, 1994 request for SC No. 12 service, and the utility's failure to tell complainant how to go about obtaining service on this rate, that prevented the account's transfer to SC No. 12 until September 21, 1995.

Excelsior Management asserts that the hearing officer, in relying on the Commission's determination in Carlton Bay Condominiums (see note 9, supra) in support of her finding that complainant was not discriminated against, ignored an important difference between that case and the present complaint. This complainant states that while, in Carlton Bay Condominiums, the Commission found no deficiency with LILCO's practice, after 1983, of assigning all new space and water heating customers internal billing codes that did not permit LILCO to identify multiple dwelling customers (the beneficiaries of the new optional rate that the case concerned), in contrast, Con Edison always has had a procedure for identifying dual-fuel gas customers billed on a firm rate. Complainant thus asserts the utility should have known of complainant's use of dual-fuel equipment.

---

[11] Herbert Albert's consultant, Utility Check, cites specific complaints, which the consultant alleges the utility settled. The complaints specified are identical to those also referred to by a different consultant, in the context of another SC No. 12 case, 95-G-0190, Appeal by Phipps Houses of the Informal Decision in Favor of Con Edison, Commission Determination (issued April 27, 1999), p. 25, as having been settled.

UTILITY'S RESPONSE TO APPEALS

The utility argues as follows:

The utility is not obligated to select the most favorable rate for a customer, and its actions satisfied contemporaneous standards for notice of new rates.[12] With the exception of Herbert Albert, the utility had no knowledge of complainants' use of dual-fuel equipment until they requested SC No. 12 service. Even if the utility knows that a customer has dual-fuel equipment, that knowledge does not necessarily presage the customer's interest in interruptible service, nor does the existence of dual-fuel equipment alone qualify a customer for SC No. 12 service.[13]

Rebilling complainants at SC No. 12, under the circumstances of their cases, would provide an undue advantage to them and discriminate against other SC No. 12 customers who have complied with the SC No. 12 requirements.

Con Edison is not obligated to settle a customer's complaint, as asserted by Herbert Albert, because it may have done so in the case of another customer. The Commission has consistently adhered to a policy that utility-customer settlements of billing disputes are not considered to "set general policy or to place universal obligations on a utility."[14]

---

[12] The utility argues that the one case in which the Commission found that the utility did not fulfill its obligation to assist a customer to select the most advantageous rate was Case 90-E-0996, Bronxwood (see note 7, supra), and notes that the Commission explicitly limited that decision to the facts of the particular case, which differed from the present complaints.

[13] Con Edison relies on General Rule III(7) of its tariff (P.S.C. No. 8 - Gas), which requires a customer to notify the utility and make any interior change necessitated by a change in gas requirements or service classification, and on the SC No. 12 special provisions, which require customers seeking SC No. 12 service to notify the utility that they have dual-fuel equipment and meet several equipment and operating conditions required for SC No. 12 service.

[14] Con Edison cites Case 91-E-0601, Appeal by Grenadier Realty Corp., et al of the Informal Decision Rendered in Favor of (continued)

Regarding complainant Herbert Albert's argument that it was improper for the hearing officer to rely on an in camera review of the utility's list of known dual-fuel using customers as evidence that the letter notifying such customers of the SC No. 12 rate's availability was sent to this complainant in or around March 1988, the utility provides a redacted copy of the March 1988 list of known dual-fuel firm rate customers showing that Herbert Albert was on the list. The utility asserts that since Herbert Albert was on this list, it is reasonable to presume that this complainant received this letter. The utility also asserts that complainant's claim for retroactive billing is undermined by the fact that the utility did not actually receive an SC No. 12 service application from this complainant until September 1995, when the building's board of directors approved the service switch and the utility transferred complainant to SC No. 12.

Regarding Excelsior Management's argument that Con Edison always had a procedure for identifying a dual-fuel interruptible customer on a firm rate, complainant does not make it clear what procedure it is referring to. However, in the utility's customer information system, accounts of firm and interruptible customers known to have dual-fuel equipment are coded to indicate the alternate fuel type. Those customers with dual-fuel coding were contacted when SC No. 12 was first offered in 1988.

