



PUBLIC UTILITIES REGULATORY COMMISSION

Procedural Rules for Formal Hearings

purc

11/28/2017

Administrative bodies in Ghana have developed individual procedures to govern their dispute resolution mechanisms. Some of the common features found in these procedures include mediation, the use of investigative panels and arbitration. The rules in this document are intended to provide clear guidelines to govern the formal hearing of complaints by the Public Utilities Regulatory Commission and were developed following a review of the dispute procedures of institutions and agencies which practice some form of administrative hearing procedures in Ghana.

<p>1.0 Introduction</p> <p>There are no standard procedures governing the dispute resolution mechanisms used by administrative bodies in Ghana. However common features found in the procedures of these bodies include mediation, the use of investigative panels and arbitration. The rules embodied in this document were developed following a review of the dispute procedures of several institutions and agencies which practice some form of administrative hearing procedures in the country.¹ The rules are based on the requirements of the Public Utilities Regulatory Commission Act, 1997 (Act 538) (“the Act”).</p>	<p>Introduction and Objective</p>
<p>Sections 30 and 48 of the Act mandate the Commission to issue regulations relating to submission of complaints to the Commission and the investigation and determination of the complaints. This was done with the enactment of the Public Utilities (Complaints Procedure) Regulations 1999, (LI 1665). Under Regulation 6(1) of LI 1665, the Commission may constitute a panel of three to five persons employed by the Commission to conduct a formal hearing into a complaint. Further, any person selected by the Commission may be co-opted to serve on the panel. The objective of these Procedural Rules is to provide clear guidelines to govern the <u>formal</u> hearing of complaints by the Commission. Rules governing informal hearing of complaints have been provided elsewhere.²</p>	<p>Legislative Framework</p>
<p>2.0 Establishment of Panel</p> <p>2.1 In the interest of transparency and to enable parties to complaints/disputes tap into a wide pool of expertise, the Commission shall constitute a Panel comprising persons employed by the Commission and external professionals co-opted from relevant disciplines, to be known as Hearing Examiners.</p>	<p>Establishment of Panel</p>
<p>2.2 Hearing Examiners shall be called upon whenever necessary to hear and make full enquiry into complaints brought before the Commission and shall make recommendations concerning those complaints to the Commission.</p>	<p>Formal Hearing to be by Panel of Hearing Examiners</p>
<p>2.3 Hearing Examiners shall serve on full or part-time basis on terms and conditions to be determined by the Commission and shall be bound by the Code of Conduct and Ethics issued by the Commission. Hearing Examiners are required to follow these procedures side by side with the Hearing Officers’ Manual.</p>	<p>Code of Ethics</p>
<p>2.4 There shall be a Chief Hearing Examiner who shall be a full-time employee of the Commission.</p>	<p>Chief Hearing Examiner</p>
<p>3.0 Category / Scope of Matters to be submitted to Panel</p> <p>3.1 The First Schedule sets out the range of complaints that may be submitted to the Commission and the available resolution channels including settlement, mediation and formal hearing. Generally, a complaint that a person has failed to comply with the Act or any enactment or rule relevant to the electricity, gas or water industry regulated by the Commission may be heard by a Panel.</p>	<p>Failure to comply with law generally</p>



