



# **FAIR TRADING COMMISSION**

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## **CONSULTATION PAPER**

### **Retroactive Billing Policy**

Document No. FTCUR/CONS/RBP/2024-02

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# Contents

PURPOSE OF DOCUMENT .....	2
<b>Responding to this Consultation Paper</b> .....	2
<b>Submission of Comments</b> .....	2
<b>Treatment of Submitted Comments</b> .....	3
<b>Confidentiality</b> .....	3
<b>SECTION 1 INTRODUCTION</b> .....	4
<b>SECTION 2 LEGISLATIVE FRAMEWORK</b> .....	6
<b>SECTION 3 ASSESSMENT OF RETROACTIVE BILLING MATTERS</b> .....	8
<b>Background</b> .....	8
<b>Retroactive billing Policies in other Jurisdictions</b> .....	10
<b>Electricity</b> .....	11
<b>Telecommunications</b> .....	13
<b>Water</b> .....	14
<b>Issues not considered under Retroactive Billing</b> .....	15
<b>Overbilling of the Customer by the Utility</b> .....	18
<b>SECTION 4 TIME LIMITATIONS FOR FAILURE TO BILL CUSTOMERS</b> .....	20
<b>Time limitations in Overcharges and Refunds</b> .....	24
<b>Returning of overcharges to the customer</b> .....	25
<b>Procedure for the Handling of Retroactive Billing Complaints</b> .....	26
<b>What is not covered under Retroactive Billing?</b> .....	27
<b>SECTION 5 CONSULTATION QUESTIONS</b> .....	28

## **PURPOSE OF DOCUMENT**

The Fair Trading Commission “the Commission” is issuing this consultative document for feedback on the implementation of a Retroactive Billing Policy applicable to the utility service providers in Barbados.

The Commission seeks the view of stakeholders on:

- a) The conditions under which such a policy would be applicable;
- b) The time period that the utility is allowed to retroactively bill customers;
- c) The time period a customer is allowed to recover overcharges by the utility; and
- d) The type of redress available.

## **Responding to this Consultation Paper**

The Commission invites and encourages written responses on the matters discussed from all interested parties including customers, utilities, other licensed operators, Government ministries, non-governmental organisations, consumer representatives, businesses and all other interested parties.

This consultative document includes a series of specific questions for which the Commission is seeking comments. To facilitate the analysis of submissions, respondents should reference the relevant question numbers in the document. If they consider it appropriate, respondents may wish to address other aspects of the document for which the Commission has not prepared specific questions. Absence of answers to all questions posed will in no way reduce the consideration given to the submissions of a respondent.

## **Submission of Comments**

The Consultation period will commence on **May 29, 2024** and end on **June 26, 2024 at 4:00 p.m.** All written submissions should be received by this deadline. The Commission is under no obligation to consider comments received after 4:00 p.m. on **June 26, 2024.**

The Consultation Paper may be downloaded from the Commission’s website at <http://www.ftc.gov.bb>. Respondents to the Consultation may submit responses in electronic format. The Commission would prefer that email submissions forwarded to

[info@ftc.gov.bb](mailto:info@ftc.gov.bb) be prepared as a Microsoft Word document and attached to an email cover letter.

Mailed or hand delivered responses should be addressed to the:

Chief Executive Officer  
Fair Trading Commission  
Good Hope, Green Hill  
St. Michael, BB12003  
Barbados

### **Treatment of Submitted Comments**

Responses to this consultation paper will be reviewed, analysed and discussed with stakeholders where appropriate. The Commission will consider the outcome of this consultative process before making a final determination.

### **Confidentiality**

The Commission is of the view that this consultation is largely of a general nature. The Commission expects to receive views from a wide cross section of stakeholders and that the views and comments received should be shared as widely as possible with all respondents.

**Respondents should therefore ensure that they indicate clearly to the Commission any response or part of a response that they consider to contain confidential or proprietary information.**

### **Structure of Paper**

The sections of this paper are presented as follows:

Section 1 Introduction

Section 2 Legislative Framework

Section 3 Assessment of Retroactive Billing Matters

Section 4 Time Limitations for failure to bill customers

Section 5 Consultation questions

## SECTION 1 INTRODUCTION

1. Retroactive billing, also commonly referred to as backbilling, or catch-up billing, is a method of billing employed by utilities, where a customer is billed for previously unbilled or incorrectly billed consumption periods. This is distinguishable from arrears on a customer's account which arose from non-payment. Retroactive billing may be utilized to rectify instances of previous billing anomalies. For example, on discovery of a billing error, the utility issues the customer with a bill for the difference between what was previously billed and what should have been billed. This results in the customer being indebted to the utility if previously underbilled, or eligible for a refund if previously overbilled. This has implications for both customer and utility.
2. Theoretically, the potential exists for a customer to be indebted to the utility for a substantial amount if previously underbilled for an extended period of time. A customer, in this situation, may be asked to settle the outstanding amount immediately or risk disconnection, potentially leaving them in a financially disadvantageous position. This specific situation may be particularly detrimental to the most vulnerable segments of the customer base and can lead to mental stress.
3. As it relates to commercial entities, there can be a potentially negative effect on a business to manage its cash flow, in particular, small and micro businesses. Conversely, the continued financial survival of the utility is threatened if it accumulates substantial account receivables.
4. Given the foregoing, and in the interest of fairness and equity to all customers (residential and commercial) and the utilities, the Commission considers it prudent to establish a policy to regulate retroactive billing, in the electricity, telecommunications, water and sewerage sectors. The policy intends to outline the rights and responsibilities of customers and the utilities alike, as well as establish parameters to govern retroactive billing. These parameters include the time period for which the utility is allowed to retroactively bill a customer, as well as the conditions under which retroactive billing would be permitted.

