



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Oversight of Complaint Activity

Public Service Commission



Report 2015-S-82

February 2017

Executive Summary

Purpose

To determine whether the Public Service Commission consistently applies State laws, rules, and regulations to ensure utility consumer protections are enforced, including applying monetary penalties and other sanctions against utility companies. The audit covered the period January 1, 2012 through August 19, 2016.

Background

The Public Service Commission (Commission) regulates almost 2,000 electric, gas, steam, telecommunications, and water utilities, which collected an estimated \$36 billion in revenue in fiscal year 2015-16. Pursuant to Public Service Law (Law) Sections 65 and 66, the Commission has the authority to set rates for, and ensure that safe and adequate service is provided by, New York's utilities. In addition, the Commission oversees the siting of major utility infrastructure, ensures the safety of natural gas and liquid petroleum pipelines, and provides oversight on the cable industry and telecommunications service. The Department of Public Service (Department) is the operating agency for the Commission. The primary mission of the Department is to ensure affordable, safe, secure, and reliable access to electric, gas, steam, telecommunications, and water services for New York's residential and business consumers, while protecting the natural environment. To aid the Department in accomplishing these goals, the Commission has developed policies and procedures for recording and addressing consumer complaints.

Within the Department, the Office of Consumer Services (OCS) monitors the number and types of complaints received against all utilities operating in the State. OCS's purpose is to ensure that utilities fulfill their obligation to provide effective customer service in compliance with the laws, rules, regulations, and policies that the Commission is charged with enforcing. Under Title 16, Part 12 of the New York Codes, Rules and Regulations, consumers who feel they have not obtained a satisfactory resolution of a complaint with a utility regulated by the Commission may file a complaint with the Commission. OCS utilizes a complaint database to record and monitor complaints received. During our audit period, OCS entered 108,405 complaints and inquiries into the database. Of the 108,405 entries, 80,717 (74 percent) pertained to natural gas and electric services. The most common reasons for the complaints and inquiries were: potential termination of service, service outages, questionable marketing practices, billing issues, and items related to life support equipment.

Key Findings

- The Department consistently applies State laws, rules, and regulations to enforce utility consumer protections related to consumer complaints.
- The Department could improve its monitoring efforts by tracking and documenting broader complaints about more global issues, such as inadequate infrastructure or poor service reliability throughout a particular area, that impact more than just individual consumers. Currently, these issues are directed to individual Department units with little or no documented follow-up to ensure broader issues are addressed.
- The Commission generally does not fine utilities to ensure compliance with regulations. Rather,

the Department prefers to work with the utilities to achieve compliance, such as by requiring performance plans that can be used to evaluate a utility's performance.

Key Recommendations

- Develop a process to track global complaints that ensures accountability for Department staff and documents the efforts undertaken to address consumer issues.
- Periodically evaluate the effectiveness of the performance plans in ensuring safe and reliable service for utility consumers.

Other Related Audit/Report of Interest

[Public Service Commission: Pipeline Safety Oversight \(2015-S-31\)](#)

State of New York
Office of the State Comptroller

Division of State Government Accountability

February 1, 2017

Ms. Audrey Zibelman
Chair
Public Service Commission
Building 3 Empire State Plaza
Albany, NY 12223

Dear Ms. Zibelman:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is our audit report entitled *Oversight of Complaint Activity*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

Table of Contents

Background	5
Audit Findings and Recommendations	6
Management of Complaints	6
Fines and Negative Revenue Adjustments	9
Recommendations	11
Audit Scope and Methodology	11
Authority	12
Reporting Requirements	12
Contributors to This Report	13
Agency Comments	14
State Comptroller's Comments	20

State Government Accountability Contact Information:

Audit Director: John Buyce

Phone: (518) 474-3271

Email: StateGovernmentAccountability@osc.state.ny.us

Address:

Office of the State Comptroller
 Division of State Government Accountability
 110 State Street, 11th Floor
 Albany, NY 12236

This report is also available on our website at: www.osc.state.ny.us

Background

The Public Service Commission (Commission) regulates almost 2,000 electric, gas, steam, telecommunications, and water utilities operating in New York State. In fiscal year 2015-16, these utilities collected an estimated \$36 billion in revenue. There are wide ranges in the scope and magnitude of individual utilities' programs and the numbers of residents they serve. Pursuant to Public Service Law (Law) Sections 65 and 66, the Commission is authorized to set rates for, and ensure safe and adequate service is provided by, New York's utilities. Additionally, the Commission oversees the siting of major utility infrastructure, ensures the safety of natural gas and liquid petroleum pipelines, and provides oversight on the cable industry and telecommunications service.

