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NOTE ON REPRODUCTION

The court decisions and filed response are retypeset from the record. Original wording is retained; brackets identify reproduction notes, redactions, and omitted portions. Prior binder pagination, decorative graphics, barcodes, and repeated filing headers are omitted. Original document pages and docket identifiers appear with each reproduced part.

Exhibit excerpts are identified as excerpts. Account and deposit identifiers are redacted. The mandate repeats the summary order; only its endorsement is reproduced separately. Historical allegations and citations in the filed response are reproduced as part of that filing, without alteration to conform to the petition's present arguments.

COURT OF APPEALS SUMMARY ORDER, MAY 7, 2026

[Second Circuit No. 25-1996, Dkt. 63.1, May 7, 2026, original pages 1–5.]

25-1996-cv
Hussein v. Consol. Edison, Inc.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 7th day of May, two thousand twenty-six.

PRESENT:
GERARD E. LYNCH,
JOSEPH F. BIANCO,
MARIA ARAÚJO KAHN,
Circuit Judges.

MOTHANA MAHER HUSSEIN,
Plaintiff-Appellant,
v. 25-1996-cv
CONSOLIDATED EDISON, INC.,
Defendant-Appellee.

FOR PLAINTIFF-APPELLANT: Mothana Maher Hussein, pro se, Staten Island, New York.

FOR DEFENDANT-APPELLEE: Michael S. Davi, Consolidated Edison Company of New York, Inc., Law Department, New York, New York.

Appeal from a judgment of the United States District Court for the Eastern District of New York (Rachel P. Kovner, Judge).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court, entered August 18, 2025, is AFFIRMED.

Plaintiff-Appellant Mothana Maher Hussein, proceeding pro se, appeals from the district court's judgment, dismissing his action against Defendant-Appellee Consolidated Edison Company of New York, Inc. ("ConEd"). In his original complaint, Hussein alleged that ConEd had violated the Fair Debt Collection Practices Act ("FDCPA"). The district court ordered Hussein to show cause why the complaint should not be dismissed because ConEd is not a "debt collector" under the FDCPA. Hussein responded with

an amended complaint, again asserting claims under the FDCPA and additional claims under the Equal Credit Opportunity Act ("ECOA") and state law. The district court sua sponte dismissed the FDCPA claim, concluding that Hussein failed to plausibly allege in either his original or amended complaint that ConEd is a "debt collector" under the FDCPA. ConEd then moved to dismiss the remainder of the amended complaint for failure to state a claim, pursuant to Federal Rule of Civil Procedure 12(b)(6). Hussein opposed and again moved to amend, attaching a proposed second amended complaint that sought to assert claims under the ECOA, Truth in Lending Act ("TILA"), and state law. The district court granted ConEd's motion to dismiss the federal claims in the amended complaint, declined to exercise supplemental jurisdiction over the state law claims, and denied further leave to amend as futile. See generally Hussein v. Consol. Edison, Inc., No. 24-cv-4480, 2025 WL 2371049 (E.D.N.Y. Aug. 14, 2025). We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal, to which we refer only as necessary to explain our decision to affirm.

"[D]istrict courts may dismiss a frivolous complaint sua sponte even when the plaintiff has paid the required filing fee." Fitzgerald v. First E. Seventh St. Tenants Corp., 221 F.3d 362, 364 (2d Cir. 2000) (per curiam). Although we have not addressed whether such dismissals are reviewed de novo or for abuse of discretion, we need not decide that question here because the district court's decision "easily passes muster under the more rigorous de novo review." Id. at

364 n.2. A complaint survives a Rule 12(b)(6) motion to dismiss if it alleges sufficient facts, taken as true and with all reasonable inferences drawn in the plaintiff's favor, to state a plausible claim. See MacNaughton v. Young Living Essential Oils, LC, 67 F.4th 89, 95 (2d Cir. 2023). Moreover, when "a district court's denial of leave to amend... was based on an interpretation of law, such as futility,... we review the legal conclusion de novo." Panther Partners Inc. v. Ikanos Commc'ns, Inc., 681 F.3d 114, 119 (2d Cir. 2012). Because Hussein "has been pro se throughout, his pleadings and other filings are interpreted to raise the strongest claims they suggest." Sharikov v. Philips Med. Sys. MR, Inc., 103 F.4th 159, 166 (2d Cir. 2024).

As a threshold matter, Hussein's brief does not challenge the district court's dismissal of his amended complaint for failure to state a claim. He challenges only the fact that the dismissal was without further leave to amend. Accordingly, he has abandoned any issues related to whether his amended complaint stated a federal claim and whether the district court properly declined to exercise supplemental jurisdiction over his state law claims. See LoSacco v. City of Middletown, 71 F.3d 88, 92–93 (2d Cir. 1995).

On appeal, Hussein challenges the district court's denial of leave to file his proposed second amended complaint. "A pro se complaint should not be dismissed without the [c]ourt granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated." Chavis v. Chappius, 618 F.3d 162, 170 (2d Cir.

2010) (alterations accepted) (internal quotation marks and citation omitted). However, "a futile request to replead should be denied." Cuoco v. Moritsugu, 222 F.3d 99, 112 (2d Cir. 2000).

In this case, the district court had already granted leave to amend once, and it correctly concluded that further leave to amend would be futile. See Hussein, 2025 WL 2371049, at *3. As with his amended complaint, Hussein's proposed second amended complaint failed to state an ECOA claim because it did not plausibly allege discrimination. "ECOA provides that it is 'unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction[,]... on the basis of race, color, religion, national origin, sex or marital status, or age.'" Crawford v. Franklin Credit Mgmt. Corp., 758 F.3d 473, 489 (2d Cir. 2014) (alteration in original) (quoting 15 U.S.C. § 1691(a)). ECOA also prohibits discrimination "because all or part of the applicant's income derives from any public assistance program," or "because the applicant has in good faith exercised any right under this chapter." 15 U.S.C. § 1691(a)(2)–(3).

Here, even assuming that Hussein was a member of a protected class or exercised a protected right in good faith, he did not plausibly allege that ConEd treated him differently than other customers, much less that ConEd did so on the basis of a protected attribute or because of any protected activity. See, e.g., Gorham-DiMaggio v. Countrywide Home Loans, Inc., 421 F. App'x 97, 100 (2d Cir. 2011) (affirming dismissal of a plaintiff's ECOA claim because "she failed to

plead sufficiently actionable discriminatory conduct").

Hussein's proposed second amended complaint also failed to state a claim under TILA. TILA "impos[es] mandatory disclosure requirements on those who extend credit to consumers in the American market." Strubel v. Comenity Bank, 842 F.3d 181, 186 (2d Cir. 2016) (quoting Mourning v. Family Publ'ns Serv., Inc., 411 U.S. 356, 363 (1973)). In the instant case, even if ConEd were a creditor for purposes of TILA, Hussein failed to plausibly allege that ConEd violated any requirements of TILA. * * * We have considered all of Hussein's remaining arguments and conclude that they are without merit. Accordingly, we AFFIRM the judgment of the district court.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

DISTRICT COURT MEMORANDUM AND ORDER, AUGUST 14, 2025

[E.D.N.Y. No. 24-cv-04480, ECF 57, August 14, 2025, original pages 1–7, PageID 725–731.]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MOTHANA MAHER HUSSEIN,
Plaintiff,
v.
CONSOLIDATED EDISON, INC.,
Defendant.