5. For the avoidance of doubt, the retroactive billing policy would therefore apply to the following regulated entities:

- The Barbados Light and Power Company Limited (the “BLPC”);
- The Barbados Water Authority (the “BWA”);
- Cable & Wireless (Barbados) Limited (C&W);
- Any other service provider that may, in the future, fall under the regulatory purview of the Commission.

## SECTION 2 LEGISLATIVE FRAMEWORK

### Commission's General Duties

6. By virtue of the Fair Trading Commission Act CAP 326B of the Laws of Barbados (as amended by way of the Fair Trading Commission (Amendment) Act, 2020) (the "FTCA"), the Commission has responsibility to, among other things:
  - safeguard the interest of customers;
  - regulate utility services supplied by service providers; and
  - monitor and investigate the conduct of service providers.
7. This broad remit requires the Commission to carry out its more specific functions in a manner that promotes a balance between the rights and responsibilities of customers and those of service providers.

### The Commission's responsibility regarding customer complaints and billing issues.

8. Section 4 (3) of the FTCA requires the Commission to:

*"(i) hear and determine complaints by consumers regarding billings and the standards of service supplied by service providers;*  
*(k) receive and evaluate consumer complaints;*  
*(l) educate and assist consumers in resolving complaints..."*

### Terms and Conditions of Service

9. The Commission is empowered to make rules and regulations applicable to regulated utility service providers. Section 23 of the URA states:

*"The Commission may make rules and regulations prescribing the conditions to be contained in and to become part of all agreements entered into by a service provider in respect of any class of utility service."*

10. Due to the Commission's experience with complaints dealing with retroactive billing, the view is that customers and utilities may benefit from a policy that codifies the practical operation of the duties and responsibilities of utility service providers when billing customers. By virtue of Section 23, such a policy may be incorporated (whether by reference or otherwise) into the existing terms and conditions of service between customers and utilities.

11. The establishment of a retroactive billing policy would ensure that utilities are recovering, and customers are charged, the correct amounts for services rendered under set parameters.



## SECTION 3 ASSESSMENT OF RETROACTIVE BILLING MATTERS

### Background

12. Between January 2015 and September 2023, thirty-four (34) of the fifty-one (51) billing-related complaints received by the Commission from customers of the BLPC, related to retroactive billing, where the utility sought to recover a previously unbilled or under-billed amount. For this same period, of the eighty-six (86) billing related complaints received from the BWA, twenty-nine (29) were related to retroactive billing. 43% of all BLPC complaints and 28% of all BWA complaints received related to retroactive billing<sup>1</sup>.
13. Records show that during the above referenced period, retroactive billing issues represented the largest category of all complaints against these two utilities<sup>2</sup>. Given this observed disparity in relation to other categories, it was determined by the Commission that a thorough examination of this issue was required.
14. Customers are reliant on the information supplied by the utility as an accurate assessment and measurement of their consumption as recorded on the bill. Therefore, when a customer who has been billed for usage, settles the account, and subsequently receives another bill for additional amounts for the same period, it is to the customer's detriment. For example, when the utility neglects to read the meter on a regular schedule and instead issues an interim bill for an extended period, the possibility exists for an accumulation of charges when the meter is finally read. A hardship is experienced when the utility seeks to recover the charges by retroactively billing the customer after this protracted period.
15. A customer may justifiably assume that the bill received from the utility is correct and accurately measures consumption during the specified period. Moreover, customers' billing is solely the domain of the utility; the customer has no control over invoicing, only a responsibility to pay the invoiced amount. Therefore, if a

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<sup>1</sup> There were 79 BLPC and 103 BWA (billing and service combined) complaints from customers.

<sup>2</sup> There were two (2) retroactive billing complaints related to the Cable & Wireless, not a significant amount.

customer has been previously issued with a bill for the service, the utility should be unable to retroactively issue a bill for that same usage in the absence of unauthorised interference, for example, through meter tampering.

16. It would not be equitable that a customer should be disadvantaged due to the utility's failure to take the appropriate action in a timely manner. This sentiment was also clearly expressed by the Office of Gas and Electricity Markets (Ofgem<sup>3</sup>) in the Consultation paper entitled "Protecting Customers who receive back bills"<sup>4</sup>. The development and implementation of a retroactive billing policy seeks to create a balance between the utility and the customer, to avoid either side being unduly disadvantaged.
17. When these complaints are received by the Commission, there is an investigation into the circumstances leading to each instance of retroactive billing. Depending on the results of the investigation, if anomalies are found, for example, the utility was at fault for not billing in a timely manner, the Commission may intercede on the behalf of the customer and request that the utility offer consideration in reducing the quantum of the charges. However, up until now, resolution of these types of complaints has been subject to the discretion of the utility.
18. In the absence of a formal policy or framework, nothing directs or compels the utilities to offer resolution with complaints of this nature. Without a limit on the allowed retroactive billing period, a customer could conceivably receive a bill that covers an inordinate period of time. Ostensibly, the potential for retroactive billing to be problematic exists, given the invoiced amounts and the time periods that may be involved.
19. It is therefore appropriate for a framework to address complaints falling into this category, so that there is a formal, consistent and transparent procedure for attaining resolution and it is not subject to the discretion of the utility.

