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SUBCHAPTER B. PROCEDURES AND REQUIREMENTS CONCERNING CONSUMER PROTECTIONS
PART 12. CONSUMER COMPLAINT PROCEDURES

§ 12.0 Applicability of Part 12 complaint procedures

When used in this Part, the term utility includes any such gas corporation, electric corporation, gas and electric corporation, steam corporation, municipality, or any entity that, in any manner, sells or facilitates the sale, furnishing or provision of gas or electric commodity to residential customers, including energy services companies and owners of submetered residential buildings; provided, however, that the term does not include any municipality that is exempt from commission regulation by virtue of *section 1005 (5) (g) of the Public Authorities Law*.

§ 12.1 Complaints and questions

(a) Filing. Any utility customer may file a complaint with, or ask a question of, the commission relating to his or her electric, gas, steam, telephone or water service, when the customer believes he or she has not obtained a satisfactory resolution of a dispute with a utility regulated by the commission. Complaints may involve bills for utility service, deposit requests, negotiations for deferred payment agreements, service problems, and other matters relating to utility service.

(b) Department offices. A complaint or question may be filed by telephone, letter, electronically, or in person at the commission's office in New York City, Albany or Buffalo.

(c) Complaint submissions. 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 will be notified of the complaint and will be required to submit information regarding the merits of the complaint. This submission should explain its actions in the disputed matter and the extent to which those actions were consistent with the utility's procedures and tariff, commission rules, regulations, orders and opinions, and applicable State laws. The 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. A customer making a complaint is responsible for providing staff with any facts that he or she possesses in support of his or her position.

(d) Inspections and tests. Should staff determine that an onsite inspection or test is required, he or she may order a test or inspection. This work may be done by staff and/or by utility staff at the direction of commission staff, depending on the nature of the complaint, time considerations and staff availability.

(e) Investigation. Staff will investigate each complaint or question and will respond to the customer, or, if possible, suggest the name, address and/or telephone number of a person or agency who might be able to respond.

§ 12.2 Complaint files

(a) A complaint file will be maintained at one of the commission's offices. It will contain all information in the commission's possession relating to a complaint.

(b) Customers, utilities or their representatives may look at and copy complaint files concerning cases to which they are a party. Staff will provide copies of the documents in accordance with the fee schedules in the commission's Administrative Manual. One free copy of the file will be made for those customers who state that they are unable to pay for reproduction costs.

(c) Complaint files shall be kept for at least one year after a case is closed.

§ 12.3 Continuation of service while a complaint is at the commission

(a) A utility shall not terminate, disconnect, or suspend a customer's service, based on amounts billed that have not been paid and which are in dispute, from the time that a complaint or an appeal of a complaint is filed with the commission until 15 days after the decision is mailed or personally communicated to the customer or his or her representative.

(b) In order to continue service during the time a complaint or an appeal of a complaint is at the commission, the utility may require the customer to pay amounts of bills not in dispute. If the undisputed amount is not paid, the utility may be entitled to terminate, disconnect, or suspend the customer's service. Should there be any question as to the amount in dispute, staff will make a reasonable estimate, establishing the disputed amount.

§ 12.4 Initial decision on complaint

(a) When necessary information has been obtained, a staff member will make an initial decision on the complaint, based on his or her findings, applicable State laws, commission rules, regulations, orders and opinions, and utility tariffs.

(b) Staff shall call or write the customer or his or her representative to inform him or her of the decision, the reasons for the decision, and what actions must be, or may be, taken by the customer or the utility. The utility will be notified of the disposition of the complaint and of any action which it must take. A customer or utility may request a written copy of the initial decision. If the decision is communicated orally, the customer will be informed that he or she may receive the decision in written form.

§ 12.5 Requests for informal hearing or review

(a) (1) If the customer or the utility objects to the initial decision, a request for an informal hearing or review may be made to the commission's Office of Consumer Services in writing, by telephone or in person, explaining the basis for the request. The request should be received within 15 days after the initial decision is mailed or personally communicated.

