

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on November 10, 2004

COMMISSIONERS PRESENT:

William M. Flynn, Chairman  
Thomas J. Dunleavy  
Leonard A. Weiss  
Neal N. Galvin

CASE 04-S-1096 - Petition of URAC Corporation for a  
Declaratory Ruling Concerning Compliance with  
16 NYCRR Section 12.13 and 12.14 by the  
Department's Office of Consumer Services.

DECLARATORY RULING CONCERNING  
OCS STAFF AUTHORITY TO REMAND ISSUES FOR RECONSIDERATION

(Issued and Effective November 15, 2004)

BY THE COMMISSION:

INTRODUCTION

By petition filed September 10, 2004, URAC Corporation (URAC), a rate consultant, seeks a declaration that an alleged Office of Consumer Services (OCS) practice of remanding issues to an informal hearing officer (IHO) for reconsideration, thereby effectively extending the time period to appeal to the Commission, is in contravention of 16 NYCRR §§12.13 and 12.14. URAC contends that only the Commission may remand a decision to the IHO for reconsideration, pursuant to 16 NYCRR §12.14(b). It asserts that on August 13, 2004, OCS Staff accepted an August 4, 2004 request for reconsideration to the IHO by Consolidated Edison Company of New York, Inc. (Con Edison) in Complaint No. 332288 (Trump Equitable), and extended Con Edison's time to appeal to the Commission until 15 days from the date of the IHO's reconsideration decision.

URAC's request for a declaratory ruling will be denied. While OCS Staff does not have the authority to remand issues to the IHO for reconsideration when a party plans on filing an appeal to the Commission, Commission regulations do not prohibit an IHO from accepting and reviewing a party's reconsideration request. Therefore, the submittal of a reconsideration request to the IHO, within the 15-day discretionary time period to file an appeal to the Commission, can be a basis for OCS staff to extend the time period for a party to file an appeal to the Commission until after the IHO "mails" the reconsideration request decision. However, once an appeal to the Commission is filed, only the Commission may remand, that is compel, a decision back to an IHO or informal reviewer for reconsideration.

#### PLEADINGS

##### URAC's Petition

URAC states that its petition is prompted by OCS Staff's acceptance of Con Edison's request for reconsideration in Complaint No. 332288 (Trump Equitable), thereby extending Con Edison's time to appeal to the Commission until 15 days from the date the IHO's reconsideration determination was mailed. URAC contends that an August 13, 2004 letter from OCS Staff accepting an August 5, 2004 Con Edison request for the IHO to reconsider a July 21, 2004 informal decision is in contravention of 16 NYCRR §§12.13 and 12.14. Furthermore, URAC contends that, if the Commission determines that such OCS Staff practice conforms with the Commission's regulations, a declaratory ruling clarifying the number of times a party may request reconsideration from an IHO should be issued. Finally, clarification is sought on how to calculate the 15-day time period to appeal an informal hearing decision to the Commission.

The challenged OCS practice has had no substantive effect on Complaint No. 332288. As discussed below, the August 13, 2004 extension to file an appeal to the Commission to 15 days after the IHO's reconsideration decision was proper. The IHO denied Con Edison's request for reconsideration on September 15, 2004, and Con Edison has appealed the IHO's decision to the Commission.

#### DISCUSSION

An agency may issue a declaratory ruling with respect, *inter alia*, to whether action should be taken by it pursuant to a rule enforceable by it (State Administrative Procedure Act §204(1)). Here, a ruling will clarify that under 16 NYCRR §§12.13 and 12.14, OCS Staff may grant extensions to file an appeal to the Commission to allow for the submittal of a request for reconsideration of an IHO decision to that IHO in accordance with 16 NYCRR §12.13(a).

The provision just cited states that:

[i]f a customer or utility disagrees with the decision rendered in the informal hearing or review, the customer or utility may appeal to the commission. . . .The appeal should be filed within 15 days after the informal hearing or review decision is mailed.

Further, §12.14(b) states that "[t]he commission will decide the appeal and may uphold, change, reject or return the decision to the informal hearing officer or reviewer for additional consideration." The cited Commission regulations do not provide authority for OCS Staff to remand a party's request for reconsideration to the IHO. OCS Staff cannot compel an IHO to reconsider a decision. Pursuant to 16 NYCRR §12.14(b), only the Commission may compel an IHO or informal reviewer to reconsider a decision.

However, nothing in 16 NYCRR §§12.13 and 12.14, prohibits an IHO from accepting a reconsideration request (made on notice to all parties) prior to the filing of an appeal to the Commission. Allowing an IHO to reconsider a decision has been established as an efficient procedure to correct errors in the record and/or present evidence previously not presented. A party seeking an informal reconsideration must be able to adequately explain why such evidence was not presented earlier. Such a procedure does not unfairly prejudice a party. A decision to grant or deny a reconsideration request will be at the IHO's discretion.

Concerning the underlying Complaint No. 332288, the August 13, 2004 OCS Staff letter did not compel the IHO to grant Con Edison's reconsideration request. The August 13, 2004 letter only extended the discretionary 15-day time period to appeal to the Commission to allow the IHO to review the reconsideration request and make a decision. Such an extension to allow for an informal reconsideration review and decision is proper. As such, OCS Staff's practice of allowing extensions of time for any request filed within the 15-day period for appeal is a permissive use of its discretion.

The regulations provide for the filing of an appeal of an IHO decision to the Commission within 15 days from the date the informal hearing decision is "mailed" to the parties, excluding the day it was mailed.<sup>1</sup> The number of reconsideration requests an IHO or informal reviewer may accept is discretionary and complaint specific, depending on whether good cause is adequately shown.

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<sup>1</sup> As an illustration, if in this Complaint, the IHO's September 15, 2004 denial to reconsider was mailed to the parties on September 15, 2004, the 15-day discretionary time period to file an appeal to the Commission would begin on September 16, 2004.

CONCLUSION

URAC's requested Declaratory Ruling is denied. The proper submittal of an informal reconsideration request prior to the expiration of the 15-day period to submit an appeal to the Commission can extend that discretionary time period. Only the Commission may remand a decision to an IHO or informal reviewer for reconsideration. However, an IHO has the discretion to accept or deny a reconsideration request, prior to the filing of an appeal to the Commission, for good cause shown.

The Commission declares:

1. The request of URAC Corp. for a declaratory ruling that an Office of Consumer Services practice to extend the time period to appeal an informal decision is in contravention of 16 NYCRR §§12.13 and 12.14 is denied, as described herein.
2. This proceeding is closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING  
Secretary