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<sup>3</sup> Ofgem is the Energy Regulator for Great Britain.

<sup>4</sup> *Protecting Customers who receive backbills - Statutory Consultation*. November. Accessed December 7, 2023. [https://www.ofgem.gov.uk/sites/default/files/docs/2017/11/protecting\\_consumers\\_who\\_receive\\_backbills\\_-\\_statutory\\_consultation.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2017/11/protecting_consumers_who_receive_backbills_-_statutory_consultation.pdf).

## Retroactive billing Policies in other Jurisdictions

20. Ideally, a retroactive billing policy would be unnecessary if the utility invoiced the customer in a timely manner for usage. Unfortunately, in reality this is not practical as there may be circumstances that preclude this.
21. Research has shown that the development of a retroactive billing policy would not be unique to Barbados, as there are several regional and international examples of functioning retroactive billing policies. There is thus regulatory precedent for the implementation of retroactive billing policies and the need for the regulator to intervene pursuant to the established framework.
22. In the United Kingdom (UK), for example, there is the Customer Protection Code of Practice<sup>5</sup> issued by Office of Water Services (OFWAT), which addresses retroactive issues affecting customers, including billing, complaints handling procedures and transfers amongst others<sup>6</sup>. Self-regulation proved ineffective in the electricity sector in the UK, Ofgem concluded that prescriptive rules for back-billing were needed. This came in the form of a license condition, which stipulated that no service provider could back-bill customers for a period beyond 12 months<sup>7</sup>. Ofgem also considered the financial impact on service providers, stating that implementation costs for the new regulations should be manageable, especially since many were following the initial voluntary standards.
23. Similar to Ofgem, the Commission recognized that a significant proportion of complaints received against BLPC and BWA related to retroactive billing and as such, it was considered prudent to intervene and make firm, prescriptive rules to deal with the issue.

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<sup>5</sup> The Customer Protection Code of Practice is a document to protect the interest of customers.

<sup>6</sup> Ofwat. 2019. "Customer Protection Code of Practice Change Proposal - CP0003." *Ofwat*. June 06. Accessed November 21, 2023. <https://www.ofwat.gov.uk/publication/customer-protection-code-of-practice-change-proposal-cp0003/>.

<sup>7</sup> Ofgem. 2018. "Decision: Modification of the electricity and gas supply licences to introduce rules on backbilling to improve customer outcomes." *Ofgem*. 5 March. Accessed November 21, 2023. [https://www.ofgem.gov.uk/sites/default/files/docs/2018/03/backbilling\\_final\\_decision\\_policy\\_document\\_-\\_march\\_5\\_-\\_website.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2018/03/backbilling_final_decision_policy_document_-_march_5_-_website.pdf).

## Electricity

24. The regulator of electricity in Jamaica, Office of Utilities Regulation (“OUR”) directed the establishment of the policy – “Revised Back Billing Policy”<sup>8</sup>. This policy was established to ensure that there is a level of fairness to customers and the utility when issues of back-billing arise<sup>9</sup>.
25. The Regulated Industries Commission (RIC) with responsibility for the regulation of electricity in Trinidad similarly developed and implemented a Code, which addresses the issue of retroactive billing.
26. The Commission’s research has indicated that retroactive billing complaints in the UK have led to the establishment of prescriptive rules that govern the practice of retroactive billing by utilities<sup>10</sup>.
27. In 2007, Ofgem issued guidance on back-billing that was used by the industry to implement a set of voluntary standards to govern the practice. However, the standards appeared inadequate and lacked enforceability as not all suppliers subscribed and the ones that did subscribe, did not always adhere. After a period of observing the industry and the practice of back-billing, Ofgem uncovered the following:
  - a. Back-billing was found to be a common source of complaints. The consumer interest group Citizens Advice and the Ombudsman indicated to Ofgem that based on their experience, back bills or retroactive bills was one of the main issues faced by customers. Moreover, data from Citizens Advice indicated that for the first half of 2017, over 7% of domestic customers had gone more than a year without an accurate bill, thus leading to retroactive bills;<sup>11</sup>

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<sup>8</sup> JPS Backbilling Policy.” *Office of Utility Regulation*. 5 December. Accessed November 23, 2023. [https://our.org.jm/wp-content/uploads/2021/01/29\\_5\\_12-jps\\_back\\_billing\\_policy\\_2012.pdf](https://our.org.jm/wp-content/uploads/2021/01/29_5_12-jps_back_billing_policy_2012.pdf).

<sup>9</sup> The legislation in Jamaica (Office of Utilities Regulation Act) does not specifically mention back-billing but it is analogous to Barbados’ FTCA.

<sup>10</sup> In the UK, there is no specific Act that addresses ‘back billing’; however, such policies were developed in order to protect the rights of customers.

<sup>11</sup> Ofgem, Protecting customers who receive back bills: Statutory Consultation, November 2017

- b. As the voluntary standards were losing effectiveness, it became clear that service providers needed to be incentivized to be more efficient in their billing practices; and
- c. Energy is an essential service and service providers must be held to a minimum standard of service delivery. Billing is an integral part of said service and as such, customers ought to be able to rely on the bills they receive from suppliers of gas and electricity.