The Department of Public Service (Department) is the staff arm of the Commission. The primary mission of the Department is to ensure affordable, safe, secure, and reliable access to electric, gas, steam, telecommunications, and water services for New York's residential and business consumers, while protecting the natural environment. The Department has about 515 employees.

The Department's Office of Consumer Services (OCS) monitors the number and types of complaints received against all utilities operating in the State. OCS's purpose is to ensure that utilities fulfill their obligation to provide effective customer service in compliance with the laws, rules, regulations, and policies the Commission is charged with enforcing. Under Title 16, Part 12 of the New York Codes, Rules and Regulations, consumers who feel they have not obtained a satisfactory resolution of a complaint with a utility regulated by the Commission may file a complaint with the Commission. OCS staff will investigate the complaint and notify both the consumer and the utility of any decision. If either the consumer or the utility does not agree with the initial decision, they may request an informal hearing in writing, within 15 days of the initial decision.

OCS utilizes a complaint database to record and monitor complaints received. During our audit period, OCS recorded 108,405 complaints and inquiries in the database; 74 percent of the complaints were related to gas and electric services. The most common reasons for the complaints and inquiries received were: potential termination of service, service outages, questionable marketing practices, billing issues, and issues related to life support equipment.

Audit Findings and Recommendations

The Department consistently applies State laws, rules, and regulations to enforce utility consumer protections related to complaints. Further, the Commission generally does not fine utilities to ensure compliance with regulations. Rather, the Department works with the utilities to achieve compliance through various methods, including formal performance plans. However, we cannot determine if the Department's system of fining utilities is fair and equitable, since not all utilities have a performance plan. Department officials have made a strategic decision to not require performance plans or impose fines on smaller utilities because the Department believes they are among the safest, lowest-cost, and most reliable providers. According to Department officials, methods that encourage compliance are the best options, and officials attempt to balance various competing interests – particularly service safety and reliability, cost-effectiveness, and utility financial viability.

Further, we found the Department could improve its monitoring efforts by better tracking and documenting its response to broader complaints that do not necessarily apply to an individual utility customer, and by periodically assessing the effectiveness of its monitoring and enforcement techniques.

Management of Complaints

Timeliness and Resolution of Consumer Complaints

Our tests showed that consumer complaints reported to OCS are generally resolved consistently, as prescribed by New York State regulations and Department policies, and in a timely manner. OCS's process for handling complaints has several phases to ensure that consumers' issues are heard, that utilities' responses resolve complaints, and that the process is consistent for all those involved. We found the Department maintains an effective and efficient system to document, assess, and resolve individual consumer complaints.

OCS handles all utility complaints, which are received via mail, emails, online complaint forms, telephone calls, or walk-ins. When a complaint first comes in, OCS staff check the complaint database, which is used to record and monitor complaints received, to determine if the consumer's complaint has already been recorded. If the consumer has never contacted OCS about the issue before, then a new case is established with the consumer's and the utility's information.

When a new case is logged, OCS follows a standard administrative process for handling complaints, which can encompass up to three phases, as follows:

1. **Initial Complaint:** The Department's InterTrac complaint system, which contains both the Quick Resolution System and the Standard Resolution System, automatically generates both a Quick Resolution Utility Notice letter, which is sent to the utility regarding the complaint, and an acknowledgment letter, which is sent to the consumer informing them that the case has been entered and the utility company has been notified of the situation.

If the utility does not contact the consumer acknowledging the complaint or does not respond to the consumer within two weeks, or if the issue remains unresolved after discussions with the utility, the consumer is directed to again contact OCS. At that point, the complaint is escalated to the Standard Resolution System, and OCS will investigate the circumstances of the complaint. These cases are assigned regionally when they are received and are checked routinely to ensure that no case is waiting more than 60 days without assignment to a reviewer. Complaint cases are assigned oldest first, with consideration given to each analyst's caseload and expertise and the subject of the case. OCS will then investigate the matter and report the findings of its initial decision to the consumer.

2. Informal Hearing or Review: If the consumer feels OCS's initial decision on their complaint is wrong, they can request an informal hearing or review. This request should be made within 15 days of the initial decision. If the utility and the consumer are still unable to resolve the complaint, a ruling will then be issued by the hearing officer or reviewer.
3. Appeal to the Commission: If the consumer feels the informal hearing decision is wrong, they must appeal the decision in writing to the Commission within 15 days of the decision.

For the four-year period January 1, 2012 through January 13, 2016, there were 114,408 data entries into the complaint database, including 97,270 complaints, 11,135 inquiries, and 6,003 formal opinions. We excluded the formal opinions from our detailed review and focused our tests on consumer complaints and inquiries. We then took a statistical sample of 201 cases from the remaining population of 108,405 entries (97,270 complaints and 11,135 inquiries). Of the 108,405 entries, 80,717 (74 percent) pertained to natural gas and electric services. Our review of the 201 cases found that OCS consistently complied with the protocols prescribed by New York State regulations and with the Department's and the Commission's own established policies and procedures. Further, all cases were handled in a timely manner, and 199 of the 201 cases selected were resolved. The remaining two cases were still ongoing at the time our fieldwork was completed.

