

UTILITY COMPLAINT HANDLING PROCEDURES OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION

New York's Utility Project Law Manual
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New York's Utility Project
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COMPLAINT HANDLING PROCEDURES

1. Introduction

The complaint handling procedures are the administrative procedure adopted by the New York Public Service Commission (PSC) to review the consumer service actions taken by any regulated utility. Complaint procedures exist for electric, steam and gas utility customers, as well as for telephone and water utility customers. This chapter addresses the general procedures and practice of making and pursuing a complaint.¹

Consumer complaints typically involve disputes regarding bill amounts, deposit requests, negotiation of deferred payment agreements, service problems, and the failure of a utility to comply with the substantive protections extended to utility customers by statute and/or regulation. Upon reaching the Department of Public Service, the administrative complaint procedures potentially involve three levels of investigation: (1) an initial complaint; (2) an informal hearing or informal review; and (3) a formal appeal to the Public Service Commission.

¹ 16 NYCRR Part 12, Consumer Complaint Procedures. 16 NYCRR § 12.0 provides that the complaint procedures are applicable to any “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 [ESCOs] and owners of submetered residential buildings; provided, however, that the term [utility] does not include any municipality that is exempt from commission regulation by virtue of section 1005(5)(g) of the Public Authorities Law.”

2. Initial Complaint

2.1. When to Make a Complaint

Before contacting the PSC, the customer must first make a complaint to the utility.² The utility must not terminate service for nonpayment while the complaint is pending, provided the customer pays the undisputed portions of the bill(s).³ After the utility has investigated the complaint and reported its results to the customer, the customer may then file a complaint with the PSC whenever he or she believes that the matter has not been resolved satisfactorily by the utility. The PSC will not accept customer complaints where resolution has not first been attempted at the utility.⁴

PSC regulations do not impose time constraints upon the filing of an initial complaint.⁵ When a customer faces impending termination of service, or has already been disconnected, necessity dictates its own time constraint. A utility may terminate a customer's gas or electric service 15 days after mailing a final termination notice.⁶ To maintain service for customers facing an impending termination, complaint must be filed *before* the scheduled termination date. A *pending* complaint stays the utility from terminating service for nonpayment.⁷ A condition of

² See 16 NYCRR § 12.1(a), “Any utility customer may file a complaint . . . when the customer believes he or she has not obtained a satisfactory resolution of a dispute with a utility. . . .” For rules related to billing disputes and other complaints to utilities, see 16 NYCRR §§ 11.20 (complaints to the utility); 14.19 (complaint handling procedures – water corporations); 143.8 (electric corporation billing dispute procedures); 275.8 (gas corporation billing dispute procedures); 434.8 (steam utility billing dispute procedures); 533.9 (water utility billing dispute procedures); 600.8 (telephone billing dispute procedures); and 609.16 (telephone complaint-handling procedures).

³ 16 NYCRR § 11.20.

⁴ 16 NYCRR § 11.20.

⁵ 16 NYCRR §12.0 *et seq.*

⁶ PSL § 32(2)(d); 16 NYCRR § 11.4(a)(1)(v). Telephone customers may have their outgoing service suspended 8 days after the mailing of a termination notice, and both incoming and outgoing service may be terminated after 13 days of mailing such notice. 16 NYCRR § 600.3(a)(2) and (b)(2).

⁷ 16 NYCRR § 11.20 and § 14.19(a)(2). See *Brooklyn Union Gas Co. v. Mac Gregor's Custom Coach, Inc.*, 122 Misc.2d 287, 292, 471 N.Y.S.2d 470 (N.Y. Civ. Ct., Kings County 1983).

continued service while the complaint is pending is that the customer must pay undisputed portions of the bill(s) for service.⁸

2.2 How to Make an Initial Complaint to the Utility

An initial complaint to a utility can be made orally, by telephone or in person, or in writing. As a practical matter, oral complaints should be confirmed in writing. It is important to record dates, names and telephone numbers of utility and PSC representatives who are contacted by phone or in person, and the complaint case number assigned, if any. A written complaint is done in the form of a letter. A sample complaint letter appears at the end of this chapter. The letter should state the relevant facts, a concise summary of the issues, indicating what is and what is not in dispute, and should provide references, whenever possible, to appropriate statutory and regulatory authority.