(2) A request for an informal hearing may be denied if the relief sought by the customer or utility is beyond the power of the informal hearing officer to provide. In this case, the person requesting the hearing shall be notified as to the reason why a hearing cannot resolve the complaint, and shall be advised of the appropriate authority to address the complaint, if known. If the person requesting the hearing contends that the hearing officer does have the authority to decide the complaint, he or she may appeal to the commission in accordance with section 12.13 of this Part.

(b) A utility which appeals a staff decision must accept an informal review unless the customer agrees to participate in an informal hearing. A customer may choose either an informal hearing or review.

(c) Upon receiving a request for an informal hearing or an informal review, the customer and the utility will be notified in writing:

(1) of the date, time and location of the informal hearing at least 10 days before the date of the hearing, or that an informal review will be held;

(2) that any documents in support of their position should be brought to the informal hearing or sent to the informal reviewer within 15 days, or longer if the reviewer finds it reasonable to extend the time period, after receiving notice that a review will be conducted; and

(3) that the customer may be represented by a person of his or her choice or may request that the commission's Office of Consumer Services assign an advocate, free of charge, if available.

§ 12.6 Description of informal hearings and reviews

(a) Informal hearings. (1) An informal hearing is a procedure at which the utility and the customer, and/or his or her representative, appear and are provided with the opportunity to present information, discuss and resolve the complaint before an informal hearing officer. Hearings normally will be held at commission offices; however, a customer may request that an informal hearing be conducted by telephone conference call.

(2) The hearing officer is an impartial member of the commission staff who has not had previous contact with the complaint. The hearing officer will consider the statements made by the parties at the hearing and review relevant information in the complaint file. The hearing officer will then make an independent decision and provide the customer and utility with a written statement explaining the reasons for the decision.

(b) Informal review. An informal review is a further review of the complaint by a staff member who has not previously worked on the complaint. An informal review does not require the presence of either the customer or the utility. It is an option available to the customer who disagrees with the initial decision, but who is unable or prefers not to participate in an informal hearing. Staff will review the complaint record, make an independent decision and provide the customer and the utility with a written statement explaining the reasons for the decision.

§ 12.7 Rights of parties

(a) Informal hearing rights. The parties to an informal hearing shall have the following rights:

(1) To represent themselves or to be represented by counsel or other person of their choice. At the request of a customer, the commission's Office of Consumer Services may assign an advocate, free of charge, if available, to assist the customer in preparing and presenting his or her complaint during an informal hearing.

(2) To examine the documents in the complaint file before the informal hearing.

(3) To have a reasonable opportunity during an informal hearing to present evidence and arguments concerning the complaint, and to challenge the evidence of and question the other party.

(4) To have the commission tape-record the hearing, with the consent of the customer. The commission will retain such tape for at least four months after the complaint is closed. The hearing officer shall inform the parties that either party may review the recording at the commission office or make a copy of the tape at his or her own expense.

(5) To have an interpreter at the hearing. If the party in need of such services is unable to obtain an interpreter, the commission will provide an interpreter where feasible, provided that the customer makes the request at least five days before the hearing.

(6) To request that information relevant to the complaint possessed by the other party be provided. The request can be made directly or through the hearing officer.

(b) Informal review rights. The parties to an informal review shall have the following rights:

(1) To present evidence and written arguments concerning the complaint. At the request of a customer, the commission's Office of Consumer Services may assign an advocate, free of charge, if available, to assist the customer in preparing his or her submission for the informal review.

(2) To examine the documents in the complaint file.

(3) To examine the evidence and arguments submitted by the other party and to submit a response to the evidence and arguments of the other party.

(4) To request the information relevant to the complaint possessed by the other party be provided. The request can be made directly or through the hearing officer.

§ 12.8 Powers and duties of hearing officers and reviewers

(a) Informal hearing officers and reviewers shall conduct fair and impartial hearings or reviews, and may, in carrying out this responsibility:

(1) (i) Order utilities to provide copies of information in their possession and state the form in which certain information is to be provided.