Tracking and Resolution of Broader Complaints

As previously noted, OCS has a process and system in place to track individual consumer complaints involving a single utility where the consumer has an account. However, it does not have an effective tracking system for issues raised by someone other than an account holder, such as a tenant whose rent includes utilities or an advocacy or watchdog group. The Department also does not have a system to effectively track complaints that involve more than one utility or those that address broader issues, such as the lack of access to services, inadequate infrastructure, or service reliability across a larger service area. For the purposes of this report, we refer to these broader issues as "global complaints."

OCS officials stated that global complaints are relatively rare, and are either forwarded to the appropriate Department unit to address or received directly by the unit. Officials stated that it is ultimately the units' responsibility to document, investigate, and address global complaints. Nevertheless, they could not provide us with a list of global complaints, the number that have occurred over the years, or their resolution. During the audit, Department officials provided us

with a spreadsheet of issues maintained by one such unit (the Gas and Electric Unit). However, the spreadsheet consisted mostly of safety issues that were identified outside the normal complaint process (as opposed to more global matters) that needed to be investigated.

It is the responsibility of the Commission to ensure consumers' interests are protected and complaints are addressed in an efficient and effective manner. Without sufficient documentation of global complaints, it is difficult to determine if the complaint was addressed, what investigation or research was done to arrive at a resolution, or if a resolution was reached. There should be a system in place to record these complaints in the complaint database and document who is responsible for handling them, what was done to address the issue, and the resolution.

Energy Service Companies (ESCOs)

The Department has recognized that the number of complaints received about ESCOs has increased significantly in recent years, rising from 1,956 in fiscal year 2012-13 to 4,922 in fiscal year 2015-16 (an increase of over 150 percent), and as a result has taken steps to address the issues raised. Specifically, since April 2013, the Commission has suspended or revoked eight ESCOs' ability to market or do business in New York. Further, Department officials have initiated a process to further help identify problem ESCOs, and have indicated they will continue to modify their monitoring of and interactions with ESCOs so that consumer rights are protected.

The Department is responsible for monitoring the business practices of ESCOs. Its authority over the ESCOs is stipulated in the Commission's Uniform Business Practices (UBP). Pursuant to the UBP, the Commission may impose significant sanctions on ESCOs that fail to comply with requirements. Specifically, the Commission can: (1) prohibit an ESCO from marketing in New York State; and (2) suspend or revoke an ESCO's license to do business in New York State. If the Commission takes either of these steps, the ESCO has the right to a full hearing and then can appeal that decision if ESCO officials disagree with it. Department officials stated that if an ESCO's violations were so egregious that they resulted in the death or injury of a person, they could fine the ESCO under Sections 25 and 25a of the Law, which they have used in the past to fine gas and electric companies. However, officials stated they have never applied this provision to ESCOs.

Currently, there are approximately 200 ESCOs licensed to do business in New York, and as noted previously, the number of initial complaints against ESCOs has risen significantly in recent years. In addition to annual reports that disclose this data, OCS staff stated they review daily and monthly reports on complaints against ESCOs. The Department requires the ESCOs to report on how many consumers they serve so they can put the numbers of complaints against each ESCO in perspective. They consider a few complaints against an ESCO in a single day, or five in a month, enough to trigger a review of the ESCO. We reviewed ESCO complaint reports maintained by OCS, as well as Notification of Apparent Failure letters issued to the ESCOs to follow up on the complaints filed. While this process is relatively new, we found reviews were performed when the aforementioned thresholds were reached.

In response to the growing number of complaints, on February 23, 2016, the Commission issued an Order that stated "Effective ten calendar days from the date of issuance of this order,

energy service companies (ESCOs) may only enroll mass market consumers and renew expiring agreements with existing mass market consumers based on contracts that guarantee savings in comparison to what the customer would have paid as a full service utility customer or provide at least 30% renewable electricity.” On June 22, 2016, the Order was invalidated by a court decision, and the Department is currently assessing whether to appeal. In the meantime, the Department has enhanced its monitoring of ESCOs by forming a team to conduct additional review and analysis of ESCO performance, including reviewing complaints and auditing for UBP violations, primarily slamming (the unauthorized transferral of a customer from a utility to an ESCO) and deceptive marketing.

Fines and Negative Revenue Adjustments

As a general practice, the Commission does not fine utilities to ensure compliance with regulations, and instead works with the utilities to achieve compliance. Fines or other penalties are levied only after other efforts have been unsuccessful at achieving compliance or when egregious violations are identified.