Both oral and written complaints should include, where appropriate, a request for continued service (connection or reconnection), a request for an investigation, and a request for a written determination from the utility.⁹ The utility should be informed when a customer is a vulnerable person (see Home Energy Fair Practices Act [HEFPA] chapter and Telephone chapter), or applying for or receiving public assistance in any form.

2.3 How to Make an Initial Complaint to the PSC

If dissatisfied with the utility's decision, or if the utility does not cooperate in resolving a dispute, the customer should file an initial complaint with the Department of Public Service

⁸ 16 NYCRR 12.3(b).

⁹ The utility has no obligation to provide a written report of its investigation unless the complainant makes a written request for it. 16 NYCRR § 11.20.

contacting the Hotline, an advocate should give the PSC's designee relevant information, emphasizing facts demonstrating the emergency and how a person's rights were violated. Request an explanation if the PSC designee refuses to authorize reconnection, continuation or initiation of service and then ask for a supervisor and repeat the initial request.

2.3.3. Written Complaints

Like an initial complaint to a utility, an initial complaint filed with the PSC should state the relevant facts, the issues involved, and any appropriate references to statutory or regulatory authority. The PSC's complaint handling regulations state that the customer is responsible for providing the PSC with any facts that the customer has to support the complaint.¹³

Advocates should request any tests, inspections or information which could aid their client's case. A common test in cases involving bill disputes is a "fast meter" test.¹⁴ An inspection is usually requested in cases where diversion of service or a shared meter is suspected. Advocates should also request a copy of the utility's submission in response to the complaint, for the results of any tests or inspections, and for the opportunity to respond to this information before a decision is made. Customers and their representatives may review and copy their complaint files. Customers who state that they are unable to pay for reproduction costs are entitled to receive one free copy of their file.¹⁵

2.4 Effect of Filing an Initial Utility or PSC Complaint

Once an initial complaint is filed with a utility or with the PSC, the utility may not terminate a customer's service for nonpayment of a disputed bill, so long as the complaint is

¹³ 16 NYCRR § 12.1(c).

¹⁴ See, PSL § 67(2), (3) for electric and gas meters; PSL § 67-a for commercial customer meters; PSL § 89-d for water meters, and 16 NYCRR § 12.1(d). See also the Meter & Backbilling section of the HEFPA chapter.

¹⁵ 16 NYCRR § 12.2(b).

pending and for an additional 15 days after its resolution by either the utility or the PSC,¹⁶ or for a longer period that the PSC may establish.¹⁷ As a condition of continued service, the utility may ask the customer to pay or enter into a deferred payment agreement for any amounts, including current charges that are not in dispute.¹⁸ If a deferred payment agreement is necessary on the undisputed portion of a bill and the utility requires a down payment or periodic payments that are higher than a customer can afford, the customer should not enter into the agreement and the plan should be contested. In cases of residential gas and electric customers, payment of undisputed arrears should be explored under Social Services Law § 131-s and the Home Energy Assistance Program.¹⁹

2.4.1 Complaint Processing and Initial Decision

Upon the filing of an initial complaint with the PSC, the agency must investigate and respond to the complaint.²⁰ At every stage in the proceeding, the burden of proof is on the utility,²¹ and it is required to submit information relevant to the complaint.²² After obtaining necessary information, the PSC staff member makes an initial decision based on his or her factual findings, applicable law, rules, orders, opinions and tariffs.²³ The customer must be

¹⁶ PSL § 43(1)(c); 16 NYCRR 11.20; 16 NYCRR 12.3(a); 16 NYCRR 14.19; 16 NYCRR 143.8(c); 16 NYCRR § 275.8(c); 16 NYCRR § 434.8(c); 16 NYCRR § 533.9(c); 16 NYCRR § 609.16.

¹⁷ PSL § 43(1)(c); 16 NYCRR 11.20

¹⁸ *Id.*

¹⁹ See PULP chapters, “Public Assistance For Energy and Utility Costs,” and “PULP Winter Extra 2007-2008.”

²⁰ 16 NYCRR § 12.1(e).

²¹ PSL § 42(2)(b).

²² “The 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. 16 NYCRR § 12.1(c).