MEMORANDUM AND ORDER
24-cv-4480 (RPK) (AYS)

RACHEL P. KOVNER, United States District Judge:

Pro se plaintiff Mothana Maher Hussein, a customer of utility company Consolidated Edison, Inc. ("Con Edison"), Am. Compl. 1 (Dkt. #13), has filed an amended complaint that alleges violations of the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691 et seq., and state law. Defendant has moved to dismiss. Mot. Dismiss (Dkt. #24). Plaintiff has sought leave to file a second amended complaint that contains claims under the ECOA, Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 et seq., and state law. 2nd Mot. to Amend. (Dkt. #32). For the reasons that follow, defendant's motion to dismiss is granted, plaintiff's motion for leave to file his proposed second amended complaint is denied as futile, and the complaint is dismissed with prejudice.

BACKGROUND

The following facts, assumed true for the purposes of this order, are drawn from the operative amended complaint.

1. Plaintiff's Complaint and Amended Complaint

Plaintiff filed an initial complaint against the "Occupant of the Office of CEO & CFO of Consolidated Edison, Inc." on June 24, 2024, asserting violations of the Fair Debt Collection

Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq. Compl. (Dkt. #1). The Court directed plaintiff to show cause why his claim under the FDCPA should not be dismissed because Con Edison is not a debt collector under that statute. See Aug. 29, 2024 Order.

Plaintiff did not respond to the order to show cause, but he instead sought leave to file an amended complaint against Con Edison, alleging that the company violated both the FDCPA and the ECOA. Am. Compl. He alleges in the amended complaint that Con Edison violated the ECOA by refusing to accommodate his request to "rescind the security interest attached to Plaintiff's consumer credit application" and engaging in "discriminatory practices in managing Plaintiff's account." Am. Compl. 4.

The Court accepted plaintiff's amended complaint but dismissed its FDCPA claims for the reason explained in the Court's order to show cause. Sept. 5, 2024 Order.

Defendant then submitted a letter arguing that the amended complaint should be dismissed in its entirety. Among other arguments, defendant contended that the complaint failed to state an ECOA claim.

Defendant argued that, if plaintiff's ECOA claim was dismissed, the court should decline to exercise supplemental jurisdiction over plaintiff's state law claims.

On October 18, 2024, plaintiff filed a document styled as a "second amended complaint with brief and responses to defendant's motions to dismiss both complaints." 2nd Mot. to Amend. The proposed second amended complaint contains additional ECOA allegations related to Con Edison's alleged misclassification of plaintiff's account as commercial. It also raises a new claim under the TILA, likewise premised on Con Edison's misclassification of plaintiff's account. Id. at 28–29 (ECF pagination). In addition, it includes state law claims for unjust enrichment and violations of New York General Business Law ("GBL") § 349. Id. at 29–30. Con Edison opposes the motion to amend. See Mem. of L. 15–17 (Dkt. #36).

The Court directed plaintiff to file a letter explaining why granting leave to amend his complaint to include the ECOA and TILA claims would not be futile, see July 28, 2025 Order, and plaintiff then submitted a letter in response, see Ltr. (Dkt. #56).

STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss a complaint that "fail[s] to state a claim upon which relief can be granted." To survive a motion to dismiss, a complaint must "state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). The facial "plausibility standard is not akin to a probability require-

ment," but it requires a plaintiff to allege sufficient facts to allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ibid. (citing Twombly, 550 U.S. at 556) (quotation marks omitted). In contrast, a complaint fails to state a plausible claim when, as a matter of law, "the allegations in a complaint, however true, could not raise a claim of entitlement to relief," Twombly, 550 U.S. at 558, or when, as a matter of fact, "the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct," Iqbal, 556 U.S. at 679.

A pro se plaintiff should generally be granted leave to amend a complaint at least once "when a liberal reading of the complaint gives any indication that a valid claim might be stated." Nielsen v. Rabin, 746 F.3d 58, 62 (2d Cir. 2014) (citation omitted). But "leave to amend need not be granted when amendment would be futile." Terry v. Inc. Vill. of Patchogue, 826 F.3d 631, 633 (2d Cir. 2016).

The complaint of a pro se plaintiff must be "liberally construed," and "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (citation and quotation marks omitted). Pro se status, however, "does not exempt a party from compliance with relevant rules of procedural and substantive law." Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 477 (2d Cir. 2006) (quoting Traguth v. Zuck, 710 F.2d 90, 95 (2d Cir. 1983)).

DISCUSSION

The ECOA claim in plaintiff's first amended complaint is dismissed for failure to state a claim, and the Court declines to exercise supplemental jurisdiction over the remaining claims in the first amended complaint, which arise under state law. Leave to file a second amended complaint is denied because the proposed amendments would be futile.

I. Plaintiff's ECOA Claims Are Dismissed for Failure to State a Claim.

Plaintiff fails to state a claim under the ECOA. The ECOA makes it "unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction[] (1) on the basis of race, color, religion, national origin, sex or marital status, or age...; (2) because all or part of the applicant's income derives from any public assistance program; or (3) because the applicant has in good faith exercised any right under this chapter." 15 U.S.C. § 1691(a). Plaintiff fails to adequately plead an ECOA claim because he does not allege any actionable discriminatory conduct. Plaintiff alleges that defendant refused to accommodate his request to "rescind the security interest attached to Plaintiff's consumer credit application," Am. Compl. 4, but does not set forth any facts suggesting that this refusal was based on any attribute or activity protected under the ECOA. And while plaintiff's complaint also states that defendant engaged in "discriminatory practices in managing Plaintiff's account," ibid., this allegation is too vague and conclusory to state a claim.

II. The Court Declines to Exercise Supplemental Jurisdiction Over Plaintiff's State Claims.

Having dismissed plaintiff's federal claims, the Court declines to exercise supplemental jurisdiction over plaintiff's state claims. See id. at 4–5. Four factors bear on whether a court should exercise supplemental jurisdiction: "judicial economy, convenience, fairness, and comity." Catzin v. Thank You & Good Luck Corp., 899 F.3d 77, 81 (2d Cir. 2018). Generally, where "a plaintiff's federal claims are dismissed before trial, 'the state claims should be dismissed as well.'" Brzak v. United Nations, 597 F.3d 107, 113–14 (2d Cir. 2010) (quoting Cave v. E. Meadow Union Free Sch. Dist., 514 F.3d 240, 250 (2d Cir. 2008)). Plaintiff has not provided a persuasive reason to depart from the usual practice of declining to exercise supplemental jurisdiction once federal claims are dismissed. Accordingly, plaintiff's state claims are dismissed.

III. The Amendments in the Proposed Second Amended Complaint Would Be Futile.

Plaintiff is denied leave to file his proposed second amended complaint because the amendments that plaintiff proposes would be futile. Plaintiff's proposed second amended complaint would be subject to dismissal because it fails to state a claim under the ECOA or TILA, and the Court would decline to exercise supplemental jurisdiction over the state law claims.

Plaintiff's proposed ECOA claims would fail for the same reasons stated above. The proposed second

amended complaint alleges plaintiff's account was misclassified but does not set forth facts suggesting that the misclassification was based on any attribute or activity protected under the ECOA. See 2nd Mot. to Amend 28–29. The complaint therefore does not allege any actionable discriminatory conduct.

The proposed second amended complaint also fails to state a claim under the TILA. The TILA "impos[es] mandatory disclosure requirements on those who extend credit to consumers in the American market." Strubel v. Comenity Bank, 842 F.3d 181, 186 (2d Cir. 2016) (quoting Mourning v. Family Publ'ns Serv., Inc., 411 U.S. 356, 363 (1973)). Even assuming defendant is a creditor within the meaning of TILA, plaintiff's claim fails because he does not allege that defendant failed to comply with a "mandatory disclosure requirement[]" or any other requirement in TILA. Ibid. (quoting Mourning, 411 U.S. at 363).