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<p>3.2 Disputes before the Commission between two or more utility companies or between utility companies and investors, including but not limited to questions on applicable rates, metering, payment or use of facilities, shall be referred to the Panel in the first instance.</p>	<p>Disputes between utility companies or between utility companies and investors</p>
<p>3.3 Disputes before the Commission between a utility company and a consumer involving a claim for damaged equipment or loss shall be referred to the Panel in the first instance.</p>	<p>Claims for damage or loss</p>
<p>3.4 Disputes which remain un-resolved following mediation under the Commission’s mediation processes shall be referred to the Panel. A Mediator may at any stage in the mediation process declare that further mediation is not worthwhile and refer the dispute to the Panel.</p>	<p>Referral from Mediation</p>
<p>3.5 The Commission may request the Panel to investigate any matter before the Commission and submit recommendations to the Commission.</p>	<p>Referral from Commission</p>
<p>4.0 Pre-Hearing Processes</p>	
<p>4.1 Where indicated in accordance with the Commission’s dispute resolution channels, the Commission’s Complaints and Legal divisions shall refer a complaint to the Chief Hearing Examiner. The Commission may directly submit any matter related to utility services to the Chief Hearing Examiner.</p>	<p>Submission to Panel</p>
<p>4.2 A referral or submission of a complaint or matter to the Chief Hearing Examiner under Rule 4.1 above shall be accompanied by all relevant information in the form or memoranda, correspondence, reports and other documentation.</p>	
<p>4.3 The Chief Hearing Examiner shall review the matter and, within 10 days of the referral or submission, may invite the parties involved to a Pre-hearing Conference. The purpose of the Pre-hearing Conference is to discuss any preliminary issues and to prepare a Scoping Memo setting out all matters in contention between the parties and any additional documentation required for the hearing. Parties may be requested to exchange information. The invitation to a Pre-hearing Conference and Scoping Memo shall be issued in the format provided in the Second and Third Schedules.</p>	<p>Pre-hearing conference & Scoping Memo</p>
<p>4.4 Following the review of the complaint or the pre-hearing conference if any, the Chief Hearing Examiner shall appoint a Chairman and a minimum of two other Panel members based on their expertise in the issues involved, availability and no apparent conflict of interest. No person who was part of a mediation can be a member of a Panel constituted to hear the same complaint. The letters of appointment to a Panel for co-opted external professionals and persons employed by the Commission shall be issued in the format provided in the Fourth Schedule.</p>	<p>Appointment of Panel</p>
<p>4.5 The Chief Hearing Examiner shall issue Notices inviting the parties to the dispute and any other person considered relevant to the dispute to appear before the Panel at a date, time and place specified in the Notice. The date for the formal hearing shall not be less</p>	<p>Notices</p>

¹ National Communications Authority, National Labour Commission, Securities and Exchange Commission, Commission on Human Rights and Administrative Justice and the Energy Commission

² See: Public Utilities Regulatory Commission Guidelines for Settlement and Mediation of Complaints



than seven days from the date of the notice. Notices shall be issued in the format provided in the [Fifth Schedule](#).

4.6 Copies of the Notices and Scoping Memo shall be submitted to Panel members at least seven days before the date for the formal hearing.

5.0 Appearance

5.1 A person appearing before a Panel may raise a maximum of two objections to the membership of the Panel to the Chief Hearing Examiner, stating the specific grounds for the objection. The Chief Hearing Examiner shall make a record of the objection and refer it to the Commission for determination. A copy of the [Objection](#) and the Commission’s determination shall be made available to all parties in the dispute.

Objections

5.2 A Formal Hearing shall be based on the principles of fairness and impartiality and shall be conducted with formality, dignity and order. At all times parties to a Formal Hearing shall address themselves to the Panel.

Fairness and Impartiality

5.3 Persons appearing before the Panel shall appear themselves and may be represented by counsel or another expert.

Party and/or Counsel

5.4 A person appearing before the Panel to give evidence or to answer a complaint shall take an oath.

Oath

5.5 At the first sitting the Chairman of the Panel shall make an opening statement stating the following:

Chairman’s Statement

- i. the particulars of the complaint and reliefs sought,
- ii. the hearing procedure, proposed schedule and hours,
- iii. instructions to parties regarding mode of address, order of presentation, and
- iv. any other instructions to parties.

6.0 Evidence

6.1 Each party shall be afforded a full opportunity to present their case through oral or written evidence and may be questioned by any member of the panel, by his own counsel or expert or by the counsel or expert of the other party.

Rules for Evidence

6.2 The Panel shall regulate the course of proceedings and conduct of the parties and their representatives and may question any person or enquire into any matter related to the complaint.

- i. Evidence in Chief. Each party shall be given the opportunity to present its evidence in chief to the Panel and may tender any relevant documents, articles, or refer to any relevant fact or legal provision during the examination in chief. If the full docket on the complaint is before the Panel, this evidence should only be to correct facts stated by Chairman or omissions.