²³ 16 NYCRR § 12.4(a).

notified of the decision, the reasons for the decision, and what actions must be or may be taken by the customer or the utility. The PSC staff may communicate its decision by telephone, but must inform the customer in writing of the right to obtain the decision in written form.²⁴

3. Informal Hearing and Review

Within 15 days after the PSC's initial decision is mailed or personally communicated, the customer, if dissatisfied, may request an informal hearing or informal review.²⁵ An informal hearing may be conducted by telephone conference call if the customer requests, otherwise, the customer and/or his or her representative²⁶ and a representative of the utility appear before an informal hearing officer at the PSC office where the complaint was filed.²⁷ An informal review is a further review of the complaint by a PSC staff person who did not previously work on the complaint. Neither the customer nor the utility need be present. The PSC staff member reviews the complaint record and makes an independent decision, and provides the decision and an explanation of the reasons for the decision, in written form, to the customer and the utility.²⁸

In almost every case, an informal hearing is preferable to an informal review. The informal review is less rigorous than informal hearing. In addition, an informal hearing requires both sides to appear before a hearing officer and thus, provides a better opportunity for a settlement of the customer's complaint.

²⁴ 16 NYCRR § 12.4(b).

²⁵ 16 NYCRR § 12.5(a)(1).

²⁶ "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." 16 NYCRR § 12.5(c)(3).

²⁷ 16 NYCRR § 12.6(a)(1).

²⁸ 16 NYCRR § 12.6 (b).

3.1 How to Request an Informal Hearing or Review

A request for an informal hearing or review can be made by telephone, in person, or in writing, within 15 days after the initial decision was mailed or personally communicated, and must explain the basis for the request.²⁹ After receiving a request for an informal hearing or review, the PSC is required to notify the parties in writing, at least 10 days before the informal review or hearing will be held, that (i) an informal review will be conducted, or (ii) the date, time and location of the informal hearing; and (iii) a request that certain documents be brought to the hearing or provided to the reviewer.³⁰

A request for an informal hearing must be granted, unless the relief sought by the customer cannot be granted by an informal hearing officer.³¹ Examples of relief beyond the power of the informal hearing officer include amendments to laws, regulations or tariffs, modifications of rate structures, and matters outside the scope of the PSC's regulatory authority. Denials of informal hearing requests on grounds of lack of authority may be appealed to the Commission.³²

3.2 Description of an Informal Hearing and Parties' Rights

An informal hearing is a procedure in which both the utility and the customer, together with the customer's representative, appear and are provided with an opportunity to present their dispute before an impartial member of the PSC staff who has had no previous contact with the complaint.³³ Customers may represent themselves, or be represented by counsel or another

²⁹ 16 NYCRR § 12.5(a)(1).

³⁰ 16 NYCRR § 12.5(c).

³¹ 16 NYCRR § 12.5(a)(2).

³² *Id.*

person of their choice. The Office of Consumer Services may also assign an advocate, free of charge, to assist the customer in preparing and presenting the complaint at the hearing, if an advocate is available.³⁴ The following rights are afforded to all parties to an informal hearing:

- (1) to obtain information relevant to the complaint by requesting it from the hearing officer or from the utility. A list of witnesses who are expected to testify, for example, can be obtained by this process;
- (2) to examine the complaint file before the hearing;
- (3) to present evidence and arguments, and to challenge the other party's evidence and ask questions of the other party;
- (4) to have the commission tape-record the hearing, provided the customer consents to the recording. The recording is retained for at least 4 months after the hearing and either party may review it or make a copy of it at its own expense;
- (5) to have an interpreter at the hearing. If the customer is unable to obtain their own interpreter, they may request the Commission to provide one. The request must be made at least 5 days before the hearing.³⁵

At the informal hearing, it is important that every part of the customer's case be put into the record. It is therefore useful to prepare a list of every relevant fact and every document in support of the complaint. Then, at the hearing, the items on the list can be checked off as they are put into the record. Always ask to have the hearing tape-recorded.

It is also important to request that the utility make its presentation first. If the utility fails to submit factual evidence on the issues raised in the complaint, move for summary disposition based upon the utility's failure to present a *prima facie* case. If the hearing continues and the

³³ 16 NYCRR § 12.6.

³⁴ 16 NYCRR § 12.7(a)(1).

³⁵ 16 NYCRR § 12.7(a)(2)-(6).

utility fails to submit evidence on an issue relevant to the complaint, at the close of the hearing, move for summary judgment based on the utility's failure to meet its burden of proof.