28. Ofgem's main objectives were to provide protection for consumers from unexpected shock bills and incentivise service providers to adhere to an acceptable minimum standard that would improve the efficiency of their billing processes. Ofgem identified the potential harms it sought to shield customers from. These included:

- a. Unexpected large bills that can cause mental and financial stress and potentially worsen a vulnerable situation.
- b. Repayment difficulties in cases where the customer's income may be insufficient, which could adversely affect both households and small businesses.

29. The issue was comprehensively addressed by Ofgem, which issued a decision in 2017 to introduce rules on back-billing after observing a need to protect gas and electricity customers, specifically, residential customers and microbusinesses<sup>12</sup>. Ostensibly, back-billing, which involved mainly instances where the service providers were either not billing customers for certain consumption periods or incorrectly billing customers, was becoming a frequent issue.

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<sup>12</sup> 2017. *Protecting Customers who receive backbills - Statutory Consultation*. November. [https://www.ofgem.gov.uk/sites/default/files/docs/2017/11/protecting\\_consumers\\_who\\_receive\\_backbills\\_-\\_statutory\\_consultation.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2017/11/protecting_consumers_who_receive_backbills_-_statutory_consultation.pdf).

## Telecommunications

30. Notably, research into the telecommunications industry reveals that retroactive billing policies exist to some extent in the United States of America (USA) as these practices are encountered at both state and federal levels. Most prominently, the Federal Communications Commission (FCC) notes that it hears or mediates retroactive billing matters usually on a case-by-case basis. However, the majority of these cases pertain to usage-based services e.g., voice minutes.
31. The major difference in the Barbados context, is that the Commission presently only regulates C&W's fixed line voice services, for which there is a fixed rate rather than a charge based on usage, i.e., calls made or received. Deviations would only occur if the customer used a service outside of the package to which they subscribe, for example, making international calls outside of the package on the landline.
32. While the wider research has not provided much to consider, this should not be seen as an indication that the proposed policy would be inapplicable to this sector. The Commission's actual day-to-day experience with customer complaints does give some examples of retroactive billing instances in telecommunications. These include the following scenarios:
  - a. A customer discovered charges dating back for an extended period of time for a service that they no longer subscribed to nor were they receiving.
  - b. A customer provided proof of their request to discontinue a service, but the said service remained in place for an extended period of time. Though it is unlikely that a vigilant residential customer would face this issue, a business subscribed to many service lines and services may not become aware of this issue right away.
  - c. Human error, e.g., on the part of clerical staff, can account for situations where customers are incorrectly charged or classified for an extended period of time. Examples could include charging a customer for a lesser bundle package, not charging for services rendered to the customer or charging for services that the customer does not have access to. It is

important to remember that C&W is required to charge customers according to its approved tariff schedule and no customer is to be afforded a discounted service that is prejudicial to any other customers.

## Water

33. Paragraph 16(4) of the BWA Water Services Regulations is notable. While it does not explicitly state that the BWA can retroactively bill customers, it appears to imply such. Paragraph 16(4) states:

*“Where for any reason the registration of the meter is not recorded, the occupier shall be charged for each month in which registration is not recorded for a quantity of water equal to the average monthly consumption of the previous 3 months, determined in accordance with paragraph (1)(b)(ii) to (iv).”*

34. The research revealed that whilst there were no Caribbean countries with established retroactive billing policies relating to the water sector, such policies exist in the USA, Canada, the UK and Australia.

35. In Victoria, Australia, the Essential Services Commission mandates specific industry standards that water utilities must comply with, when providing water to customers outlined in the Water Industry Customer Service Document<sup>13</sup>. This document addresses retroactive billing.

36. Notably, in the state of Wisconsin in the USA, the Statutory code specifically addresses retroactive billing. The genesis of the policies in these countries, was a necessity to protect customers by the relevant regulatory authorities and States<sup>14</sup>.

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<sup>13</sup> 2020. “Changing the Back Billing rules.” *Essential Services Commission*. 8 July. Accessed November 22, 2023. <https://www.esc.vic.gov.au/sites/default/files/documents/changing-the-back-billing-rules-final-decision.pdf>.

<sup>14</sup> The Regulatory Authority or States with the establishment of a Retroactive Billing Policy in the Water sector are as follows: Ontario (Canada), Washington Utilities and Transportation Commission (USA), California (USA), State of Wisconsin (USA), North Carolina (USA), OFWAT (U.K), Essential Services Commission (Australia).

37. Based on the foregoing discussion, the Commission considers that it would be prudent to establish a retroactive billing policy to address issues related to retroactive billing.

### **Issues not considered under Retroactive Billing**

38. The Commission considered instances where there were errors on the customer's account resulting from payments being unrecorded by the utility and therefore not reflected on the next month's bill. These were viewed as adjustments in accounts and therefore do not uniquely fit under a retroactive billing policy. For this reason, these are excluded.

39. In instances where customers have already been billed for service and the amount in question relates to the utility trying to collect outstanding amounts. This would be considered a debt collection issue and not an issue to be covered under the policy.

40. In cases when there is a meter replacement due to measurement errors, noticeable differences in the consumption pattern may be observed. Unless the utility is able to provide incontrovertible evidence of unauthorized usage (water and electricity), the customer must not be retroactively billed in an effort to recover any resultant difference.