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ii. Cross Examination. After each evidence in chief the other party or parties may personally or through their counsel, question the witness.

iii. Re-Examination

After cross examination a party may re-examine their witness personally or through their counsel.

iv. Evidence of Parties' Experts – A party is at liberty to call its own experts to appear before the Panel to give evidence. The experts may be cross-examined by the other party or counsel and re-examined by their own party or counsel.

v. Evidence of Commission Staff. Staff of the Commission who were detailed to handle the complaint when it was first lodged with the Commission may be called by the Panel to give evidence on the actions taken on the complaint and on any observations they may have made in the handling of a complaint. Staff may be questioned by the Panel and the parties.

vi. Evidence given during Mediation. No party or staff of the Commission shall disclose evidence / deliberations / concessions made by a party at an earlier mediation on the matter to the Panel.

vii. Panel's Inquiries. At any time during the evidence in chief or cross examination the Panel may question or request clarification from the witness or the party's experts on any aspect of the issues before the Panel.

viii. Scope of Evidence. The Panel shall allow evidence that is relevant having regard to the issues set out in the Scoping Memo.

ix. Rules of Evidence. Rigid rules of evidence are not suited to administrative hearings and shall be relaxed for purposes of hearings under these rules.

x. Request for further information. The Panel may request either party to submit any further information that will be relevant for the determination of the complaint.

xi. Further tests or inspection. At any stage in the hearing the Panel may request an independent expert to investigate a specific matter within a stated timeframe and submit the results to the Panel. Where practicable, the parties will be allowed to cross-examine the independent expert on the contents of the investigation report.

xii. Order to conduct tests or inspection. The Panel may order a public utility to conduct any test or inspection which it considers necessary to resolve the complaint.

xiii. Non-Availability of Party or Witness. The Panel may grant a total of two adjournments per complaint, where a Party or its witness is not available to give evidence or cross examine the other party. An extension may be granted at the Panel's discretion on a case by case basis. Upon adjournment in such circumstances the Chief Hearing Examiner shall serve all parties with Notices stating the next date on which hearing will continue.

xiv. Burden of Proof. A complainant has the burden of proving his case on the balance of probabilities. If the complainant is able to establish a prima facie case, the burden of



<p>proof will shift to the respondent who will have to lead evidence to rebut the prima facie case on a balance of probabilities.</p> <p>xv. <u>Submission of documents</u>. A Party who submits a document to the Panel shall submit a sufficient number of copies for all Panel members hearing the complaint and a copy for the Record in physical or electronic copy, as directed by the Chairman.</p> <p>xvi. <u>Addresses and Closure of Case</u>. A party shall indicate to the Panel when it has concluded its case. A party may file a written Address summarizing its case but is not compelled to do so.</p>	
<p>7.0 Ex Parte Communication</p> <p>7.1 A Panel Member shall not receive information from a party on the case without:</p> <ul style="list-style-type: none"> o giving the other party the opportunity to be present; o making disclosure to the other party; or o ensuring that the information is filed on the Record. 	<p>Restrictions on Ex-Parte</p>
<p>8.0 The Record</p> <p>8.1 The proceedings of formal hearings shall be recorded by a secretary/clerk who shall keep separate files for each complaint.</p> <p>8.2 The secretary/ clerk shall see to all administrative matters related to the conduct of the hearing including serving of notices, management of exhibits, maintenance of simultaneous digital and manual records and recording of the proceedings of a formal hearing.</p> <p>8.3 The secretary/clerk shall work under the supervision of the Chief Hearing Examiner.</p>	<p>The Record</p>
<p>9.0 Panel Recommendations</p> <p>9.1 The Chief Hearing Examiner may convene a Panel Conference immediately after the closure of evidence to enable the Panel members involved in a hearing to deliberate on the issues and evidence presented during the hearing.</p> <p>9.2 Within 14 days of the closure of evidence the Panel shall take a decision on the complaint and submit its recommendations to the Commission together with a full report of the hearing.</p> <p>9.3 In preparing its recommendations, the Panel shall have regard to the facts of the dispute as well as any legal and policy considerations and may recommend any related policy issues for the Commission’s consideration. The Panel’s recommendations shall form part of the record.</p> <p>9.4 Any compensation recommended by the Panel must be in accordance with law or precedent where available.</p>	<p>Panel Conference</p> <p>Panel Recommendations and Submission</p>



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9.5 Decisions shall be taken by the majority of Panel members present and voting and shall be signed by the Chairman of the Panel.