The Commission has the statutory authority to pursue penalties on the utilities pursuant to Section 25 of the Law and assess those penalties pursuant to Section 25a. Section 25 states in part that “any public utility company, corporation or person and the officers, agents and employees thereof that knowingly fails or neglects to obey or comply with a provision of this chapter or an order adopted under authority of this chapter so long as the same shall be in force, shall forfeit to the people of the state of New York a sum not exceeding one hundred thousand dollars constituting a civil penalty for each and every offense and, in the case of a continuing violation, each day shall be deemed a separate and distinct offense.” Penalties increase if there is an injury or death involved with non-compliance.

According to Department officials, fines pursued under Section 25 can only be collected when the Commission sues the utility in a court of jurisdiction. In recent years, the Department has levied fines only on rare occasions, mostly involving very serious incidents with deaths. In fact, there were only four settlements, totaling \$1.4 million, with utilities under this provision between January 1, 2012 and May 1, 2016. In contrast, under Section 25a, the Commission can assess and collect penalties through its own administrative processes without suing the utility. However, court action has also been used to collect fines assessed under Section 25a when utilities fail to pay. Department staff assess each litigation on the evidence when deciding on a settlement strategy. Each settlement agreement contains enforcement provisions describing how the penalty is to be imposed and the deadlines for those terms. This includes additional punitive actions to be taken if utilities do not make the required reparations.

In addition to its authority to fine utilities under Sections 25 and 25a, the Department utilizes a program of individualized “performance plans” for certain utilities, which include performance improvement goals that both the Department and the utilities agree are appropriate and achievable. Performance plans can address areas such as: capital infrastructure replacement, customer satisfaction, service quality, system reliability, damage prevention, emergency response times, and/or violations noted during inspections or investigations. The Department monitors

the utilities' performance related to the benchmarks set in each utility's performance plan.

While we found the 11 major electric and gas companies all have performance plans, not all utilities have performance plans. Electric and gas utilities' performance plans are the most extensive due to the potential serious consequences that can occur if they aren't performing to expectations. The performance of these 11 companies is summarized in an annual Performance Measures Report, which staff prepare from data supplied by the utilities. Other utilities may have different elements that make up their plans, and are geared more toward customer satisfaction as opposed to safety. These plans are based on surveys of customers to see how satisfied they are with the services and the number and duration of any service outages.

The performance plans state that the utility has sufficient resources to meet the agreed-upon performance standards. Failure to meet the plan's goals could result in a fine based on a percentage of the utility's revenue. The fines incurred for failing to meet performance plan goals are generally assessed through a process the Department refers to as a "negative revenue adjustment," which typically occurs when a utility applies to the Commission for a rate increase. Currently, the Department estimates that regulated utilities collectively face in excess of \$500 million annually in potential negative revenue adjustments should they fail to meet their prescribed performance goals. The actual amount of negative adjustments, however, has been much less in recent years. During our audit period, there were only seven negative revenue adjustments imposed, ranging from \$2 million to \$9 million each, for a total of about \$27 million.

Based on our audit, we concluded that more significant rate adjustments have not been imposed because Department officials have considerable reservations about the long-term impact of negative revenue adjustments on consumers. Specifically, officials expressed concern that the financial community's assessment of the impact of a negative adjustment could lead a utility's bond holders to conclude that there is risk of a material judgment against that utility, which could lower its bond rating and thereby increase its costs to borrow money. The utility could then use the increased borrowing costs to justify future rate increases, thereby passing along increases in such costs to consumers. Because the Department states it does not want to harm consumers, it is cautious about imposing potentially excessive adjustments. Department officials believe adjustments have been significant enough to motivate companies to take sufficient action to address matters of non-compliance. Department officials stressed that balancing the issues of legal compliance and public safety with the need for reasonable cost and a utility's financial viability is often a complex process.

At the same time, Department officials indicated that performance plans are not the best option for all utilities, and that they currently only have plans in place for certain utilities, as officials deem appropriate. Currently, the major electric and gas companies all have comprehensive performance plans, while other utilities have less comprehensive plans that often focus on customer satisfaction targets. Officials do not plan to develop comprehensive plans for smaller utilities because they believe these utilities are actually among the lowest-cost, safest, and most reliable systems. Officials also indicated that imposing a comprehensive performance plan on a smaller utility would likely be of little benefit and could result in higher rates for consumers.

Based on our audit, we concluded that it was unclear whether the Department's system of fining utilities was fair and equitable, particularly since many utilities were not required to follow comprehensive performance plans and, as previously noted, the Department only fined utilities in limited instances in recent years.