### **Underbilling of the Customer by the Utilities**

41. Retroactive billing complaints have at times been rooted in the negligence of the utility and other times through the unlawful action of the customer. However, from the complaints received by customers of the utilities, retroactive billing may arise through, inter alia:

- a. Estimated meter readings that undercharge depending on the utility's method of estimation;
- b. Meter reading errors, due to human error or malfunctioning meters;
- c. Failure by the utility to correct a reported fault or issue, resulting in a gradual accumulation of debt/ credit on the customer's account;



- d. Charging more or less than is permitted under a particular tariff schedule;
- e. Unbilled accounts;
- f. Errors on payment records;
- g. Installation of the incorrect meter type by the utility;
- h. Failure by the utility to update customers' records in a timely manner;
- i. The utility's failure to read the meter and the resultant issuance of interim bills;
- j. A current account holder being billed for arrears that were incurred by a previous account holder at the same address;
- k. Clerical errors in bill computations or data entry errors; and
- l. The application of incorrect factors by the utility<sup>15</sup>.

42. Generally, when the utility recognizes a disparity between the amount the customer has been billed and the amount the customer should have been billed, the utility generates and issues a bill to the customer for the difference. Notably, the installation of the Advanced Metering Infrastructure (AMI) meters often leads to disparities between usage registered under the older meter and the usage registered under the AMI meters. It is anticipated that as more of the electromagnetic meters are replaced, one can expect to see a further increase in these claims.

43. In the case of the BLPC's Standards of Service (SOS), it is noteworthy that under the Overall Standard OES 1, 100% of domestic meters are to be read every two (2) months, whilst 100% of large power meters are to be read monthly. Under the BWA's Standards of Service, OWS 1 – Meter Reading states that 100% of accessible meters are to be read monthly by the BWA. Thus, consideration must be given to the Standards of Service in the design of the policy.

44. The Commission proposes that the utility be allowed to retroactively bill when:

- a. Previously unbilled accounts exist;

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<sup>15</sup> This refers to a situation where the settings in the revenue meter was (1) incorreceted set or (2) where the meter was incorrectly connected by the BLPC.

- b. The customer has been utilizing the utility service but has made no attempt to contact the utility to arrange payment. This includes moving into a previously unoccupied property and not informing the utility about the occupancy status<sup>16</sup>;
- c. The customer has not co-operated with attempts to obtain meter readings or resolve queries requested by the utility. This restricted access to the meter by the occupant of the property, through denial of entry by locked gates, excessive foliage, the presence of an animal, or other circumstance which impedes access;
- d. Incorrect meter readings due to errors, whether human or system/infrastructure;
- e. Failure of the customer to report a fault or issue, resulting in the gradual accumulation of debt on the customer's account<sup>17</sup>;
- f. There was an installation of the incorrect meter type;
- g. The account has not been registered, is not included in the meter database and was therefore never billed<sup>18</sup>;
- h. The service was previously unbilled due to oversight, for example, the failure to update accounts where work was conducted, or as a result of an error, the customer was billed for a meter which was not on their account;
- i. There was an error in account number, for example, one customer's meter reading being entered in error to another customer's account; and,
- j. The service was used and charged at a price lower than the published rate<sup>19</sup>, due to some action by the customer, except in cases where a discounted rate or special package is agreed.

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<sup>16</sup> This could occur where there is an unmetered water service that is not being invoiced because it is not listed in the computer system.

<sup>17</sup> An example could be where the customer was not being billed for consumption because of database issues (human errors data entries) and the customer refused to notify the utility of this issue. Additionally, in instances where the customer's meter number was misassigned to another customer's meter number and there is a benefit from lower usage from the error. When the error is subsequently found, the customer is responsible for the payment of their actual usage.

<sup>18</sup>An example could occur where there is a change in the metering technology from analog to AMI meters, however, because the building was unoccupied and not being used, the meter was not changed. Subsequently, occupants move into the building and fail to inform the utility company that the building is now occupied. Since the utility company is unaware of the status change, the utility does not issue a bill. Furthermore, since the AMI meters are remotely read, the usage on the old meter would not be registered.

- Q1. Do you agree that the utilities should be able to retroactively bill customers in the situations outlined? Please give reason(s) for your answer.**
- Q2. Do you believe there are other situations other than those outlined in the previous section when retroactive billing would be applicable? If so, please provide a list of these situations.**

### **Overbilling of the Customer by the Utility**

45. Historically, from general research and from the complaints received at the Commission, overbilling can arise from several circumstances, including but not limited to the following:
- a. Errors as a result of incorrect meter readings, through human error or meter error (faulty meter);
  - b. An error in account number, for example, one customer's meter reading being entered in error to another customer's account; and,
  - c. Estimated bills based on higher historical usage.
46. Since the proposal is for the utility to be permitted to recover previously under-billed amounts in certain situations, in the interest of equity, a customer should be similarly entitled to redress when the reverse occurs, i.e., when the utility overbills.
47. Overbillings may be limited to one billing period or may span several periods. This can occur where a meter remains unread for an extended period and the customer receives 'estimated' bills. The overbilling may only be detected after the meter is read, and adjustments applied to the account.
48. The most fundamental question in overbilling is whether there are any time limitations to a customer's right to redress. This must be assessed in the context

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<sup>19</sup> For example, where a customer uses equipment to bypass certain systems to get lower overseas call rates. This is seen less today with the advent of 'over-the-top' services. Newton's Telecom Dictionary defines the term 'over the top' as over the internet to the customer's premises. The term describes voice and video services that are provided to customers over the internet instead of over a purpose-built network such as a telephone network or cable TV network (Schoen 2021).

that there is asymmetry of information, that is, there is an imbalance where the utility has the information, but the customer does not. The customer is reliant on the utility to bill them based on that information. It is conceivable that the customer may contribute to a situation where they are billed in excess or outside of the normal billing cycle. It is more likely that the utility may be the party responsible for the perceived inconsistencies, since the onus is on the utility to adequately meter and provide errorless invoices.