At the end of the hearing, the record may be kept open with an offer to submit additional information, documents or written arguments which may aid the hearing officer in reaching a favorable determination. The regulations provide for such additional submissions to be presented within 15 days after the hearing. The hearing officer may extend the time for such additional submissions and must provide the utility with an opportunity to respond.³⁶

3.3 Burden of Proof

As previously noted, throughout all stages of the complaint handling procedures the burden of proof is on the utility.³⁷ While the statute addresses the burden of proof directly,³⁸ the regulations do not. Instead, a section of the regulations that specifies procedures for submissions on complaints makes the customer responsible for providing facts in support of the complaint, but requires the utility 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.”³⁹ The utility is also required to “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.”⁴⁰

³⁶ 16 NYCRR § 12.8(c)

³⁷ PSL § 43(2)(b).

³⁸ *Id.*

³⁹ 16 NYCRR § 12.1(c).

⁴⁰ *Id.*

HEFPA expressly places the burden of proof on the utility, “except as otherwise provided by the commission for good cause. . . .”⁴¹ Since a utility complaint proceeding is a civil dispute, to meet its burden of proof, it is likely that the utility must establish all key points of its claim or position by a preponderance of the evidence.⁴²

3.4 Adjournments

If the customer is unable to attend an informal hearing at the scheduled time, or if the representative requires additional time to prepare, an adjournment can be obtained without difficulty. However, if a second adjournment is needed, the requesting party must provide “reasonable justification for the postponement.”⁴³ The hearing officer may deny an adjournment if the officer determines that “reasonable justification” was not given, and may substitute an informal review for the informal hearing.⁴⁴

3.5 Failure to Appear at Hearing

If the customer or the utility fails to appear for a scheduled hearing, without good cause, the hearing officer is authorized to accept information from the attending party and to render a decision on the complaint.⁴⁵

3.6 Description of an Informal Review and Parties’ Rights

An informal review is a process that does not require the presence of any party. It entails a further review of an initial complaint by a PSC staff member who has had no previous contact

⁴¹ PSL § 43(2)(b).

⁴² *Ward v. NY Life Ins. Co.*, 225 N.Y. 314, 322 (1919) (“The rule in any civil case is that the plaintiff must establish his claim by a fair preponderance of evidence.”).

⁴³ 16 NYCRR § 12.9(a).

⁴⁴ *Id.*

⁴⁵ 16 NYCRR § 12.10.

with the complaint. The staff member reviews the complaint record and makes an independent decision, then provides both the customer and the utility with a written statement that explains the reason for the decision.⁴⁶

The following rights are afforded to parties to an informal review:

- (1) to examine the complaint file;
- (2) to present evidence and written arguments and to examine and submit responses to the evidence and written arguments of the other party;
- (3) at the customer's request, to have the Commission assign an advocate, free of charge, if available, to assist the customer in preparing a submission;
- (4) to have access to relevant information in the possession of the other party. A request for such information may be made directly to the other party, or through the staff person presiding over the review.⁴⁷

3.7 The Decision Rendered Upon Informal Hearing or Review

Following an informal hearing or review, a written decision is issued. The decision must 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.⁴⁸ The decision must also notify the parties of the right to appeal and the time by which the appeal must be filed.⁴⁹

⁴⁶ 16 NYCRR § 12.6(b). An informal review is less rigorous than the review obtained at an informal hearing. Only on rare occasions will this procedure be a desirable option.

⁴⁷ 16 NYCRR § 12.7(b)(1)-(4).

⁴⁸ 16 NYCRR § 12.12(a).

⁴⁹ 16 NYCRR § 12.12(b).

4. Formal Appeals

4.1 How to File an Appeal

A party dissatisfied with the decision rendered upon informal hearing or review may appeal from that decision to the Public Service Commission, within fifteen (15) days after the decision was mailed.⁵⁰ The appeal must be in writing and mailed to:

Office of the Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223

4.2 Requirements for Filing an Appeal

The appeal must be in writing and may be based only on one or more of the following grounds:

- (1) The hearing officer or reviewer made a mistake in the facts of the case or in the interpretation of laws or regulations, which affected the decision;
- (2) The hearing officer or reviewer did not consider evidence, presented at the hearing or review, which resulted in an unfavorable decision; and
- (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.⁵¹

4.3 Effect of Filing an Appeal

When an appeal is filed, the PSC will notify both parties of its receipt of the appeal. The PSC assigns a staff member who has not previously worked on the complaint to review all papers submitted in connection with the appeal. The staff member then makes a recommendation to the PSC.⁵²

⁵⁰ 16 NYCRR § 12.13(a).