Dissenting Opinion

9.6 A Panel member who dissents with the decision of the majority is entitled to write a dissenting opinion and this shall form part of the record.

10.0 Commission Decision

10.1 The Commission may after reviewing the recommendation of the Panel, take a decision on the complaint and may accept or reject a part or the whole of the Panel's recommendations with stated reasons.

Commission Order

10.2 The decision of the Commission shall be signed by the Chairman of the Commission and issued in the form of an Order.

10.3 A copy of the Commission's decision shall be forwarded to all parties concerned together with a copy of the record.

11.0 Review

Application for Review

11.1 The Commission may, on application by any of the parties within one month of the decision, review its previous decision.

11.2 The final decision at a review shall taken by the majority of Commissioners present and voting.

11.3 A copy of the Commission's decision following a review shall be forwarded to all Parties concerned.

12.0 Evaluation

Evaluation of PURC Procedures

At the conclusion of a Formal Hearing or following the Commission's decision, the Parties shall be invited to complete a confidential [Anonymous Evaluation Questionnaire](#) for the purpose of improving the Commission's dispute resolution procedures.

13.0 Financial Provisions

Finance

13.1 Parties shall be responsible for their own expenses related to Formal Hearings including transportation and cost of counsel and submission of documentation.

13.2 Parties may be required to pay an administrative charge in respect of the hearing of their complaints.

14.0 Definitions and Interpretation



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- | | |
|---|--|
| <ul style="list-style-type: none">▪ These rules shall be interpreted in accordance with the Public Utilities Regulatory Commission Act, 1997 (Act 538) as amended by the Public Utilities Regulatory Commission (Amendment) (Act), 2010 (Act 800) and regulations made thereunder.▪ Masculine and Feminine: references to the masculine gender include the feminine.▪ Singular and Plural: references to the singular include the plural where the context demands. | |
|---|--|

SCHEDULES



Procedural Rules for Formal Hearings

I.

PURC Complaints Categorization

SCOPE OF COMPLAINTS & DISPUTE RESOLUTION MAPPING				
Category	Type	Resolution Map		
		Early Settlement	Mediation	Formal Hearing
Utility v Utility/ Investor	Rates; Use of Facilities; Metering; Payment;;			1
Consumer v Consumer	Separate Metering	1	2	
Consumer v Utility	Billing			
	High Billing	1	2	3
	Bulk Billing	1	2	3
	Other Anomaly (Unit Recovery)	1	2	3
	Delay in Billing	1	2	
Consumer v Utility / Utility v Consumer	Payment – Non-Payment / Non Reflection	1	2	
Consumer v Utility	Quality of service			
	Power Outage / No Flow	1		
	Phase off	1		
	Damaged Equipment / Loss			1
	Overloaded/ Burnt Transformer			
	Low Voltage / Water Pressure	1		2
	Leakage / Pipe Burst	1		
Consumer v Utility Utility v Consumer	Metering			
	Faulty Meter	1	2	
	Stolen Meter	1	2	

II.



Sample Referral to Formal Hearing Memo

(To be completed by Director of Legal Department)

MEMORANDUM

FROM: Director, Legal

TO: Executive Secretary

CC: Head, Formal Hearing

SUBJECT: Referral of Complaint to Formal Hearing Re: (PURC/Comp./.....)

DATE:

In accordance with Regulation 4(3) of the Public Utilities (Complaints Procedure) Regulations, 1999 (LI 1665), the above Complaint (PURC/Comp..) is being forwarded to the Formal Hearing Department.

Settlement and Mediation by the Greater Accra Regional Office are deemed to have broken down as the parties were unwilling to compromise.

Please conduct a Formal Hearing into the issues set out below and any other relevant issues. Copies of the Complaints Form, correspondence and Minutes of meetings pertaining to the complaint are enclosed.

COMPLAINT CATEGORY

Please tick

Rates	Use of Facilities	Metering	Billing	Payment	Service Quality
-------	-------------------	----------	---------	---------	-----------------

Other (Specify)

ISSUES

1. Whether or not

2. Whether or not

3.