49. While the Commission has been successful in obtaining refunds for customers who have been overbilled, the establishment of a retroactive policy would eliminate this problem and enable an automatic refund.

**Q3. Do you agree that customers should be entitled to redress in instances of overbilling by the utility? Please give a rationale for your answer.**

## SECTION 4 TIME LIMITATIONS FOR FAILURE TO BILL CUSTOMERS

50. The Jamaica Public Service Company is allowed to retroactively bill customers for a period of up to six (6) years in instances where the customers obtained the electricity through illegal means. However, where the failure is on the part of the utility to bill the customer, the utility is only allowed to retroactively bill the customer for the previous two (2) months. In instances where the current customer inherited a meter that was tampered with, or where the electric company did not connect the present account with a new meter, the utility is allowed to retroactively bill the customer for a period not exceeding two (2) years, or from the service contract date, whichever is less.
51. In Trinidad and Tobago, where the customer is not culpable for the utility's failure to bill, the Trinidad and Tobago Electricity Commission can only retroactively bill customers for a maximum period of one (1) year. In instances where the customer has been undercharged and is culpable<sup>20</sup>, the utility is able to recover the charges for a period up to four (4) years. However, if the utility fails to provide proper notice<sup>21</sup>, the recovery period is limited to a maximum of one (1) year.
52. In the UK, domestic energy suppliers, by way of prescriptive license conditions have been directed to stop customer back billing for energy used more than twelve (12) months prior, if the supplier was at fault for not sending a bill or billing incorrectly<sup>22</sup>. From May 1, 2018, this 12-month back-billing rule was removed from the billing code<sup>23</sup> and established as part of these supplier license conditions<sup>24</sup>.
53. The Washington Utilities and Transportation Commission regulates energy, telecommunications and water. The companies regulated by this authority are

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<sup>20</sup> RIC deems a customer culpable when the meter is inaccessible for reading, when the meter has been tampered with or when there has been a change in usage without informing the electricity company.

<sup>21</sup> Under the Codes of Conduct as determined by RIC, the customer must be given three weeks to object. This is considered as proper notice.

<sup>22</sup> Energy-UK. 2019. *Energy-uk*. 18 October. Accessed November 11, 2023. <https://www.energyuk.org.uk/wp-content/uploads/2023/03/EnergyUKresponse-OSEConsultation-BackbillingGuidance2019.pdf>.

<sup>23</sup> The Billing code refers to the code of practice for accurate billing. It is a series of voluntary commitments, developed to extend beyond the supply license conditions required.

<sup>24</sup> Energy-UK. 2019. *Energy-uk*. 18 October.

allowed to back bill, since companies are expected to charge the rates that have been approved in their tariff. However, companies are required to allow the customer to pay the bill over the same period of time it took to accrue the amount reflected on said back bill. Therefore, a retroactive bill accrued over a 24-month period, should be repaid over a 24-month period. Additionally, the customer has the right to see how the back bill has been determined<sup>25</sup>.

54. In Victoria, Australia, electric utilities were previously allowed to retroactively bill customers for up to one (1) year. However, effective January 1, 2021, the time period was restricted, and electric utilities are now only able to recover undercharges for the previous four (4) months, unless the undercharging resulted from the customer's fault or unlawful act or omission<sup>26</sup>.
55. The State of Wisconsin in the USA requires that the water provider bill customers within two (2) years of provision of the service<sup>27</sup>. Retroactive billing is allowed up to twenty-four (24) months from the date of the bill related to the incurred charge or the service provided, not the date of the discovery. If the utility fails to capture this window of opportunity, it is unable to go back and bill the customer for periods falling outside this timespan. The customer is given the same length of time to make the repayments, i.e., if the customer is retroactively billed for a period of twenty-four (24) months, the customer has twenty-four (24) months in which to make the payments to the water utility.
56. In North Carolina, USA, utilities are allowed to back bill customers for illegal connections up to a period of thirty-six (36) months or the duration of the period, if it is less than thirty-six (36) months<sup>28</sup>.

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<sup>25</sup> "Consumer Rights." *Washington Utilities and Transportation Commission*. Accessed November 23, 2023. <https://www.utc.wa.gov/consumers/energy/consumer-rights>.

<sup>26</sup> 2020. "Changing the Back Billing rules." *Essential Services Commission*. 8 July. Accessed November 22, 2023. <https://www.esc.vic.gov.au/sites/default/files/documents/changing-the-back-billing-rules-final-decision.pdf>.

<sup>27</sup> "Water Customer Related FAQs." *Public Service Commission of Wisconsin*. Accessed November 23, 2023. <https://psc.wi.gov/Pages/ForConsumers/MoreResources/WaterCustomerRelatedFAQs.aspx>

<sup>28</sup> "Sewer Billing Policy & Procedures." *METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NORTH CAROLINA*. 15 September. Accessed November 23, 2023.