Further, even if the Court considered plaintiff's additional filings, plaintiff fails to state a claim. To the extent plaintiff seeks to raise a claim under the Public Utility Regulatory Policies Act ("PURPA"), see Pl.'s Supp. Br. 1–2 (Dkt. #40), his claim fails because PURPA only provides a private right of action to an "electric utility, qualifying cogenerator, or qualifying small power producer," not to an individual consumer, 16 U.S.C. § 824a–3(h)(2)(B); see Allco Fin. Ltd. v. Klee, 805 F.3d 89, 92 (2d Cir. 2015), as amended (Dec. 1, 2015); Coal. for Competitive Elec., Dynegy Inc. v. Zibelman, 272 F. Supp. 3d 554, 565 (S.D.N.Y. 2017), aff'd 906 F.3d 41 (2d Cir. 2018).

For the reasons stated in connection with the state law claims in plaintiff's amended complaint, if plain-

tiff's second amended complaint were filed, the Court would decline to exercise supplemental jurisdiction over plaintiff's proposed state law claims. Accordingly, leave to file the proposed second amended complaint is denied as futile.

IV. Further Leave to Amend Is Denied.

While "[o]rdinarily," a court "should not dismiss a pro se plaintiff's claim without leave to amend when a liberal reading of the complaint gives any indication that a valid claim might be stated," dismissal with prejudice is appropriate when "amendment would be futile" because "there is no indication that [the plaintiff] might plead a valid claim." Hariprasad v. New York, 722 F. App'x 102, 103 (2d Cir. 2018). Here, plaintiff has filed three versions of his complaint with the court, and none gives any indication that a valid claim could be stated through further amendment. Accordingly, further leave to amend is denied.

CONCLUSION

For the foregoing reasons, defendant's motion to dismiss is granted, and plaintiff's motion for leave to file his proposed amended complaint is denied. The complaint is dismissed with prejudice because a liberal reading of plaintiff's filings does not give any indication that a valid claim could be stated in an amended complaint. The Clerk of Court is respectfully directed to enter judgment, close the case, and mail a copy of this order to plaintiff.

SO ORDERED.

/s/ Rachel Kovner

RACHEL P. KOVNER

United States District Judge

Dated: August 14, 2025
Brooklyn, New York

DISTRICT COURT JUDGMENT, AUGUST 18, 2025

[E.D.N.Y. No. 24-cv-04480, ECF 59, August 18, 2025, PageID 733.]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MOTHANA MAHER HUSSEIN,
Plaintiff,
v.
CONSOLIDATED EDISON, INC.,
Defendant.

JUDGMENT
24-cv-4480 (RPK) (AYS)

A Memorandum and Order of Honorable Rachel P. Kovner, United States District Judge, having been filed on August 14, 2025, granting defendant's motion to dismiss; denying plaintiff's motion for leave to file his proposed amended complaint; dismissing the complaint with prejudice because a liberal reading of plaintiff's filings does not give any indication that a valid claim could be stated in an amended complaint; it is

ORDERED and ADJUDGED that defendant's motion to dismiss is granted; that plaintiff's motion for leave to file his proposed amended complaint is denied; and that complaint is dismissed with prejudice because a liberal reading of plaintiff's filings does not give any indication that a valid claim could be stated in an amended complaint.

Dated: Brooklyn, NY
August 18, 2025

Brenna B. Mahoney
Clerk of Court
By: /s/Jalitza Poveda
Deputy Clerk

ORDER INVITING RESPONSE, JULY 28, 2025

[E.D.N.Y. No. 24-cv-04480, text order, July 28, 2025.]

U.S. District Court
Eastern District of New York

Hussein v. Occupant of the Office of CEO & CFO of Consolidated Edison, Inc
1:24-cv-04480-RPK-MMH

ORDER
Entered and filed July 28, 2025

[Docket text from the Notice of Electronic Filing. Administrative email instructions and recipient lists omitted.]

ORDER: Plaintiff is directed to file a letter on or before 8/11/2024 explaining why granting leave to amend to include an Equal Credit Opportunity Act claim would not be futile for the reasons asserted in defendant's [36] reply and why granting leave to amend to include a Truth in Lending Act ("TILA") claim would not be futile in the absence of allegations that defendant failed to comply with a "mandatory disclosure requirement" imposed by TILA. Strubel v. Comenity Bank, 842 F.3d 181, 186 (2d Cir. 2016). Ordered by Judge Rachel P. Kovner on 7/28/2025. (BRS)

[The date "8/11/2024" is reproduced as it appears in the source order.]

ORDER DENYING REHEARING, MAY 28, 2026

[Second Circuit No. 25-1996, Dkt. 65.1, May 28, 2026.]

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 28th day of May, two thousand twenty-six.

Mothana Maher Hussein,
Plaintiff - Appellant,
v.
Consolidated Edison, Inc.,
Defendant - Appellee.

ORDER
Docket No: 25-1996

Appellant, Mothana Maher Hussein, filed a petition for panel rehearing, or, in the alternative, for rehearing en banc. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing en banc.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

MANDATE ENDORSEMENT, JUNE 5, 2026 (EXCERPT)

[Second Circuit No. 25-1996, Dkt. 66.1, June 5, 2026, original page 1 of 5.]

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Hussein v. Consol. Edison, Inc.
25-1996-cv

MANDATE

MANDATE ISSUED ON 06/05/2026

[Mandate endorsement excerpt from DktEntry 66.1, page 1 of 5. The mandate reproduces the May 7, 2026 summary order included above; the duplicate text is omitted here.]

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The pertinent provisions of the Equal Credit Opportunity Act, Regulation B, and Federal Rule of Civil Procedure 15(a)(2) are reproduced below. Ellipses identify omitted portions.

15 U.S.C. § 1691(a), in pertinent part

> It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction—
> (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);
> (2) because all or part of the applicant's income derives from any public assistance program; or
> (3) because the applicant has in good faith exercised any right under this chapter.

15 U.S.C. § 1691(d)(2), (3), and (6)

> (2) Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor. A creditor satisfies this obligation by—
> (A) providing statements of reasons in writing as a matter of course to applicants against whom adverse action is taken; or
> (B) giving written notification of adverse action which discloses (i) the applicant's right to a statement of reasons within thirty days after receipt by the creditor of a request made within sixty days after such notification, and (ii) the identity of the person or office from which such

statement may be obtained. Such statement may be given orally if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.

(3) A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action taken.

(6) For purposes of this subsection, the term "adverse action" means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested. Such term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit.

15 U.S.C. § 1691e(a), in pertinent part

Any creditor who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class.

12 C.F.R. § 1002.2(c)

(c) Adverse action.
(1) The term means:
(i) A refusal to grant credit in substantially the amount or on substantially the terms requested

in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered;
(ii) A termination of an account or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts; or
(iii) A refusal to increase the amount of credit available to an applicant who has made an application for an increase.

(2) The term does not include:
(i) A change in the terms of an account expressly agreed to by an applicant;
(ii) Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account;
(iii) A refusal or failure to authorize an account transaction at point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts, or when the refusal is a denial of an application for an increase in the amount of credit available under the account;
(iv) A refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or
(v) A refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(3) An action that falls within the definition of both paragraphs (c)(1) and (c)(2) of this section is governed by paragraph (c)(2) of this section.

12 C.F.R. § 1002.3(a)

(a) Public utilities credit—
(1) Definition. Public utilities credit refers to extensions of credit that involve public utility services provided through pipe, wire, or other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, and any discount for prompt payment are filed with or regulated by a government unit.
(2) Exceptions. The following provisions of this part do not apply to public utilities credit:
(i) Section 1002.5(d)(1) concerning information about marital status; and
(ii) Section 1002.12(b) relating to record retention.

12 C.F.R. § 1002.9(a)(1)(iii) and (a)(2)

(a) Notification of action taken, ECOA notice, and statement of specific reasons—
(1) When notification is required. A creditor shall notify an applicant of action taken within:
...
(iii) 30 days after taking adverse action on an existing account; ...