Recommendations

1. Develop a process to track global complaints that ensures accountability for Department staff and documents the efforts undertaken to address consumer issues.
2. Periodically evaluate the effectiveness of the performance plans in ensuring safe and reliable service for utility consumers.

Audit Scope and Methodology

The objective of our audit was to determine whether the Commission consistently applies State laws, rules, and regulations to ensure utility customer protections are enforced, including applying monetary penalties and other sanctions against utility companies. The audit covered the period January 1, 2012 through August 19, 2016.

To accomplish our audit objective and assess related internal controls, we reviewed Department policies and procedures as well as State and federal laws; interviewed Department officials and employees; and reviewed documentation related to the Department's monitoring activities. We also reviewed the Department's complaint database, and selected a statistical sample of 201 complaints from a population of 114,520 to determine with a 90 percent confidence level whether they were brought to a resolution and done so in a timely manner. Finally, we also became familiar with the internal controls related to complaints, and assessed their adequacy related to the areas we audited.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

We provided a draft copy of this report to Department officials for their review and formal comment. Their comments were considered in preparing this final report. Overall, Department officials disagreed with our recommendations and asserted that they were flawed or unnecessary. On balance, we are disappointed with officials' dismissive attitude toward opportunities to improve what we acknowledge is an effective process for managing consumer complaints. In particular, we note that several assertions made by officials in their response to the draft report directly contradict previous statements officials made in response to the audit's preliminary findings. In another instance, the Department takes a report phrase out of context to criticize a conclusion the report, in fact, does not make. A complete copy of the Department's response is attached in its entirety to this report. Also, our rejoinders to certain Department comments are included as the report's State Comptroller's Comments.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chair of the Public Service Commission shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Contributors to This Report

John F. Buyce, CPA, CIA, CFE, CGFM, Audit Director

Walter J. Irving, Audit Manager

Nadine Morrell, CISM, CIA, CGAP, Audit Supervisor

Brandon Ogden, Examiner-in-Charge

Robert Horn, Senior Examiner

Matt Luther, Senior Examiner

Division of State Government Accountability

Andrew A. SanFilippo, Executive Deputy Comptroller

518-474-4593, asanfilippo@osc.state.ny.us

Tina Kim, Deputy Comptroller

518-473-3596, tkim@osc.state.ny.us

Brian Mason, Assistant Comptroller

518-473-0334, bmason@osc.state.ny.us

Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments



Public Service Commission

Audrey Zibelman
Chair

Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman
Commissioners

Paul Agresta
General Counsel
Kathleen H. Burgess
Secretary

Three Empire State Plaza, Albany, NY 12223-1350
www.dps.ny.gov

December 21, 2016

Mr. John Buyce
Audit Director
State Government Accountability
Office of the State Comptroller
110 State Street-11th Floor
Albany, New York 12236

Dear Mr. Buyce,

The New York State Department of Public Service (Department) has reviewed the draft Office of the State Comptroller (OSC) Oversight of Complaint Activity audit report provided to the Department on November 18, 2016. Ensuring consumer complaints are quickly, efficiently, and fairly addressed is of utmost importance. As such, the Department was pleased to note that, as expected, OSC did not identify any significant concerns during the extensive audit of the Department's Office of Consumer Services. However, we write to take issue with the two recommendations made by OSC concerning global complaint tracking and the Department's use of penalties.

During the four year audit period, the Office of Consumer Services received nearly 100,000 consumer complaints. After completing its review, OSC determined that the Office of Consumer Services consistently applies State laws, rules, and regulations to enforce utility consumer protections related to consumer complaints. OSC also found that consumer complaints are documented, assessed, and resolved in an efficient and timely manner.

In addition, OSC noted that the Department has taken significant actions to address the growing number of complaints levied against energy services companies (ESCOs). These actions include but are not limited to thoroughly auditing all ESCOs in New York, revoking the eligibility to do business in New York for ESCOs found in violation of rules, and proposing new consumer protections that were adopted by the Public Service Commission. The Department's Office of Consumer Services utilizes a dedicated staff to actively monitor consumer complaints filed against the ESCOs. Using both daily and monthly reports, staff looks for trends among the complaints

December 21, 2016
 Department of Public Service Response

that could indicate violations of the Commission’s Uniform Business Practices (UBP), such as slamming or deceptive marketing. To further strengthen ESCO monitoring, the Department has implemented an annual internal audit process for those ESCOs about which the Department receives consumer complaints during the calendar year.

With respect to the two recommendations identified in the report, OSC first recommends the Department develop a process to track global complaints. The Department already does this. Notably, OSC found no instance where our current processes failed to address an individual or global consumer complaint in a timely fashion. The few global complaints that do not meet the necessary criteria to be included in the InterTrac system, the Department’s complaint tracking software, are either assigned to or received directly by the appropriate Department offices, which are responsible for documenting, investigating, and addressing these complaints.