57. In Ontario, Canada, where the customer has not contributed to the error, the water utility is allowed to retroactively bill for up to two (2) years prior to observing the error. However, in instances where the customer is responsible, the water utility is allowed to retroactively bill them up to seven (7) years for unbilled amounts<sup>29</sup>.
58. In Australia, the Water Corporation is allowed to retroactively bill customers to recover if they were under-charged, going back for a period of up to twelve (12) months, irrespective of whether or not the water company is at fault. The only requirement is that customers must be given equal time to make payments<sup>30</sup>.
59. With respect to backdated water bills in the UK, water companies were previously permitted to retroactively bill non-household customers for periods up to six (6) years for unbilled amounts. On April 1, 2017, this period was reduced to sixteen (16) months in instances where the water company's own error is responsible for customers not billed for water usage. The lengthier period is only permissible where the water utility is not at fault for the failure to bill the customer.
60. The Commission is of the view, that where the culpability lies with the utility for failure to render bills in a timely manner, thereby creating the necessity for retroactive billing, the utility should be restricted to billing the customer for a maximum of twenty-four (24) months, where the referenced period exceeds two (2) years. However, in instances where the utility is able to prove that the customer's action, or non-action resulted in the necessity for the retroactive billing, the utility should be able to retroactively bill for a period of up to six (6) years, as allowable for debt recovery under the Limitation of Actions Act, Cap. 231 of the Laws of Barbados<sup>31</sup>, or the period during which the event occurred, whichever is the lesser. The Commission is guided by this referenced Act in relation to the time period.

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<sup>29</sup> Brant. n.d. *Explore our Services - Resources*. Accessed February 26, 2018. <http://www.brant.ca/en/explore-our-services/resources/PWE-2013-02.pdf>.

<sup>30</sup> 2023. "Backbilling, refunds and lost payments." *Energy and Water Ombudsman*. 03 April. Accessed November 22, 2023. <https://www.ewov.com.au/fact-sheets/backbilling>.

<sup>31</sup> Section 14 of the Limitation of Actions Act states:

*'Subject to section 15, no action founded on simple contract may be brought after the expiration of 6 years from the date on which the cause of action accrued.'*

61. Given the detriment to the customer when a utility requests payment of retroactive charges resultant from its failure to accurately bill the customer at the relevant time, the utility should provide payment plan options for the customer. It is especially essential that consideration is given to vulnerable customers. As it relates to the payment of charges becoming payable resultant from retroactive billing, the Commission is of the view that the customer should be given an equivalent time to settle the resulting debt.

**Q4. Do you agree with the proposed timeframe in which the utility can seek to recover revenue from the situations referenced in the document? If not, what timeframe would you suggest and why?**

**Q5. Do you agree that the time customers should be given to pay the amounts that have been retroactively billed should be equivalent to the time over which the debt accrued? Please give reason(s) for your answer.**

**Table 1 - Showing Retroactive Billing Periods in other Jurisdictions**

Country	Utility	Retroactive Billing Period		
		Utility at Fault	Customer at Fault	Illegal Connection
Australia, Victoria	Electricity	4 months	1 year	1 year
Australia - Water Corporation	Water	12 months		
Canada, Ontario	Water	24 months	7 years	
Jamaica	Electricity	2 months		6 years 2 years <sup>32</sup>
Trinidad	Electricity	12 months	4 years <sup>33</sup>	
UK - OFGEM	Electricity	12 months		
UK - OFWAT	Water	16 months	6 years	
USA - UTC	Electricity	24 months		
USA, California	Electricity/Gas	3 years		
USA, North Carolina	Water			3 years
USA, Wisconsin	Water	24 months <sup>34</sup>		

<sup>32</sup> Current customer is retroactively billed for two (2) years, if previous customer was the party responsible for the illegal connection.

<sup>33</sup> The utility is required to provide proper notice, failure to do so limits the recovery period to one (1) year.



## Time limitations in Overcharges and Refunds

62. In instances of overbilling by a water utility in Canada, a customer is entitled to repayments, but these are retroactively limited to two (2) years<sup>35</sup>. In California, where an electric or gas customer has been overbilled over a period of time, they are entitled to refunds going back to three (3) years of overcharges<sup>36</sup>. This is equivalent to the time Ofgem is allowed to retroactively charge customers for previously underbilled amounts.
63. Research has revealed, that while OFWAT in the UK allows water companies to retroactively bill customers for previously under billed amounts, there is little reciprocity when customers have been overbilled. The customer is restricted to a shorter period and the overcharges are not repaid in totality<sup>37</sup>.
64. Given the asymmetry of information, the customer is reliant on the utility to generate accurate bills. Therefore, if the utility continues to generate bills for, and collect income to which it is not entitled, the customer may recoup the amounts paid to the utility, dating back to the time the error or infraction occurred or upwards to a period of six (6) years, whichever is less. This is conditional on the customer's ability to provide evidence to substantiate the claim, such as receipts, completed forms or correspondence. The credit will be issued by the end of the billing cycle following the period when the error was discovered and acknowledged to be legitimate.

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<sup>34</sup> This is from the date of the bill relating to the incurred charges, not the date of the discovery.