(2) Content of notification when adverse action is taken. A notification given to an applicant when adverse action is taken shall be in writing and shall contain a statement of the action tak-

en; the name and address of the creditor; a statement of the provisions of section 701(a) of the Act; the name and address of the Federal agency that administers compliance with respect to the creditor; and either:
(i) A statement of specific reasons for the action taken; or
(ii) A disclosure of the applicant's right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor's notification. The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving the applicant's written request for confirmation.

12 C.F.R. § 1002.9(b)(2)

(2) Statement of specific reasons. The statement of reasons for adverse action required by paragraph (a)(2)(i) of this section must be specific and indicate the principal reason(s) for the adverse action. Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant, joint applicant, or similar party failed to achieve a qualifying score on the creditor's credit scoring system are insufficient.

Federal Rule of Civil Procedure 15(a)(2)

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

RESPONSE TO FUTILITY ORDER, AUGUST 11, 2025

[E.D.N.Y. No. 24-cv-04480, ECF 56, August 11, 2025, original pages 1–6 of 11, PageID 714–719.]

FROM:
Mothana Maher Hussein
2562 Hylan Boulevard, Suite 61413
Staten Island, NY 10306
mothanahussein@gmail.com
(347) 433-5623

TO:
The Honorable Rachel P. Kovner
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: 24-cv-04480 (RPK)(MMH)
Plaintiff's Response to July 28, 2025 Order
(ECOA & TILA, Household-Consumer Misclassification)

BY ECF

PRELIMINARY STATEMENT & RULE 15 REQUEST:

The Court directed Plaintiff to explain (1) why adding an Equal Credit Opportunity Act ("ECOA") claim is not futile, and (2) why adding a Truth in Lending Act ("TILA") claim is not futile absent allegations that Defendant failed to comply with a mandatory

disclosure under TILA. See Strubel v. Comenity Bank, 842 F.3d 181, 186 (2d Cir. 2016). Plaintiff emphasizes that this request does not alter or expand the substantive legal theories already pled in the 2AC. It is made solely to integrate existing factual and regulatory allegations (including 16 NYCRR provisions and Con Edison's PSC tariff obligations) that directly support the ECOA and TILA counts already before the Court.

ECOA. The proposed Second Amended Complaint ("2AC," ECF 32) plausibly alleges Con Edison is a "creditor," 15 U.S.C. § 1691a(e); 12 C.F.R. § 1002.2(l), because it supplies service before payment, imposes credit terms (security deposits, late-payment finance charges), and conditions service on disclosure of sensitive identifiers or a cash substitute. The record shows deposit demands above the legal cap and adverse action shortly after Plaintiff's PSC complaint. (Ex. 37[1]; Ex. 47[2]; Bills at Exs. 1–23[3]; Tariff PSC No. 10 Leaf 26 §§ 3.2.3, 3.3.4-3.3.7; 16 NYCRR §§ 11.12(h), 13.7).

TILA. Con Edison's periodic statements disclose a "Late Payment Charge — 1.5%" but omit the APR and the method of computing the finance charge, contrary to Reg. Z §§ 1026.5(b)(2)(i) & 1026.7(b)(4). (See exemplar bills at Exs. 1–23.) Under Strubel, those omissions constitute a mandatory-disclosure failure, conferring standing and stating a claim.

Rule 15 favors amendment: no discovery has begun; Defendant has briefed these issues; no prejudice; justice favors decision on the merits. Foman v. Davis, 371 U.S. 178, 182 (1962).

Plaintiff further respectfully requests that the Court treat this letter-response, with its citations to applicable New York regulations (16 NYCRR) and Con Edison's PSC tariff provisions, as a supplemental pleading under Fed. R. Civ. P. 15(d) to ECF No. 32 and prior supplements. These provisions validate and contextualize the ECOA and TILA claims already pleaded. In the alternative, should the Court deem formal amendment necessary to include these provisions in the operative complaint, Plaintiff requests leave to file a further amended complaint by a date set by the Court, for the limited purpose of integrating these regulatory and tariff allegations without altering the substantive theories of relief.

1 Exhibit 37: CM/ECF Document 32, PageID #463 (Online Complaint to the Dept of Public Service Commission

2 Exhibit 47: CM/ECF – Document 32, PageID #586

3 Exhibit 1-23 'Billing Statements' Document 32, starts collectively from Page ID #'s 353 to 414.

Your Honor:

Pursuant to the July 28 Order, this letter explains why Counts I (ECOA) and II (TILA) in the 2AC state plausible claims and why granting leave is not futile. It shows (1) why Con Edison qualifies as a creditor under ECOA, (2) how its deposit and billing practices violate TILA and HEFPA, and (3) why those violations entitle Plaintiff to amendment, statutory damages, and equitable accounting under Fed. R. Civ. P. 15(a)(2).

I. ECOA — LEAVE TO AMEND IS NOT FUTILE

A. Con Edison is a "creditor" Under ECOA

1. Regularly extends or arranges credit. Con Edison provides utility service before payment and offers deferred-arrears and Balanced Billing (open-end style) plans. See 15 U.S.C. § 1691a(e); 12 C.F.R. § 1002.2(l). It also imposes late-payment charges—finance charges under Reg. Z § 1026.4(b)(5)— therefore the incidental-credit exemption does not apply. 12 C.F.R. § 1002.3(c)(1)(ii).

2. Deposit as a credit term. Regulation B's Official Staff Commentary treats a security deposit as a credit term subject to ECOA. Reg. B Supp. I, § 1002.3(a) cmt. 2 ("Security deposits"). Con Edison demanded deposits between $420–$612 on an average ~$130 monthly bill (Ex. 1–23; Ex. 47), exceeding the two-months ceiling in 16 NYCRR § 11.12(h), incorporated in Tariff Leaf 26 § 3.2.3. See also Tariff §§ 3.3.4–3.3.7 (alternatives, receipt, interest).

3. PII-conditioned access to credit. Con Edison conditioned service on providing SSN/driver's license/passport—or paying a deposit. (Recorded call 7/31/25, Ex. 55A[4] at 04:16–04:31.) Its Standards of Business Conduct list full SSN, DOB, mother's maiden name, and government-ID numbers as PII gathered to establish credit. (Ex. 45 at PageID 559.) This satisfies ECOA's broad "creditor" definition where the provider relies on credit information or requires a cash substitute to access the product. See Treadway v. Gateway Chevrolet, 362 F.3d 971, 980–81 (7th Cir. 2004); Bayard v. Behlmann Auto Servs., 292 F. Supp. 2d 1181, 1185 (E.D. Mo. 2003).

B. Deposits Are Conditional Loans — IPL's Debtor–Creditor Framework

The Supreme Court in Commissioner v. Indianapolis Power & Light Co., 493 U.S. 203 (1990) held that utility customer deposits create a debtor–creditor relationship: the utility lacks "complete dominion"; deposits are liabilities, refundable with interest unless and until applied to a lawful default. Id. at 210–12. Here, Con Edison (i) demanded the $405 deposit before any default (Ex. 47), and (ii) failed to credit annual interest required by 16 NYCRR § 90.3 and Tariff Leaf 26 § 3.3.5 (compare deposit receipt, Ex. A[5], with subsequent bills, Exs. 1–23). That is the "worst of both worlds" IPL cautions against: holding the customer's money (or its ledger equivalent) while still charging the full bill and finance charges.