DETERMINATION

The central issues here are whether the utility gave complainants, firm gas customers with dual-fuel equipment, adequate notice of the availability of a new rate that might have

---

(continued) Con Edison, Commission Determination, (issued December 7, 1993), p. 13 (note), and Case 90-E-0267, Appeal by Suffolk County Department of Public Works of the Informal Decision Rendered in Favor of the Long Island Lighting Company, Commission Determination (issued November 16, 1993), pp. 15-16.

been beneficial to them, and whether the utility properly assisted complainants in obtaining that rate once they applied for it.

We recently considered these issues in a similar appeal seeking rebilling at SC No. 12, in Case 94-G-0887, Carol Turner.[15] We found in that case, at pp. 10-13, that Con Edison had made reasonable efforts, under the circumstances, to notify customers for whom the SC No. 12 rate might be beneficial of the rate's availability. We stated that under such circumstances:

> [T]he newspaper notice published pursuant to our regulations and the Public Service Law, combined with reasonable efforts by the utility to directly contact a group of customers with characteristics indicating more propensity to utilize such a rate (customers identified as having dual-fuel equipment) satisfied the utility's obligation under its tariff to assist customers in obtaining the most beneficial rate.[16]

The conclusion reached in Carol Turner about the adequacy of the general efforts made to notify existing firm gas customers of the availability from March 1988 on of the SC No. 12 interruptible rate is applicable as well to the present cases.

As we did with the similar argument in Carol Turner, we reject the argument by complainants Franconia Village, Excelsior Management, and 119-121 West 104 Realty that the utility knew or should have known of complainants' use of dual-fuel equipment, and should therefore have included complainants in the direct mail campaign.[17] The tariff provides that the utility may require, at any time, a written service application from a nonresidential customer. There is no evidence that the utility in fact requested a written service application or a security deposit from any of the present complainants when service was

---

[15] Case 94-G-0887, Appeal by Ms. Carol Turner of the Informal decision Rendered in Favor of Con Edison, Commission Determination (issued October 18, 2000).

[16] Id., p. 11.

[17] Id., pp. 13-15.

requested. Nor has any evidence been presented to support the speculative assertion that in order to protect the utility's capital investment the utility would have required assurances from complainants. Complainants' assertions that the utility must have known of their possession of dual-fuel equipment because of its alleged review of New York City Buildings Department permits is also incorrect. No showing has been made that Con Edison was required to review any New York City Department of Buildings permits for the purpose of determining the type of gas equipment to be used, or even that permits issued by the Buildings Department would indicate the use of dual-fuel equipment.[18] Excelsior Management alleges that Con Edison has always had a procedure for identifying dual-fuel gas customers but fails to state or document what that procedure is. No basis had been shown for concluding that this customer met Con Edison's criteria (see p. 11, supra) for inclusion on its 1988 list of customers known to have dual-fuel equipment.

These three complainants argue that, pursuant to the tariff, the utility must be able to identify its dual-fuel customers for the purpose of assessing the minimum charge required of SC No. 2 dual-fuel customers whose annual usage reaches 103,300 therms or more, and curtailing gas service in a prescribed order during a period of gas service interruption. Again, however, these requirements do not obligate the utility to take affirmative steps to inventory its customers' equipment to

---

[18] The utility requires that customers present the City Buildings Department gas certificate (which affirms that the customer's plumber found the gas piping to be safe), and, upon receipt of the gas certificate, the utility performs a routine inspection prior to turning on the gas service. However, there is no requirement that such an inspection include ascertaining whether equipment is dual-fuel capable. We note that, in any case, no evidence was submitted by either the utility or complainants related to the initiation of service.

determine which customers have dual-fuel equipment. Rather, pursuant to the tariff, the utility may rely on its record of the customers known to be using dual-fuel equipment.

Since Con Edison did not know or have reason to know of these three complainants' dual-fuel equipment, it could not have been expected to send complainants the letter in March 1988 directed to customers known by the utility to have dual-fuel equipment, and its not doing so was not discriminatory.