<sup>35</sup> "Conditions of service." *Hydro One Networks Inc.* 1 January. Accessed November 22, 2023. [https://www.hydroone.com/abouthydroone/conditionsofservice\\_/Documents/Hydro\\_One\\_Conditions\\_of\\_Service\\_January\\_1\\_2023.pdf](https://www.hydroone.com/abouthydroone/conditionsofservice_/Documents/Hydro_One_Conditions_of_Service_January_1_2023.pdf)

<sup>36</sup> TURN. 2016. *Know your rights Training Manual. A Guide to keeping the Lights on.* 24 August. Accessed June 26, 2019. <http://www.turn.org/wp-content/uploads/2016/06/End-Shut-Offs-Training-Manual.pdf>. Last Accessed June, 2019.

<sup>37</sup> 2020. "Back dated water bills." *Citizens Advice.* 20 February. Accessed November 22, 2023. <https://www.citizensadvice.org.uk/customer/water/water-supply/problems-with-paying-your-water-bill/backdated-water-bills/>.

**Table 2 - Showing Retroactive Billing Periods allowed in other Jurisdictions**

<b>Country</b>	<b>Utility</b>	<b>Refunds from overcharges</b>
Canada, Ontario	Water	2 years
USA, California	Electricity/Gas	3 years

**Q6. Do you agree with the time limitations as proposed by the Commission? If not, please suggest a time period along with the rationale for the proposal.**

#### **Returning of overcharges to the customer**

65. In Australia, where a customer's energy bill has been overstated by an amount less than AUS \$50, the resulting credit is applied towards the next bill. Alternatively, where the customer has been overbilled by more than AUS \$50, the customer is given two options: a credit on their bill or a refund of the difference in the form of a cheque<sup>38</sup>. However, there is no stipulated limitation on the time period covered for these billings.

66. The Commission considers that redress may be in the form of a credit on the account, reducing the payables on subsequent bills, or a refund of the difference between the current bill and the credit on the account. If the amount is \$100 or greater, the customer is entitled to receive a refund in the form of a cheque or bank transfer. However, where the amount is less than \$100, the utility may apply a credit to the customer's account. A customer may indicate their preference for amounts in excess of \$100 to be credited to their account in lieu of a cheque or bank transfer.

**Q7. Do you agree with the proposed method of returning overcharges to the customer? If not, what would you suggest?**

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<sup>38</sup> Australian Energy Regulator. 2023. *Estimated bills, overcharging and undercharging*. 25 October. Accessed December 11, 2023. <https://www.energymadeeasy.gov.au/article/estimated-bills-overcharging-and-undercharging?query=estimated+bills>.

## **Procedure for the Handling of Retroactive Billing Complaints**

67. The retroactive billing policy is not applicable in instances where the utility is trying to collect outstanding amounts. The following principles are applicable:

- a. Where it has been established that retroactive billing is applicable, the utility must communicate this to the customer in writing by letter. Additional notification may be on the monthly bill, by email or other electronic means. The notification should explain the reason for the retroactive billing;
- b. The utility must provide an explanation of how the retroactive charge was calculated;
- c. No interest shall be applied to the amount to be recovered;
- d. Where the retroactive billing results in the customer being indebted to the utility, the customer must be allowed payment options. The minimum period allowed for repayment should be at least equivalent to the time over which the debt accrued. In instances where the debt is considered excessive i.e. when the amount is equivalent to or greater than the monthly income (salary, pension) of the customer, the customer should be given a lengthier period over which to repay the debt. The arrangements must be in alignment with the utility's existing payment policy, if there is one in place. If there is no payment policy in place, the utility must implement a payment policy;
- e. If a customer is not in agreement with the decision of the utility, he/she has the right to submit a formal complaint to the Commission. While the matter is under investigation, service should not be disconnected;
- f. In every instance, the utility must provide the substantive evidence that was used to initiate the application of the retroactive billing process;
- g. Where a customer fails to adhere to the terms of the agreement arranged under this policy, the provisions of this policy are no longer applicable.

**Q8. Do you agree with the foregoing complaint procedure for handling retroactive billing complaints? Please give reason(s) for your answer.**

## **What is not covered under Retroactive Billing?**

68. This consultation paper does not address illegal activity by customers. This is not an oversight. The retroactive policy is not intended to cover unlawful or illegal actions by the customer, i.e. where an individual or a company illegally receives the benefits of a service without paying for the service. The retroactive policy is only applicable to customers of the utility. In this case, a customer is defined as an individual or company that has applied to the utility for and has received a lawful connection.

## SECTION 5      CONSULTATION QUESTIONS

- Q1. Do you agree that the utilities should be able to retroactively bill customers in the situations outlined? Please give reason(s) for your answer.**
- Q2. Do you believe there are other situations other than those outlined in the previous section when retroactive billing should be applicable? If so, please provide a list of these situations.**
- Q3. Do you agree that customers should be entitled to redress in instances of overbilling by the utility? Please give a rationale for your answer.**
- Q4. Do you agree with the proposed timeframe in which the utility can seek to recover revenue from the situations referenced in the document? If not, what timeframe would you suggest and why?**
- Q5. Do you agree that the time customers should be given to pay the amounts that have been retroactively billed should be equivalent to the time over which the debt accrued? Please give reason(s) for your answer.**
- Q6. Do you agree with the time limitations as proposed by the Commission? If not, please suggest a time period along with the rationale for the proposal.**
- Q7. Do you agree with the proposed method of returning overcharges to the customer? If not, what would you suggest?**
- Q8. Do you agree with the foregoing complaint procedure for handling retroactive billing complaints? Please give reason(s) for your answer.**