4 Exhibit 55A – (submitted herewith) 31 July 2025 recorded call transcript (submitted herewith)

5 Exhibit A – (submitted herewith)– Derived from Document 32 - PageID 447

C. Adverse Action After Protected Conduct

Plaintiff filed a PSC complaint on July 1 (Ex. 37). Six days later, Con Edison issued a Final Turn-Off Notice and deposit demand for $405 (Ex. 47). This constitutes an "adverse action" under 12 C.F.R. § 1002.2(c)(1)(i)–(iii), changing credit terms unfavorably without an ECOA-compliant statement of reasons. The temporal proximity supports a plausible retaliatory inference. The six-day gap—PSC complaint July 1, turn-off/deposit demand July 7—supports a plausible inference of retaliation for asserting CCPA rights.

D. Procedural and Notice Failures (Further ECOA Context)

HEFPA and Con Edison's tariff require written deposit notices, receipt issuance, and disclosure of interest and installment options. 16 NYCRR § 13.7(a)(4)–(5); Tariff Leaf 26 §§ 3.3.4–3.3.7. The demand was made orally first (Ex. 55A at 04:16–04:31) and not all required items appeared contemporaneously. The later-mailed "Customer Deposit Receipt" (Ex. A) acknowledges interest, yet bills after the 8/18/2023 anniversary show no interest credit (Exs. 1–23). These facts reinforce ECOA creditor status and support equitable relief.

II. TILA — LEAVE TO AMEND IS NOT FUTILE

A. The Account Is Consumer Credit

Plaintiff used electricity solely for personal, family, or household purposes. 15 U.S.C. § 1602(i); 12 C.F.R. § 1026.2(a)(12). Open-end rules apply where payment may be deferred past the cycle. 12 C.F.R. § 1026.2(a)(20). Internal mislabeling does not change federal consumer-credit status.

B. Mandatory-Disclosure Violation (APR & Method) — Strubel Controls

Reg. Z § 1026.7(b)(4) requires each periodic statement to disclose:

(1) the APR corresponding to the 1.5% periodic rate and the method of computing the finance charge (balance base, periodic rate, compounding status, the exact grace-period due date required to lawfully

avoid the fee, and payment-allocation order). (Exs. 1–23.)

(2) the dollar amount of that finance charge.

This is textbook mandatory-disclosure noncompliance under Strubel, 842 F.3d at 190–91 (informational injury where creditor fails to provide required information; material risk of harm where omission impairs a consumer's ability to avoid/verify charges). The CFPB's Official Staff Commentary to Reg. Z explains that the APR and finance-charge method are "material" because they enable a consumer to determine the cost of credit, compare it to alternatives, and decide whether and when to incur or avoid the charge. Their omission disables those core statutory functions, satisfying Strubel's material-risk prong.

Standing (two-part Strubel test):

• Informational injury — the APR/method were required and missing.

• Material risk of harm — without those disclosures, Plaintiff cannot know the true cost of late payment or how to avoid or challenge it.

C. Filed-Rate Doctrine Does Not Apply

Plaintiff challenges disclosure compliance, not tariff rate levels. Marcus v. AT&T, 138 F.3d 46, 63–64 (2d Cir. 1998) (filed-rate doctrine does not bar federal disclosure claims).

III. RULE 15 FACTORS FAVOR LEAVE

No undue delay or bad faith; discovery has not begun; Defendant has already briefed these theories;

amendment advances merits adjudication. Foman, 371 U.S. at 182.

IV. BOTTOM LINE

Con Edison's own deposit receipt (Ex. A) confirms the company treated the deposit and PII-conditioned account as a book-entry loan/liability relationship, booked a $405 liability it never funded, and used that liability as interest-free operational capital. It then sidestepped every statutory duty: annual interest credit, two-month cap, required installment option, ECOA adverse-action notice, and accurate TILA disclosures.

The omission of the APR and computation method is not an oversight — it is a deliberate tactic. By keeping those disclosures off periodic statements, Con Edison conceals that the account is open-end consumer credit under federal law. This concealment shields it from:

1. ECOA creditor status, which would trigger equal-terms requirements, adverse-action notices, and CFPB oversight;

2. TILA statutory damages for each defective statement; and

3. Tax scrutiny, because acknowledging a finance-charge APR links the deposit to a credit relationship, undermining its "non-income" treatment under Commissioner v. IPL.

The effect is to preserve a lucrative model in which non-negotiable customer deposits and late-payment penalties finance operations without interest, without disclosure, and without federal consumer-credit

compliance. IPL recognized that deposits are conditional loans in a debtor–creditor relationship, but its tax-focused holding left the consumer-credit implications to other courts. Con Edison exploits that gap — turning what should be a narrow tax classification into a shield against accountability.

V. CONCLUSION & REQUESTED RELIEF

Plaintiff respectfully requests that the Court:

1. In the interest of justice, grant leave and accept the 2AC, its supplements, and this letter as part of the operative pleading; or, in the alternative, grant Plaintiff leave to file a further amended complaint that consolidates and organizes all necessary points. The Court may, consistent with the Haines v. Kerner, 404 U.S. 519 (1972) standard, take from the 2AC, its supplements, and this letter such parts as it finds relevant and liberally construe them in Plaintiff's favor in interpreting and adjudicating the claims.

2. Declare the proper classification "Household-Consumer, Non-Resale," and order:

a. Re-rating of past bills;

b. Refund of excess deposits/fees with statutory interest (16 NYCRR § 90.3);

c. Prospective compliance with HEFPA and tariff deposit rules;

3. Award TILA/ECOA statutory damages: 15 U.S.C. § 1640(a) (including per-statement damages for open-end credit) and § 1691e(c), plus actual damages, costs, and reasonable fees;

4. Order an equitable accounting of deposit and PII-conditioned credit practices, including:

a) Production (under seal if needed) of onboarding/credit-screening files, deposit ledgers, and any credit-bureau inquiries;

b) Reconciliation against each periodic statement since May 2022;

c) A sworn narrative of systems used to store, protect, and access PII, identifying any purged/masked fields;

5. Prospective compliance safeguards for periodic statements (APR, computation method, grace-period due date, compounding status, payment-allocation order; display of deposit principal/interest-to-date and annual credit date), standardized written deposit notices (with ECOA reasons where applicable), documented non-SSN identity alternatives, and retention of onboarding/ledger data for not less than three years;

6. Any other relief the Court deems just, including appointment of a Special Master if accounting reveals customer-funds handling inconsistent with law.

Why Equity Is Needed In Addition to Statutory Damages

TILA/ECOA damages alone cannot restore Plaintiff to the position he would have occupied had Con Edison complied: deposits functioned as conditional loans under IPL (debtor-creditor liability with statutory interest), yet the record reflects missing interest credits and opaque handling (Ex. A; Exs. 1-23). Only an equitable accounting can trace use of customer

funds, confirm interest accruals, and ensure accurate restitution and prospective compliance.

Respectfully submitted,

Declaration: I declare under penalty of perjury that the statements in this letter are true and correct to the best of my knowledge and belief, and that any transcript excerpts are accurate to the best of my ability.

CERTIFICATE OF SERVICE:

I certify that on August 11, 2025, I electronically filed the foregoing letter-response with the Clerk of the Court using the CM/ECF system. The CM/ECF system will automatically send notice of this filing to all counsel of record who are registered CM/ECF users in this action.

Executed on this 11th day of August, 2025

[Signature in original]
/s/ Mothana Maher Hussein
- Plaintiff Pro Se

APPENDIX – Authorities & Record Citations

1. U.S. SUPREME COURT

• Commissioner v. Indianapolis Power & Light Co., 493 U.S. 203 (1990) – utility "security deposits" are conditional, interest-bearing loans held in trust until applied to a lawful default; no "complete dominion."

2. FEDERAL COURTS OF APPEALS

• Marcus v. AT&T Corp., 138 F.3d 46 (2d Cir. 1998) – filed-rate doctrine does not bar TILA-disclosure suits.

• Strubel v. Comenity Bank, 842 F.3d 181 (2d Cir. 2016) – omitting APR or calculation method is facial Reg Z non-compliance.