Regarding OSC’s recommendation that the Department periodically evaluate the effectiveness of the utilities’ performance plans, this recommendation is flawed and fails to take into account the fact that the performance plans in place for all 11 major electric and gas companies are already regularly evaluated. Each performance plan includes thresholds and related metrics that the utility must reach to avoid being assessed a negative revenue adjustment (NRA). Department staff actively monitors the utilities’ performance against these metrics, which are related to a number of topics including customer satisfaction and system reliability. During a utility’s rate case, typically every two to three years, the metrics are analyzed for reasonableness and adjusted as necessary. With regard to smaller utilities, for the reasons discussed in further detail below, the Department has determined that performance plans are not an effective means of ensuring compliance with regulations.

* Comment 1
* Comment 2
* Comment 3

Global Complaints

OSC Recommendation: Develop a process to track global complaints that ensures accountability for Department staff and documents the efforts undertaken to address consumer issues.

Department Response:

Contrary to OSC’s assertion, the Department has developed and utilizes multiple systems to track and resolve complaints, including global complaints, received from the public. While the Office of Consumer Services is the office primarily responsible for handling consumer complaints, global complaints may be referred to or taken by other offices within the Department. Each office is responsible for tracking and addressing these complaints.

The Office of Consumer Services utilizes a robust process and system to track complaints involving individual customers who have an account with a single utility or multiple accounts with different utilities. These complaints are documented and tracked through the Office of Consumer Services’ Quick Resolution System (QRS) and/or Standard Response System (SRS), which are components of InterTrac – the Department’s consumer complaint tracking system. In a continuing effort to reduce consumer concerns and provide more timely resolution to those consumers who

*See State Comptroller’s Comments, Page 20.

December 21, 2016
Department of Public Service Response

experience a problem with their utility service providers, the Office of Consumer Services developed QRS in 2002. The QRS refers the initial complaint directly to the appropriate service provider, thereby placing the responsibility on the service provider to work directly with the consumer to resolve concerns in a timely manner. QRS also provides the utility a further opportunity to resolve consumer concerns without escalating the case to an SRS complaint, which is then charged against the utility when measuring performance. InterTrac automatically generates a detailed acknowledgment letter that is sent out to the consumer by close of business on the same day the consumer contacts the Office of Consumer Services. The QRS acknowledgment letter describes the Office of Consumer Services' process in great detail. It clearly advises the consumer to re-contact the Office of Consumer Services if the service provider fails to contact or fails to properly address the consumer's concerns so that the case can be escalated to an SRS complaint. An SRS complaint requires a full response to the Office of Consumer Services from the service provider. Once the service provider's response is reviewed and determined to be complete, an Office of Consumer Services analyst will investigate and issue a written determination to the consumer advising about further available complaint processes if the consumer is dissatisfied.

Complaints that do not meet the QRS/SRS criteria are either referred to the appropriate Department office or are taken directly by those offices. Ultimately, it is the Office that receives the complaint that is responsible for investigating, documenting, and addressing these global complaints, many of which can be resolved at an individual customer level. For example, a customer may contact the Office of Consumer Services alleging that damage has been done to a gas pipeline, either by the customer him/herself or a third-party excavator. The Office of Consumer Services will connect the customer with the Department's Gas Safety Section, which will send a field employee to the site to investigate the issue and is responsible for providing the customer with a response. If multiple complaints are received for the same issue, this may result in a further action (*e.g.* see the Commission Order in Case 10-E-0285 that provided customers with the option to decline installation of smart meter technology). These complaints are documented in the Document Matter Management (DMM) system, the Department's primary data storage application used to house all information and documents related to matters being worked on by staff.

*
Comment
4

In the report, OSC recommends that the Department should "Develop a process to track global complaints that ensures accountability for Department staff and documents the efforts undertaken to address consumer issues." The current processes have led to the timely and appropriate resolution of all global complaints. While the Department always strives to identify potential improvements to the current processes, such as collaborating with the NYS Lean Office to refine and optimize our processes, OSC's recommendation to develop a process may fail to take existing procedures into account and would therefore result in redundant and inefficient agency action.

*
Comment
5

December 21, 2016
Department of Public Service Response

Fines, Penalties, and Negative Revenue Adjustments

OSC Recommendation: Periodically evaluate the effectiveness of the performance plans in ensuring safe and reliable service to utility customers.