⁵¹ 16 NYCRR § 12.13(b).

⁵² 16 NYCRR § 12.14(a).

The regulations authorize the PSC to uphold, change, reject or remand the decision to the informal hearing officer or reviewer for additional consideration. If there is a factual or legal dispute, the PSC may order a formal evidentiary hearing on the complaint, or make such other decision as it deems appropriate.⁵³ The PSC Secretary will notify the utility and the customer in writing of the agency's decision and action.⁵⁴

5. Judicial Review and Cases

5.1 Generally

Adverse PSC decisions on appeal may be reviewed by the courts in a proceeding pursuant to New York Civil Practice Law and Rules (CPLR) Article 78. An Article 78 proceeding must be commenced within four months of the date of the PSC decision.⁵⁵ Judicial review does not automatically stay any scheduled or to-be-scheduled termination.⁵⁶ Thus, if the customer seeks to stay termination pending the decision in the Article 78, the action should be commenced and a stay of enforcement of the decision under review should be requested within the 15 days.⁵⁷

⁵³ 16 NYCRR § 12.14(b).

⁵⁴ 16 NYCRR § 12.14(c).

⁵⁵ CPLR § 217.

⁵⁶ The automatic stay of termination mandated by PSL § 43(1)(c) and 16 NYCRR § 12.3(a) is effective for only 15 days after the PSC's final decision is mailed or personally communicated to the customer or the customer's representative.

⁵⁷ CPLR § 7805.

**A Model Letter and Form Complaint to PSC
Regarding Failure to Negotiate
an Affordable Deferred Payment Agreement**

[DATE]

Office of Consumer Services
New York Public Service Commission
3 Empire State Plaza
Albany, NY 12223-1350

OR

Office of Consumer Services
New York Public Service Commission
Ellicott Square Building
295 Main Street- 8th Floor, Room 814
Buffalo, NY 14203

OR

Office of Consumer Services
New York Public Service Commission
90 Church Street
New York, NY 10007-2919

Dear Office of Consumer Services Representative:

Please consider this letter as a complaint, pursuant to Public Service Law § 43, and provide a written determination on the issues raised.

ISSUE

This complaint alleges that Consolidated Gas & Electric (“CG&E”) has violated the Home Energy Fair Practices Act (“HEFPA”) as follows:

The company has refused to negotiate a deferred payment agreement (DPA) tailored to the customer’s financial circumstances, as required by 16 NYCRR § 11.10(a)(1)(i).

FACTS

1. The customer owes \$300 arrears to CG&E for electric and gas service.
2. CG&E offered the customer a *standard* deferred payment agreement on March 1, 2008, which required a down payment.
3. The customer cannot afford a down payment as evidenced by the attached copy of the New York Social Services Form 3596 (Exhibit A).

4. The customer cannot afford installments of more than \$10 per month as evidenced by Exhibit A.
5. On April 1, 2008, I made a formal complaint to CG&E. A copy of the complaint letter is attached as Exhibit B.
6. On April 22, CG&E's Customer Services Representative refused, in writing, to offer a DPA with no down payment. See Exhibit C.

LEGAL ARGUMENT

Public Service Law § 37 requires that no utility shall terminate service to a residential customer because of arrears, unless the utility first offers the customer a DPA. It further provides that DPAs must be "fair and equitable, considering the customer's financial circumstances." The minimum terms of such an agreement are described in 16 NYCRR 11.10(a)(1)(iii) as installments as low as \$10 per month with no down payment, when the customer demonstrates financial need for such terms.

Since this customer has shown that his financial circumstances do not allow for any down payment and that he cannot afford installments greater than \$10 per month, the company has not negotiated a DPA with this customer in good faith.

Therefore, the company should immediately offer the customer a DPA with no down payment and \$10 per month installment payments, and it must not terminate service.

Thank you for your attention and consideration.

Very truly yours,

Josephine Lawyer, Esq.
Everywhere Legal Services