4.

III.

Sample Invitation to Pre-Hearing Conference



PUBLIC UTILITIES REGULATORY COMMISSION

OFFICE LOCATION:
NO. 51 & 53 LIBERATION ROAD
AFRICA LIBERATION CIRCLE
ACCRA, GHANA

POSTAL ADDRESS:
P.O. BOX CT 3095
CANTONMENTS, ACCRA
TEL: (233-302) 244180-3
(233-302) 218300
FAX: (233-302) 244188
E-MAIL: info@purcghana.com
www.purc.com.gh

ADDRESSED TO:

CASE REFERENCE _____

IN THE MATTER OF _____

XXX

COMPLAINANT

AND

YYY

RESPONDENT

The above matter has been scheduled for Formal Hearing under the Commission’s Dispute Resolution Procedures.

YOU ARE INVITED to a Pre-Hearing Conference to discuss preliminary issues in preparation for the hearing. All issues in contention between the parties and any documentation required for the hearing will be set out at the conference. No decisions on the merits of the complaint will be taken at the conference.

VENUE: _____

TIME: _____

The typical duration of a Pre-Hearing Conference is 30 minutes to 1 hour, depending on the complexity of the issues.

You are not required to appear with a lawyer but you may do so if you wish. If you are unable to attend please call the number above quoting the Case Reference number. Please note that the Pre-Hearing Conference will proceed without you in the absence of any communication from you.

For further information on our Dispute Resolution Procedures visit www.purc.com.gh/

IV.

Sample Scoping Memo

(To be completed by Chief Hearing Examiner)



PUBLIC UTILITIES REGULATORY COMMISSION

OFFICE LOCATION:

NO. 51 & 53 LIBERATION ROAD
AFRICA LIBERATION CIRCLE
ACCRA, GHANA

POSTAL ADDRESS:

P.O. BOX CT 3095
CANTONMENTS, ACCRA
TEL: (233-302) 244180-3
(233-302) 218300
FAX: (233-302) 244188
E-MAIL: info@purcghana.com
www.purc.com.gh

A: PARTIES

IN THE MATTER OF

XXX

COMPLAINANT

AND

YYY

RESPONDENT

B: CATEGORY			C: REPRESENTATION		
D: RELIEFS SOUGHT FOR COMPLAINANT			FOR RESPONDENT		
COMPLAINANT			RESPONDENT		
Rates	Use of Facilities	Metering	Billing	Payment	Service Quality
----- Other (Specify)			-----		
-----			-----		



Procedural Rules for Formal Hearings

E: ISSUES

List here the specific issues that need to be addressed in the Hearing.

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

F: SUPPORTING DOCUMENTS SUBMITTED / REQUESTED

COMPLAINANT

RESPONDENT

G: DO PARTIES INTEND TO CALL WITNESSES?

Yes

No **NB: Panel has discretion to limit number**

Enter Number

FOR COMPLAINANT _____

FOR RESPONDENT _____

PROVIDE MAIN POINT OF EVIDENCE OF EACH WITNESS

FOR COMPLAINANT

FOR RESPONDENT

1 _____

1 _____

2 _____

2 _____

V.



Appointment to Panel

PUBLIC UTILITIES REGULATORY COMMISSION

OFFICE LOCATION:
NO. 51 & 53 LIBERATION ROAD
AFRICA LIBERATION CIRCLE
ACCRA, GHANA

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TEL: (233-302) 244180-3
(233-302) 218300
FAX: (233-302) 244188
E-MAIL: info@purcghana.com
www.purc.com.gh

Our Ref:

ADDRESSED TO:

CASE REFERENCE _____

Dear Sir/Madam,

Appointment to PURC Panel to Conduct a Formal Hearing Re: -----

In accordance with Regulation 5(1) of the Public Utilities (Complaints Procedure) Regulations, 1999 (LI 1665), the Public Utilities Regulatory Commission wishes to appoint you as a Panel Member to conduct a Formal Hearing into the above complaint.

Enclosed, please find a copy of the documents pertaining to the complaint. We would be grateful if you would indicate your acceptance or otherwise of the appointment by _____
Please also indicate below whether your membership of the Panel would constitute any conflict of interest in the above complaint.