(ii) Request customers to provide information in their possession which is necessary to prove any facts that the customer offers in support of his or her position. The customer's failure to provide any such information may influence the hearing officer's decision regarding that particular fact.

(2) Order the utility to conduct meter tests and inspections, diversion of service inspections and other tests necessary for the resolution of the complaint.

(3) Regulate the course of hearings and the conduct of the parties and their representatives. In executing this responsibility, the hearing officer may allow the attendance of the media if he or she believes that this will not disrupt the hearing, and parties agree to such attendance.

(4) Question participants directly and inquire into all matters related to the case.

(b) Informal hearing officers and reviewers shall provide a party 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.

(c) The hearing officer may permit any party to submit further information, documentation or arguments that may aid the officer in reaching a determination within 15 days after an informal hearing. The hearing officer shall ensure that this information is provided to the other party, who will have an opportunity to respond. The hearing officer may grant reasonable requests to extend the time period to submit information.

§ 12.9 Hearing postponement

(a) The hearing officer may grant initial requests for a hearing postponement. A party requesting a second postponement will be required to provide reasonable justification for the postponement. If a party does not provide reasonable justification, as determined by the hearing officer, a new hearing date will not be set and an informal review will be conducted.

(b) The hearing officer may, at his or her own discretion, postpone or adjourn a hearing for reasonable cause. If a hearing is postponed, adequate notice will be provided to the parties.

§ 12.10 Failure to appear

If a customer or the utility does not appear for a scheduled hearing, without good cause, the hearing officer will accept information from the attending party, and make a determination on the dispute.

§ 12.11 Settlement agreement

(a) If, at any point during the informal hearing, the utility and the customer agree to settle their dispute, the agreement shall be in writing and signed by the customer, the utility representative and the hearing officer. The agreement shall state that it is binding on parties and may not be appealed.

(b) A settlement of an informal review shall be confirmed by letter from the reviewer to parties.

§ 12.12 Informal hearing or review decision

(a) If the parties have not been able to settle their dispute, the hearing officer or informal reviewer will make a written decision. In reaching the decision, the hearing officer shall give consideration to the evidence and facts of the case, and base the decision on his or her findings, applicable State law, commission rules, regulations, orders and opinions, and utility tariffs. The decision shall summarize the positions and arguments of the customer and the utility, the facts as established, the reasons for the decision, and, where appropriate, include a statement of what actions must be taken by the parties.

(b) The hearing officer or reviewer shall promptly notify the parties, by first class mail, of the decision and of the parties' right to appeal in writing to the commission and the time by which an appeal must be filed.

§ 12.13 Appeals to the commission

(a) Filing of appeals. If a customer or utility disagrees with the decision rendered in the informal hearing or review, the customer or utility may appeal to the commission by writing to the Office of the Secretary to the Public Service Commission, 3 Empire State Plaza, Albany, N.Y. 12223-1350. The appeal should be filed within 15 days after the informal hearing or review decision is mailed.

(b) Requirements for appeals. An appeal must be in writing and be based on one or more of the following grounds:

(1) The hearing officer or reviewer made a mistake in the facts in the case or in the interpretation of laws or regulations which affected his or her decision.

(2) The hearing officer or reviewer did not consider evidence, presented at the hearing or review, which resulted in an unfavorable decision.

(3) New facts or evidence, not available at the time of the hearing or review, have become available which would have affected the decision on the complaint.

§ 12.14 Commission determination

(a) Parties will be notified of the commission's receipt of the appeal, and a staff member, who has not previously worked on the complaint, will be assigned to review the request. The staff member will examine all papers submitted in connection with the appeal and advise the commission on the appeal.

(b) The commission will decide the appeal and may uphold, change, reject or return the decision to the informal hearing officer or reviewer for additional consideration. If there is a factual or legal dispute, the commission may order a formal evidentiary hearing on the complaint or make such other decision as it deems appropriate.

(c) The Secretary to the Commission will notify the customer and the utility in writing of the commission's decision and action.