• Treadway v. Gateway Chevrolet Oldsmobile, Inc., 362 F.3d 971 (7th Cir. 2004) – PII-conditioned security deposit makes provider a "creditor" under ECOA.

3. FEDERAL DISTRICT COURTS

• Bayard v. Behlmann Auto Servs., Inc., 292 F. Supp. 2d 1181 (E.D. Mo. 2003) – entity that "regularly arranges" credit is a creditor under ECOA.

4. FEDERAL STATUTES

• Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691 et seq.

• Truth in Lending Act (TILA), 15 U.S.C. § 1601 et seq.

• Consumer Credit Protection Act (umbrella for ECOA/TILA).

5. FEDERAL REGULATIONS & OFFICIAL COMMENTARY

• Regulation B, 12 C.F.R. pt. 1002 & Official Staff Commentary (Supp. I).

• Regulation Z, 12 C.F.R. pt. 1026 (incl. 89 Fed. Reg. 106837, Dec. 30, 2024 update on late-fees).

6. NEW YORK STATUTES & REGULATIONS

• Home Energy Fair Practices Act (HEFPA) – Pub. Serv. L. art. 2 & 16 NYCRR pts. 11-13.

• 16 NYCRR pt. 90 – interest on customer deposits.

• Public Authorities Law § 1005(5)(g) – municipal-utility exemption (inapplicable).

7. CON EDISON ELECTRIC TARIFF – PSC NO. 10 (KEY LEAVES)

• Leaf 13 (definition of "Customer").

• Leaf 23, Rule 4-L.1(a)(ii)-(iii) (ID-based deposits / delinquency).

• Leaf 26, §§ 3.2.3 & 3.3.4-3.3.7 (two-month cap, alternatives, receipt, interest).

• Leaf 40, § 5.3.4 (written onboarding file).

• Leaf 153, § 20.2(A)(1) (interconnection advances as "other-customer-provided capital").

8. OTHER UTILITY TARIFF

• NYSEG Tariff PSC No. 119, Leaf 101 § 4-S-2(a) – (illustrates collection-credit function during moratoria) deposits remain a collection-credit tool even during moratoria.

9. Record Exhibits (CM/ECF PageID references)

• Ex. 1-23 – Billing statements (PageID 353-356; 439-442).

• Ex. 24-31 – other Notices and Receipts (See Ex. A)

• Ex. A – (submitted herewith)– Derived from Document 32 - PageID 447

• Ex. 37 – DPS/PSC online complaint (PageID 463).

• Ex. 38 – settlement proposal / Con Ed response (PageID 472).

- Ex. 39 – paper application for service (PageID 492-497).
- Ex. 45 – Con Ed Standards of Business Conduct (PageID 559).
- Ex. 47 – Final Turn-Off Notice & $405 deposit demand (PageID 586).
- Ex. 55A – (submitted herewith) 31 July 2025 recorded call transcript.

End of Appendix

CUSTOMER'S DEPOSIT RECEIPT, AUGUST 18, 2023

[E.D.N.Y. No. 24-cv-04480, ECF 56, August 11, 2025, original page 7 of 11, PageID 720.]

conEdison
4 IRVING PLACE, NEW YORK, N.Y. 10003

CUSTOMER'S DEPOSIT RECEIPT

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., HAS ON RECORD AS OF THIS DAY THE AMOUNT INDICATED HEREON AS SECURITY FOR THE PAYMENT OF BILLS RENDERED OR TO BE RENDERED FOR GAS AND/OR ELECTRIC SERVICE SUPPLIED. PLEASE DISCARD ANY DEPOSIT RECEIPTS ISSUED BEFORE THIS DATE.

YOUR ACCOUNT NUMBER: [redacted]
DATE: 08-18-23
DEPOSIT AMOUNT: $405
DEPOSIT NUMBER: [redacted]

MOTHANA HUSSEIN
[Street address omitted]
STATEN ISLAND NY 10306-5618

THIS RECEIPT IS NOT NEGOTIABLE OR TRANSFERABLE

INTEREST WILL BE ALLOWED ON THIS DEPOSIT SO LONG AS IT SHALL REMAIN WITH THE CORPORATION. THE INTEREST ACCRUED ON IT SHALL BE CREDITED TO THE DEPOSITOR ON THE FIRST BILLING FOR UTILITY SERVICE RENDERED AFTER THE

DEPOSIT ANNIVERSARY DATE. INTEREST SHALL BE CREDITED TO THE DEPOSITOR ANNUALLY THEREAFTER.

PLEASE KEEP THIS RECEIPT AS PROOF OF PAYMENT

[Duplicate mailing panel, barcode, decorative marks and prior binder pagination omitted.]

FILED CALL TRANSCRIPT, JULY 31, 2025

[E.D.N.Y. No. 24-cv-04480, ECF 56, August 11, 2025, original pages 8–11 of 11, PageID 721–724.]

Ex. 55A — Call Transcript (7-31-25)
July 31, 2025 at 3:17 PM

[00:00] Prompt Con Edison, for service in English Press 1, To Speak with a Representative now Press 1, para servici espan... Please

[00:04] M. Hussein [Presses 1]

[00:05] Prompt Please listen to the foll.

[00:05] M. Hussein [Presses 0]

[00:06] Prompt To speak to a representative now, press 1, otherwise press...

[00:09] M. Hussein [Presses 1]

[00:10] Prompt Let me connect you to a representative who can help you with your request. To ensure the best possible service, your call may be monitored and recorded for quality assurance purposes. [Dial Tone]

[00:25] Ms. Mack Thank you for calling Con Edison. This is Miss. Mack. How can I assist you?

[00:30] M. Hussein Hi, I just got a home. It's for personal household use and I need to start electric service.

[00:40] Ms. Mack So you're saying that you need to open an account?

[00:43] M. Hussein Yeah.

[00:45] Ms. Mack What's the address?

[00:47] M. Hussein Well, I was hoping like before we begin, um what type of information that you require?

[00:54] Ms. Mack Your Social Security number.

[00:55] M. Hussein Oh, well, Can I do it without the SS number?

[01:02] Ms. Mack You can do it with a driver's license or a passport number.

[01:07] M. Hussein Ok, and um How could I hand you that number?

[01:15] Ms. Mack What is it that you want to do?

[01:18] M. Hussein Um, OK—could you update - if I have an existing account, um can you tell me if it's possible that you've already um taken any personal identifiers?

[01:34] Ms. Mack Sir, you're being very evasive. If you have an account ...

[01:36] M. Hussein Oh, is my question, is my, is my question evasive? How is it evasive—what am I evading?

[01:41] Ms. Mack It is, because You're asking me questions that are like loopholes

[01:46] M. Hussein What am I evading? What am I evading? What am I evading?

[01:49] Ms. Mack Absolutely not—what we will not do is argue.

[01:51] M. Hussein What am I evading? Tell me what I'm evading. You said I'm evasive—tell me what I'm evading.

[01:58] Ms. Mack What is it that you are calling to do? You asked me if you'de open an account -What do you need? I said your Social Security number. You said if you don't want to give your Social Security

number, is there something else. I said a passport number or a driver's license.

[02:11] M. Hussein OK, so—

[02:13] Ms. Mack What is it that you would like to do?

[02:14] M. Hussein Right. OK, then proceeded to state that, if I had an existing account, would you be able to tell me if—under your P, PII, your personal-identification requirements—if you, if you've taken any numbers from me to open that account?

[02:40] Ms. Mack We would have needed one of those three identifying things. I will not be able to have any access to them. I can't see what they are— what the numbers are—on it.

[02:53] M. Hussein OK bec...

[02:54] Ms. Mack So I could, I could depending on how the account is, I would be able to transfer over certain information, but I would need that account number.

[03:06] M. Hussein OK, OK, so, um, once I give you—

[03:09] Ms. Mack Sorry.