Herbert Albert asserts that the hearing officer's finding that this complainant had been sent a letter in March 1988 of notification regarding SC No. 12's availability was not properly supported. A January 21, 1988 Con Edison memorandum, relied upon by complainant (see informal decision, p. 2) referred to a list of dual-fuel users then taking gas service at firm rates, and said such customers were to receive a letter informing them of the availability of the new interruptible rate. Con Edison refused on grounds of confidentiality to provide the list to complainant's consultant, but offered to make it available to the hearing officer for an in camera review. The hearing officer made such a review, over complainant's objection, and confirmed that complainant was on the list. As a document made in the ordinary course of the company's business, the list is credible evidence that complainant was contacted about the availability of SC No. 12. Complainant asserts, however, that the hearing officer's consideration of this information violated complainant's rights, under 16 NYCRR §12.8(b), to be provided by the hearing officer "with any information regarding the merits of the case exchanged between the hearing officer and any other party, and an opportunity to respond to the hearing officer regarding such information," and urges that the hearing officer erred in not requiring the utility to submit the list to the Commission's Records Access Officer, presumably under 16 NYCRR Part 6, for a finding whether the information was entitled to protection from disclosure.

It would have been preferable to refer the matter to the Records Access Officer to resolve confidentiality issues, rather than to proceed, without complainant's agreement, with an in camera review. In the absence of the Records Access Officer's decision, it is not clear whether the names of the other customers on the list were confidential and should not have been disclosed to complainant or its consultant. However the hearing officer's intent in reviewing the list in camera was to protect potential confidential information, not to engage in ex parte communication. Complainant's name was on the list, and the identities of the other customers had no decisional consequence. Under these circumstances, we conclude that the hearing officer's procedure was not prejudicial to complainant.

Further, complainants Franconia Village, Excelsior Management and 119-121 West 104 Realty assert that PSL §§65(3) and 66(12)(d) take precedence over the Commission's newspaper notice requirement, and that these provisions required the utility (in order to avoid unlawful discrimination) to send letters to each of these complainants notifying them of the availability of SC No. 12 soon after that rate took effect, because it sent such letters to other customers (identified as having dual-fuel equipment). This argument is incorrect. Section 65(3) prohibits giving unreasonable or undue preference or advantage to "any person, corporation or locality, or to any particular description of service" or subjecting any such entity to "any undue or unreasonable prejudice or disadvantage in any respect whatsoever." In the circumstances at issue (a very large number of firm gas customers as opposed to the number likely to utilize the interruptible rate) we have already found that the utility's mailings to identified dual-fuel users, combined with the provision of adequate newspaper notice of the proposed rate change, constituted reasonable efforts to notify customers of the newly available rate. The utility's mailing letters only to customers who could be identified as possessing dual-fuel equipment, and therefore as being more likely than other firm gas

customers to utilize the new rate, did not unreasonably or unduly advantage some customers or disadvantage others and did not violate §65(3). Given the utility's reasonable notification efforts, the failure to place complainants on the interruptible rate before the utility knew they were dual-fuel customers who wished to take interruptible service (having dual-fuel equipment does not guarantee that the customer will opt for interruptible service) did not violate PSL §66(12)(d)'s prohibition on charging a different compensation for any service rendered than the tariff permits.

We next consider whether the utility properly assisted complainants once they applied for SC No. 12 service. In three of these cases, complainants have been billed on SC No. 12 from the time they requested this rate. Specifically, Franconia Village requested SC No. 12 for its two accounts by letters dated September 2, 1994, and, after it segregated the hot water boilers serving complainant's two multiple dwellings from the interruptible heating loads, its accounts were placed on SC No. 12 effective September 15, 1994;[19] Excelsior Management was placed on SC No. 12 effective the date it requested this rate, November 30, 1994; and, in compliance with the hearing officer's decision, Con Edison placed 119-121 West 104 Realty on SC No. 12 as of December 4, 1995, when complainant's original SC No. 12 request was improperly denied by the utility. Since these customers have been billed, or in the case of 119-121 West 104 Realty rebilled, at SC No. 12 from the date of their request for the rate or, if necessary, from the date of removal of non-interruptible service from the meter to receive interruptible billing, we find that no adjustment is warranted.

[19] Since the two hot water boilers only burn gas, and the interruption of gas use during a curtailment period would deprive complainant's multiple dwellings of water heating service, the boilers had to be separated from the interruptible space heating load.