Department Response:

First, the Department disagrees with the statement from OSC’s report that the “Commission does not fine utilities to ensure compliance with regulations”. That conclusion is simply incorrect. Violations of laws, regulations, and orders are thoroughly investigated and enforced. For examples, in 2007 Consolidated Edison Company of New York, Inc. (Con Edison) shareholders were required to return \$18 million to consumers for failing to provide safe and reliable services to 170,000 residents of Queens, and in April 2016 their shareholders were required to provide \$171 million to consumers to resolve an investigation of Con Edison employees participating in a contractor kickback scheme (ultimately, the employees were charged criminally).

*
Comment
6

Sections 25 and 25-a of the Public Service Law grant the Public Service Commission the statutory authorization to penalize utilities for non-compliance with established regulations. OSC notes that that were four settlements totaling \$1.4 million under section 25 during the audit period, however the final report should note that there were an additional two cases initiated during the period. One remains open, and the other, which was the first enforcement action under section 25-a following its enactment in 2013, was resolved for a value of \$500,000 for consumers at the December 2016 Commission session.

Penalizing utilities for non-compliance should be used strategically to address egregious violations. The Department also utilizes multiple alternative methods and tools to ensure compliance and strong performance by utilities that, if not complied with, will result in a serious financial impact to the utilities’ shareholders. For example, performance plans, in which a utility’s future rate increases are affected by compliance with established metrics and benchmarks, have been utilized since the early 1990’s. The Department has determined that these plans are an effective and economical means to ensure utilities consistently provide safe and reliable service to consumers.

*
Comment
7

Performance plans are negotiated and agreed upon between the Department and the individual utilities, but are ultimately adopted through a Commission Order in a rate case. When developing a performance plan with a utility, the Department devises reasonable and attainable performance goals that will provide consumers with tangible benefits, including but not limited to, improvements in service quality, capital infrastructure, and emergency response times. Utilities are allocated sufficient resources to achieve the goals and Department staff actively monitors each utility’s compliance with the assigned metrics. If a utility does not meet its goals, the utility is assessed an NRA. NRAs are calculated as a percentage of the utility’s revenue and, collectively, the utilities could potentially be assessed more than \$500 million in NRAs annually for failure to meet prescribed goals.

December 21, 2016
Department of Public Service Response

That there have been significantly less NRAs triggered than the maximum, as noted by OSC, should be expected and indicates the NRAs are working as they should to affect good performance. For example, as reported by Department staff to the Public Service Commission at the June 15, 2016 public session, since 2003 there has been a 72.5% improvement in statewide natural gas utility performance in damage prevention which can be attributed to the use of the performance metrics and NRAs.

Importantly, the Department regularly evaluates the effectiveness of the performance plans. Typically every two to three years each utility will request of the Commission a rate increase and, as part of the rate case review process, Department staff analyzes the utility's performance plan and determines whether new metrics should be added or historical measures adjusted or eliminated.

As noted above, the Department has observed significant performance improvements that can be attributed to these plans and believes it has implemented both the appropriate incentives and disincentives to ensure the utilities' continued compliance with performance plan metrics. The report states that "more significant rate adjustments have not been imposed because Department officials have considerable reservations about the long term impact of negative revenue adjustments on consumers." This statement should be clarified in the final report. Once an NRA is set, the Department has no reservation about enforcing it if a utility fails to meet relevant metrics. However, when establishing the NRA in the first instance the Department must balance the goal of influencing utility behavior with the goal of protecting consumers from unintended rate increases. If not set appropriately, NRAs could cause unintended financial consequences to the utility, such as lower bond ratings, thereby increasing costs that could be ultimately passed to the consumer. When devising NRAs, staff evaluates the long term effects this action may have on consumers, particularly the possibility of increased rates. It is a delicate balance for staff to calculate an NRA amount that is sufficient to motivate companies to reach or exceed thresholds while not causing preventable rate increases to the consumer. Importantly, the Department does not hesitate to follow through with NRAs when they are triggered and the final report should not suggest otherwise.

While performance plans provide both the necessary incentives and disincentives for certain utilities to actively improve their operations, these plans are not an appropriate option for all utilities. Smaller utilities have significantly lower total revenues, and orders of magnitude fewer customers than major utilities, so the potential costs to small utility customers to pursue NRAs and performance plans would likely exceed the benefits. Performance plan development and reporting costs spread over millions of customers in a large utility would have a negligible rate impact, but similar costs spread over a few thousand customers of a small utility could cause a rate increase. A small utility may have a total staff comprised of only a handful of employees who are focused on customer service functions such as billing and meter reading or safety functions like leak repairs. Increased performance plan obligations will likely require these utilities to hire additional staff, which will lead directly to rate increases for customers. It is more effective in these cases for Department staff to work closely with these utilities via frequent communication and monitoring

December 21, 2016
Department of Public Service Response

to ensure consumers are provided safe and reliable services at just and reasonable rates. Furthermore, small utility companies are subject to Section 25 and the Department would pursue penalties for non-compliance if necessary.