[03:10] M. Hussein Sorry—excuse me.

[03:11] Ms. Mack One moment, so I can continue—one moment. What we would need, I would need to know what it is that you're doing so I know where I'm starting from.

[03:22] M. Hussein Right, OK. So, if you have this account number that you're requesting,

[03:27] Ms. Mack Uh huh.

[03:28] M. Hussein ...you would be able to discover if you used the Social Security number or any other type of identifying numbers?

[03:39] Ms. Mack We would be able to see if there was something on the account that we would be able to transfer the information over, if the system allows it.

[03:47] M. Hussein What information are you referring to?

[03:52] Ms. Mack The account number.

[03:54] M. Hussein Right—the account number. I'm- I'm- I'm asking if it was derived—if you would be able to discover if it was derived from any personal-identification numbers. That's my request, that's my ask.

[04:09] Ms. Mack So, in order for you to open up an account—

[04:11] M. Hussein No, no—

[04:12] Ms. Mack You would need to provide—no, let me explain to you.

[04:14] M. Hussein Go ahead.

[04:16] Ms. Mack In order for you to open up any account—be it a past account or a new account—you would need to provide us with one of those three things. If you do not provide us with one of those three things, then you would have had to pay a deposit.

[04:31] M. Hussein Correct, um—

[04:32] Ms. Mack But it depends on me being able to see that account.

[04:35] M. Hussein OK, so is this a new policy that you situated?

[04:38] Ms. Mack No.

[04:39] M. Hussein Because, uh um, in the beginning of like my prior accounts that I was required to hand over only the Social Security number.

[04:53] Ms. Mack What, that's what I told you we would need; that's what I started off with.

[04:57] M. Hussein No, no, no—well, yeah, in my existing accounts that was the only requirement.

[05:03] Ms. Mack That is all that we need.

[05:06] M. Hussein Are you not listening- I was saying that I was never given the other options—that I was told it was only the Social Security number that was required to open the account—and now you're saying—

[05:16] Ms. Mack So I'm not sure of the other conversations that you had with other employees.

[05:21] M. Hussein That's why I'm asking.

[05:22] Ms. Mack I'm being thorough, and I am telling you what we are able to accept.

[05:26] M. Hussein That's why I'm asking—that's why I'm asking is—um, is

[05:30] Ms. Mack [unintelligible]

[05:31] M. Hussein if, Right, That's why I'm asking is if it would be possible to let me know if that if that if a Social Security number was used to open the account, if I were,

[05:46] Ms. Mack I would...

[05:46] M. Hussein If I were to supply you the account number.

[05:48] Ms. Mack If I had the account number.

[05:50] M. Hussein OK, I'll supply you with the account number.

[05:54] Ms. Mack Thank you.

[06:00] M. Hussein I apologize—give me a second, I had it here. Ok...

[06:09] Ms. Mack And is this the prior account number or the new one?

[06:12] M. Hussein No, no, prior..umm looking for it, okay so..The Account Number is uhh.. [account number redacted]. There's a prior account number associated with this account number too if you would like that.

[06:44] Ms. Mack Nope—that's what I meant by the prior account number or new account number. So the number that you provided me, [account prefix redacted], is the new one, and this is for uh Mothana Hussein—

[06:55] M. Hussein Yeah.

[06:56] Ms. Mack —at [street address omitted],

[06:57] M. Hussein Correct

[06:58] Ms. Mack [unit omitted], Staten Island.

[06:58] M. Hussein Right

[07:00] Ms. Mack This account does not have a Social Security number or a tax ID on file. You may have provided a driver's-license number—

[07:09] M. Hussein No— I remember

[07:11] Ms. Mack —or passport number.

[07:12] M. Hussein No, no no, I remember for a fact that when I first called but its interesting that you say that when I first called that I was required to- to supply my Social Security number to open the account, so, unless there's a conflict, I'd like to get, I'de like to have your name and your ID number.

[07:32] Ms. Mack I don't provide my ID number, but my name is Misses Mack. "M' 'A' 'C' 'K'. '

[07:38] M. Hussein OK, and um, would you be willing to testify under the pains and penalty of perjury on your testimony today of what?

[07:45] Ms. Mack Absolute—absolutely not. You are on a recorded line.

[07:49] M. Hussein Ok, um, So you're saying that a Social Security number was not used to establish this account at all?

[07:57] Ms. Mack That is correct.

[08:01] M. Hussein All right, so - there's no number associated to you, Miss- Miss Mack at all like an employee number?

[08:11] Ms. Mack We don't provide our ID number.

[08:13] M. Hussein You don't provide you're ID number...OK, so is it possible to convert this account to a consumer account?

[08:21] Ms. Mack What do you mean by a consumer account? This is a residential account.

[08:24] M. Hussein No, I mean consumer account not -, not -, not any other classification other than a Consumer Account.

[08:31] Ms. Mack No, this is a residential Account.

[08:33] M. Hussein Under the PSC—under the laws of the New York...—

[08:39] Ms. Mack You would need to speak with the PSC for that reason.

[08:42] M. Hussein All right, I'll let you go, Miss Mack.

[08:47] Ms. Mack If there is anything else, Mr. Hussein, thank you for calling Con Edison. Enjoy the rest of your day.

[08:51] End of call

CERTIFICATION

I, Mothana Maher Hussein, certify under penalty of perjury under the laws of the United States of America that the foregoing transcript is a true and accurate transcription of the referenced audio recording, to the best of my knowledge, information, and belief.

Executed on this 11th day of August, 2025.

[Signature in original]
Mothana Maher Hussein
2562 Hylan Boulevard, Suite 61413
Staten Island, NY 10306
mothanahussein@gmail.com
(347) 433-5623

JULY 24, 2023 BILL (EXCERPTS)

[E.D.N.Y. No. 24-cv-04480, ECF 32, October 18, 2024, original page 79 of 300, PageID 381; excerpt.]

FINAL TURN-OFF NOTICE

[Excerpts from July 24, 2023 bill. Usage chart, promotional text and remittance coupon omitted.]

MOTHANA HUSSEIN
Account Number: [redacted]
Service delivered to: [street address omitted]
Next billing date: Monday, Aug 21, 2023

Your billing summary as of Jul 24, 2023
Remaining balance: $894.03
Billing period: Jun 21, 2023 to Jul 21, 2023
Electricity charges - for 30 days: $343.10
Adjustments: $13.41
Total from this billing period: $356.51
Deposit requirement: $405.00
Total amount due: $1,655.54

Payment is due upon receipt of this bill. To avoid a late payment charge of 1.5%, please pay the total amount due by Aug 15, 2023.

There is a turn-off notice on this bill. Set up a payment plan to avoid disconnection. Visit conEd.com/PaymentAgreement. Find more resources at conEd.com/BillHelp.

KNOW YOUR RIGHTS information included with this Bill.

THIS IS A FINAL TURN-OFF NOTICE. PLEASE BRING IT TO OUR ATTENTION WHEN PAYING THIS BILL. A turn-off notice is in effect. Service will be discontinued for non-payment unless an overdue

amount of $894.03 and a deposit of $405 is received immediately. We currently pay 3.45% interest per year on deposits. An explanation of your rights is included.

DEFERRED-PAYMENT AGREEMENT, OCTOBER 6, 2022 (EXCERPTS)

[E.D.N.Y. No. 24-cv-04480, ECF 32, October 18, 2024, original pages 137–138 of 300, PageID 439–440; excerpt.]

Con Edison
October 6, 2022
Account number: [redacted]
Current balance due: $495.89
Pay By 10/18/22

IMPORTANT - A TURN OFF OF SERVICE NOTICE IS STILL IN EFFECT

Since you have not made payment or arranged for a payment agreement on your account, we have arranged a deferred payment agreement for you so that your service will not be disconnected.