With respect to Herbert Albert, we find that the documented circumstances partly support complainant's assertion that Con Edison's unexplained denial of complainant's June 29, 1994 request for SC No. 12 and failure to assist complainant to qualify for the rate prevented transfer to SC No. 12 sooner than September 21, 1995. Herbert Albert's initial letters of June 29 and July 18, 1994 asserted retroactive eligibility for SC No. 12 back to March 1988 (the utility's initial offer of that rate). In response to both letters, the utility merely stated that complainant did not qualify for the rate, and provided no explanation of what complainant needed to do to qualify for SC No. 12 going forward. Only after complainant complained to this agency on August 31, 1994, and staff intervened, did the utility conduct an inspection on September 29, 1994, and find that complainant's dual-fuel equipment did not qualify for SC No. 12. The utility informed complainant by letter dated October 13, 1994 of this obstacle to the customer's placement on SC No. 12, and provided a contact name and telephone number. Complainant then applied in writing for SC No. 12 on September 15, 1995, and was transferred to this rate, effective September 21, 1995. Clearly the delay from October 13, 1994 to September 1995 was complainant's responsibility. However, that delay apparently related to the timing of the customer's board meeting, and the delay presumably would have been shorter had the utility responded promptly to complainant's July 1994 request. In view of the fact that the utility did not properly assist complainant until three and one-half months after complainant's original SC No. 12 request, we conclude that a credit adjustment, including interest on overpayments, representing the three and one-half months of service immediately prior to the date complainant was transferred to this rate is appropriate.

The assertion by Herbert Albert that Con Edison discriminated against this complainant by not making retroactive SC No. 12 billing adjustments, although the utility allegedly made such adjustments in the case of other customers who made

similar complaints, does not provide a basis for concluding that the same kind of billing adjustment is called for here. As the Commission found in Grenadier Realty and Suffolk County Department of Public Works, settlements "do not set general policy or place universal obligations on a utility,"[20] and are an accepted means of resolving complaints efficiently, provided that the utility makes the settlements in a consistent and reasonable manner.[21]

In summary, we conclude as we did in Carol Turner, that, with respect to the reopening of Con Ed's interruptible gas service in 1988 (and the associated consolidation of prior interruptible rates and changes in the terms of the resulting service classification), Con Edison made reasonable efforts to notify existing firm gas customers by publishing an adequate newspaper notification of the proposed adoption of SC No. 12 and by sending letters starting in March 1988 to customers who could be identified as having dual-fuel equipment (and therefore being most likely to benefit from the rate) informing them of the availability of the new rate. We also find that the utility presented sufficient evidence that complainant Herbert Albert was among the customers so contacted when SC No. 12 was introduced in March 1988. That the other three complainants did not receive notification does not indicate that the utility's efforts were insufficient, since, based on the facts here, the utility could not reasonably have been expected to know that they had dual-fuel equipment. Further, we determine that the utility properly

---

[20] See note 14, supra.

[21] The specific allegedly settled complaints, upon which complainant's consultant relies, were also used by another consultant in support of a similar argument in another appeal regarding SC No. 12, Phipps, p. 25 (see note 11, supra). In Phipps, we reviewed the specific settled complaints and rejected the argument that inconsistent treatment had occurred. No basis has been demonstrated for reaching any different conclusion in Herbert Albert's case.

assisted Franconia Village, Excelsior Management, and 119-121 West 104th Realty and transferred these complainants to SC No. 12 upon their requests for service on this rate. We find, however, that the utility did not properly assist Herbert Albert until three and one-half months after complainant's original request for SC No. 12 service. Under these circumstances, complainant is entitled to recalculation at the SC No. 12 rate of his billing for the heating account for a period of three and one-half months prior to the date the utility transferred the account to SC No. 12 (September 21, 1995), and interest should be paid on any resulting refund.

In order to assure that all aspects of this case have been properly addressed, staff has thoroughly reviewed the entire complaint file. The appeals of complainants Franconia Village, 119-121 West 104 Realty and Excelsior Management are denied and the informal decisions in these complaints are upheld. The appeal of complainant Herbert Albert is granted to the extent indicated in the preceding paragraph and is otherwise denied; the informal decision is modified accordingly and upheld as modified. The utility is to notify staff within thirty days of the determination's issuance that the billing adjustment to Herbert Albert indicated in the preceding paragraph has been made.