Working collaboratively with the utilities to improve performance in response to consumer complaints is the first step toward achieving effective regulatory compliance. When the circumstances demand it, punitive measures, including penalties, can be an appropriate means of ensuring that safe and reliable service is provided to the consumers. The Department and the Commission have never shied away from taking all steps, including the pursuit of penalties, necessary to ensure that New York consumers receive the safe, reliable and affordable utility service to which they are entitled.

OSC recommends that the Department “periodically evaluate the effectiveness of the performance plans in ensuring safe and reliable service to utility consumers.” This is already a key step during the rate case process and staff continuously monitors each utility’s performance against established benchmarks and reports to the Commission annually. The Department will continue this practice and, as always, will continue to evaluate its processes for improved efficiencies.

In sum, while the Department agrees with the overall OSC conclusion that the Department consistently applies State laws, rules, and regulations to enforce utility consumer protections related to consumer complaints, it disagrees with the two recommendations for the reasons stated above. Further, we hope that the discussion embodied in this response will assist OSC in developing the final report. Please feel free to contact me if additional information or clarification is needed.

Sincerely,



Audrey Zibelman

Chair

* Comment 8

State Comptroller's Comments

1. This comment contradicts earlier statements officials made in their response to our preliminary findings, in which they indicated that they were willing to assess and develop procedures that could increase efficiency and enhance communication among the offices, and that they would discuss this matter internally to identify potential improvements to the current processes.
2. As noted in the report, because global complaints are not centrally managed, the Department could not provide us with a complete listing of global complaints, the number that have occurred over the years, actions taken by the Department, or the resolution of these complaints.
3. We disagree. Our report acknowledges the Department's efforts with the use of performance plans, not only for the largest utilities but for other providers as well. However, as noted in our report, while we agree that there is monitoring of the 11 major gas and electric utilities, there are other utilities that have performance plans which only focus on customer service, and still others that have no performance plans at all. We looked at the performance plans and how they are used in respect to fines and negative revenue adjustments, and noted that it was unclear whether the Department's system of fining utilities was fair and equitable, particularly since many utilities were not required to follow comprehensive performance plans. Further, as previously noted, the Department has only fined utilities in very limited instances in recent years. In addition, we found instances where significant failures at a utility occurred, even with a performance plan. Therefore, we still recommend that the Department evaluate the effectiveness of the performance plans – including determining if more comprehensive plans are needed for those utilities whose plans do not address safety or re-evaluating the course of action for the utilities that do not have plans at all.
4. The Department made us aware of the DMM system in response to our preliminary findings; however, when we requested a listing of the global complaints within this system, the Department failed to supply us with any such listing.
5. As noted in the report, the Department could not provide us with a complete listing of global complaints, the number that have occurred over the years, actions the Department has taken, or the resolution of these complaints, even with all the tracking systems noted in their response. The Department's comments seem to contradict its response to our preliminary findings. In their response to the preliminary findings, Department officials noted that they were willing to assess and develop procedures that could increase efficiency and enhance communication among the offices. Further, they indicated they would discuss this matter internally to identify potential improvements to the current processes.
6. This is a partial statement taken out of context to imply a conclusion that does not appear in the report. In fact, our report clearly states, "As a general practice, the Commission does not fine utilities to ensure compliance with regulations, and instead works with the utilities to achieve compliance. Fines or other penalties are levied only after other efforts have been unsuccessful at achieving compliance or when egregious violations are identified."

7. As previously noted, these performance plans only address performance benchmarks for safety and customer satisfaction for the 11 major electric and gas companies, while other utilities' plans only address customer satisfaction, and still others have no performance plans at all.
8. To reiterate, the Department's comments relate only to the 11 major electric and gas companies whose performance plans address performance benchmarks for safety and customer satisfaction. Other utilities' plans only address customer satisfaction, or they have no performance plans at all. In response to a preliminary finding, the Department provided auditors with an example of one utility's service problems and the Department's actions. While investigating that utility because of a July 2006 power outage, the Department issued a report containing 87 recommendations for failures with regard to maintenance, operations, and oversight of the network, as well as communication failures with customers, the media, and government officials. A subsequent audit of the utility, prompted by the aforementioned report, resulted in the utility paying a negotiated settlement of \$63 million. Further, this same utility is also mentioned in the Department's current response as having to return \$18 million to consumers for failing to provide safe and reliable service to 170,000 residents and \$171 million to consumers to resolve an investigation of utility employees' participation in a contractor kickback scheme. This utility had a performance plan and should have been evaluated every 2 to 3 years, as the Department has stated. However, these issues still occurred. We believe this is a clear example of why our recommendation to periodically evaluate the performance plans is appropriate.