Yours faithfully

I accept the appointment as a Panel Member for the Formal Hearing of the above complaint, and declare that my membership will not constitute any conflict of interest.

Name:..... Signature:..... Date:.....

I cannot accept the appointment as a Panel Member for the Formal Hearing of the above complaint.

Name:..... Signature:..... Date:.....



MEMORANDUM

FROM: Executive Secretary

TO: (Staff)

SUBJECT: Appointment to PURC Panel to Conduct a Formal Hearing Re:

DATE:

In accordance with Regulation 5(1) of the Public Utilities (Complaints Procedure) Regulations, 1999 (LI 1665), the Commission has appointed you as a Panel Member to conduct a Formal Hearing into the above complaint.

Copies of the documents pertaining to the complaint are enclosed. Please complete the acceptance and conflict of interest declaration portion below and submit it to the Legal Department by 13 August 2013.

-
- I accept the appointment as a Panel Member for the Formal Hearing of the above complaint, and declare that my membership will not constitute any conflict of interest.

Name:..... Signature:..... Date:.....

- I cannot accept the appointment as a Panel Member for the Formal Hearing of the above complaint.

Name:..... Signature:..... Date:.....



Notices

PUBLIC UTILITIES REGULATORY COMMISSION

OFFICE LOCATION:
NO. 51 & 53 LIBERATION ROAD
AFRICA LIBERATION CIRCLE
ACCRA, GHANA

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P.O. BOX CT 3095
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www.purc.com.gh

ADDRESSED TO:

CASE REFERENCE _____

IN THE MATTER OF

XXX

COMPLAINANT

AND

YYY

RESPONDENT

The above matter has been scheduled for Formal Hearing under the Commission’s Dispute Resolution Procedures. The hearing will be conducted by a Panel of XXX including a Chairman.

YOU ARE INVITED to appear before the Panel at the date, time and place specified in this Notice to present your side of the case.

DATE: _____

TIME: _____

VENUE: _____

You are not required to appear with a lawyer or other expert but you may do so if you wish. You have the right to withdraw your complaint at any time; this will not limit your right to re-file the complaint subsequently.

Attached is a brief Profile of the Panel Members. If you have an objection to the membership of the Panel, or are unable to attend for any reason, please call the number above quoting the Case Reference number. An objection must state specific grounds and will be referred to the Commission for determination.

Please note that the hearing will proceed without you in the absence of any communication from you. It is an offence to obstruct or refuse to co-operate with the Panel in the performance of its functions.

For further information on our Dispute Resolution Procedures visit www.purc.com.gh/

VII.

Objections

PUBLIC UTILITIES REGULATORY COMMISSION



MEMORANDUM TO COMMISSION

IN THE MATTER OF

XXX

COMPLAINANT

AND

YYY

RESPONDENT

The above matter is scheduled for Formal Hearing before:

----- - Chairman

----- - Member

----- - Member

On ----- the Complainant Respondent hised an objection to-----

The grounds for the objection are: -----

The Commission is hereby requested to consider the objection and make a determination on it.

(Below to be completed by Chief Hearing Examiner)

COMMISSION DECISION:

DATE: -----

SIGN: -----

VIII.

SAMPLE COMPLAINT FORM

CASE REF:.....(Official use)



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TO: _____

Date

Title: _____

Please find attached the above complaint lodged with the Commission by _____ (Complainant).

We hereby forward the complaint to you for your response. Please take note of the applicable Compliance requirements for this complaint, which are indicated below.

Yours faithfully

Compliance Requirements:

Respond within five (5) working days. (If more time is needed, please issue written advice to PURC promptly indicating approximately how much additional time is needed to respond.)

Provide all pertinent information including copies of related correspondence with the complainant

Investigate and explain action taken within _____

Explain company's position

Provide relevant meter readings and statements

Reconnect complainant or customer

Unblock account of complainant or customer to enable unit purchase in the case of prepayment meter

Re-bill complainant or customer (per duration of inconsistent billing/ irregularities or bulk billing)

Provide tariff reference or authority for utility action

Suggest means of resolving this complaint

Contact customer to resolve complaint