Sign And Return This Agreement With Your Downpayment

Please review the terms of this agreement detailed below and, if you agree, sign and return this page with required downpayment amount by October 18, 2022 in the enclosed envelope, making sure the return address appears in the window of the envelope. If you are unable to pay these terms, you should not sign this agreement. Instead, please call us. Since a turn-off notice is still in effect on your account, failure to return the signed agreement with the downpayment or pay the total amount due may result in termination of service.

This is an agreement offer by Con Edison to continue utility service to you as long as you make payments on time for amounts owed. Con Edison agrees that your signature and the payment of the downpayment makes this agreement binding on Con Edison and the customer.
I have read, understand, and accept this agreement.

Your signature: [blank in original]
Date: [blank in original]
[Unchecked box] Yes, I want to enroll in the Level Billing Plan

Important Payment Agreement Information

This agreement must be fair and based on your ability to pay. If you can show financial need, alternate terms will be arranged. Depending on your circumstances, a downpayment may not be required and installments may be as low as $10 per month. This agreement can be changed if your ability to pay changes for reasons you cannot control. If a change is needed, please call us.

If you receive public assistance or Supplemental Security Income (SSI), you may be eligible for help in paying your utility bills. If so, you may want to call or visit your local Social Services Office.

How Much Is To Be Paid

[Remittance coupon, street address, barcode and promotional footer omitted.]

Account Balance: $495.89
Deposit Amount: $0.00
Total Amount of Agreement: $495.89

TERMS OF AGREEMENT

The amount owed is to be paid in the following manner:

A Downpayment of $74.38 is due October 18, 2022.

Installments of $120.00 are due by the 16th of each month.

A Final Payment of $61.51 is due by February 16, 2023.

In addition, current bills issued after October 5, 2022 are due upon receipt.

What Happens If Payments Are Not Made

If we do not receive the installment payments or your current bill payments, we can require you to pay the total amount owed on your account. Before service is turned off, a notice that allows 15 days to pay is mailed to you.

Assistance

If you are unable to pay the terms of the agreement, or need help understanding or making this agreement, call us at 1-877-262-6633. If further help is needed you may reach the New York State Public Service Commission at www.dps.ny.gov/complaints or call them at 1-800-342-3377, Monday through Friday between 8:30 A.M. and 4:00 P.M.

Level Payment Plan

If your usage varies greatly from season to season and you would like to spread your energy payments evenly over a full year or have any questions about the Level Payment Plan, please visit www.coned.com/customercentral or call us at 1-877-262-6633.

SERVICE TURN-OFF NOTICE, MARCH 3, 2023 (EXCERPTS)

[E.D.N.Y. No. 24-cv-04480, ECF 32, October 18, 2024, original page 154 of 300, PageID 456; excerpt.]

Con Edison
March 3, 2023
Account number: [redacted]
Current balance due: $124.07
Pay Immediately

SERVICE TURN OFF NOTICE

We still have not received the $124.07 for bills due on your account. As we told you on your last bill, we will have to turn off your service* unless you pay $124.07 right away, or call us to set up a payment agreement.

You can pay your bill over the phone with your checking account by calling 1-888-925-5016. Otherwise, please mail your payment (check or money order) in the envelope, making sure that our address is visible in the envelope window.

If you can't pay the full overdue amount now, we can set up a fair payment agreement that will let you pay the balance in equal installments over a period of time we both agree on. You must continue to pay your current bills. You may also have to make a down payment that will be no more than 15 percent of what you owe, or half of your average current bill, whichever is greater. The agreement can be changed if your ability to pay changes for reasons you can't control. To discuss a payment agreement, call us at 1-212-243-3003.

After speaking to our representative, if you are not satisfied with the terms of our agreement, please ask to speak to a supervisor.

*If service is turned off, there will be a charge to reconnect service after payment is made. This charge is $26.00 for reconnection during normal business hours and $28.00 for reconnection after normal business hours.

[Remittance coupon, address, barcode and promotional footer omitted.]

BUSINESS-CONDUCT POLICY (EXCERPT)

[E.D.N.Y. No. 24-cv-04480, ECF 32, October 18, 2024, original page 257 of 300, PageID 559; excerpt.]

Con Edison, Inc.
STANDARDS OF BUSINESS CONDUCT, page 15
We Protect Personal Information
[Excerpt]

Personally identifiable information (PII) is any information, either by itself or in combination with other information, that could be used directly or indirectly to identify a person, such as:

- Name, date of birth, mother's maiden name
- Any derivative of Social Security numbers
- Government-issued identification numbers
- Bank account information
- Personal health information (PHI), drug/alcohol testing
- Username or email address in combination with passwords
- Biometric and genetic information

APPLICATION AND SERVICE POLICIES (EXCERPTS)

[E.D.N.Y. No. 24-cv-04480, ECF 32, October 18, 2024, original pages 294 and 297–299 of 300, PageID 596 and 599–601; excerpt.]

APPLICATION FOR SERVICE

[Introductory text excerpt; completed identifying fields and other form sections omitted.]

It's important for you to answer the following questions accurately and completely to determine the proper service classification for your account. For further information on your rights as a customer, please request our RIGHTS AND RESPONSIBILITIES pamphlets.

As a Con Edison customer, you agree to pay for service supplied at the rates, charges, and terms of your service classification, and in accordance with the provisions of the applicable (electricity or gas) Con Edison rate schedule. If you are interested in steam service, please visit www.coned.com/steam. Our rate schedules are located on our web site at www.coned.com and at offices where applications for service can be made.

IMPORTANT INFORMATION FOR ALL APPLICANTS

[Excerpts]

PART B. RATES FOR SERVICE

Rates vary. It is important that your account is properly classified from the start. If your account is eligible for two different rates, you can choose the more beneficial rate. Con Edison uses the infor-

mation you provide to classify your account. If your information is not accurate or complete, we may adjust your account at the proper rate later on. Please notify Con Edison immediately if you add or eliminate equipment. A significant change in the use of equipment may make you eligible for a different rate.

The most common rate classifications are described below.

Electric Rates

• EL1 is for customers who use electricity for their apartment or home.

[Other rate descriptions omitted.]

[Excerpts from application information, continuation]

If you use electric service primarily for residential purpose, you may qualify for certain benefits and protections for residential customers even though you are billed at non residential rates.

Please speak to a service representative if you believe you are eligible for any of these options.

[Intervening text omitted.]

PART C. INFORMATION ABOUT DEPOSITS

New residential customers who do not provide valid identification and all new non-residential customers are required to pay a deposit. We apply interest every year on your deposit at a rate set by the Public Service Commission. We hold the deposit for one year for residential and three years for non-residential accounts. At the end of those periods, we review the account. If there were no late payments during the period, we refund the deposit with inter-

est. If there were one or more late payments, we then review the account each month. We refund the deposit once there are 12 consecutive months (residential) and 36 consecutive months (non residential) without a late payment.

If you are required to pay a deposit, we determine the deposit amount by estimating the charges on two monthly bills. For heating customers, we base the deposit on the charges for two months' service during the heating season. If you are a nonresidential customer there are alternatives to paying a deposit. Ask us about the possibility of providing a surety bond or a letter of credit instead of a cash deposit.

PART D. ADDITIONAL INFORMATION
[Excerpt]

Con Edison's Payment Policy

Payment is due when you receive your bill. We consider the payment late if we do not receive it within 23 days of the date we mailed the bill to you. We apply late payment charges on all past-due balances at a rate of 1.5 percent a month. If you make two or more late payments in a twelve-month period, we may require a deposit or an additional deposit on your account. We offer a Direct Payment Plan option for customers with personal or business bank accounts. You can authorize Con Edison to electronically transfer funds for bill payment.