New York’s Utility Termination Storm
“The Quiet Blackout”

March 2011

EXECUTIVE SUMMARY

Weather systems and other natural phenomena can cause unintended outages of electric service, and less frequently, gas service. There are regulatory policies in place to harden utility systems against storm damage, and to encourage prompt service restoration of these unplanned events. In contrast, a less publicized, less visible, but possibly more serious "blackout" is affecting thousands New Yorkers every day when crews disconnect service. These less noticeable terminations may last days or weeks rather than hours and are resolved only when the customer makes payment arrangements or receives assistance to pay what the utility demands as a condition of service reinstatement.

Continuous utility service is required for household functions of light, refrigeration, cooking, and in many circumstances, for heating, cooling, and water supply. In 2010, Consolidated Edison Company of New York, Inc., National Grid, KeySpan - New York, KeySpan - Long Island, New York State Electric and Gas Corp., Rochester Gas and Electric Corp., National Fuel Gas Distribution Corporation, Central Hudson Gas & Electric Company, Orange & Rockland Utilities, Inc., and the Long Island Power Authority collectively terminated electric and natural gas service to their residential customers 321,995 times as a routine debt collection measure.[1]

Historically, utility costs in New York have been higher than most other states – and consumers have felt the effects. A recent AARP survey of New Yorkers over age 50 revealed 41 percent reported that they had difficulty paying their monthly electric bill. This figure was even higher among minority populations with 48 percent of African Americans and 56 percent of Hispanics age 50+ in New York indicating that they experienced difficulty paying their electric bill.

The persistently large number of residential utility service shutoffs raises important and urgent issues about effectuation of the state's policy favoring continuous utility service for all residential customers. This report provides an analysis of the most recent data which is from 2010. AARP believes this matter needs to be addressed by the Governor and the New York Legislature.

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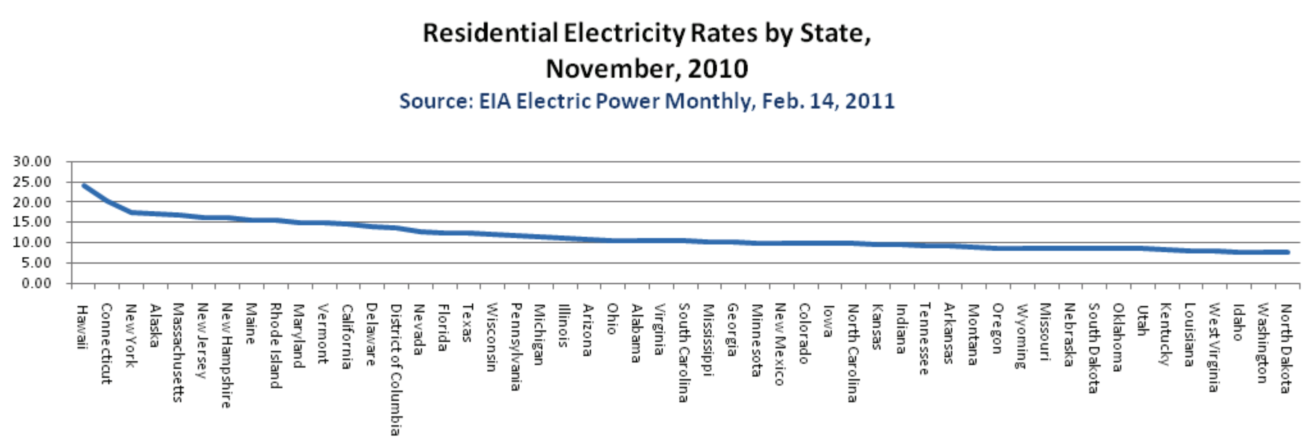
[1] Most terminated customers are reconnected after new arrangements are made for full or partial payment of arrears. Under Home Energy Fair Practices Act (HEFPA), utilities are required annually to survey customers previously shut off to ascertain their situations prior to the beginning of cold weather. "The purpose of the survey is to determine whether the former customer or other resident is likely to suffer a serious impairment to health or safety from a continued lack of service." (16 NYCRR 11.5(c) (4)). PSC regulations, however, do not require the results of the utilities' surveys to be filed and so they are not publicly available.

Background

The accumulation by households of significant arrears that trigger utility service termination is likely affected by New York's high, volatile, and possibly manipulated wholesale electricity prices, combined with several economic factors including high unemployment rates, reduced household incomes and reduced retirement income and savings due to Wall Street and interest rate downturns. Overlaying these factors are discretionary service termination practices of the utilities.

Society as a whole faces significant costs from unsafe or unhealthy situations caused by a lack of residential utility service. These include emergency public assistance, illness due to lack of heat or air conditioning needed by vulnerable household members, emergency medical care, and not infrequently, the cost of fire, police, and other first responders. It was out of such concerns over the societal costs of utility service interruptions that in 1981, the New York State legislature recognized the importance of continuous residential service as a matter of public safety, health and welfare and the passed the Home Energy Fair Practices Act (HEFPA).

In recent years, New York's utility prices have been consistently among the highest in the nation, making this basic necessity unaffordable for many.[2] Despite New York's bounty of inexpensive hydro power,[3] the state's residential electric rates are currently third highest in the nation, second only to Hawaii and Connecticut as illustrated in the below graph. The utility regulation and public aid systems for consumers who fall behind on bills are complex and multi-faceted. Issues often arise concerning interpretation by the New York State Public Service Commission ("PSC") of regulations, tariffs, and practices concerning service continuation for medical reasons, deposit requirements, billing disputes, shared meter responsibility, eligibility of customers in arrears for new or revised deferred payment plans, and modification or revival of broken payment plans.



[2] Average electricity prices for New York's residential customers increased by more than 1cent per kwh since November 2009, reaching 18.09 cents per kwh in November 2010, the most recent period for which data is available. *Average Retail Price of Electricity to Ultimate Customers by End-Use Sector, by State*, Energy Information Agency, Electric Power Monthly, Feb. 14, 2011,

[3] New York is the third largest producer of hydro electric power in the nation. EIA Electric Power Monthly, March 2010, *Net Generation from Hydroelectric (Conventional) Power by State by Sector, Year-to-Date through December 2009 and 2008*, Table 1.13.B., p. 37.

New York utilities have only fledgling programs to reduce energy burdens of their lower income customers, and New York State policy makers and the PSC have not adequately addressed the affordability issue for residential customers.[4] Research shows that energy cost unpredictability creates serious difficulties for customers trying to manage their household budgets, particularly those who lack savings or low-cost credit to meet the cost of spiking utility bills.[5]

Safety net programs of the New York State Office of Temporary and Disability Assistance (OTDA) such as HEAP and the state-funded emergency utility assistance program are intended to meet utility service emergencies when a utility is justified in terminating service to a customer for non-payment under PSC rules. For a variety of reasons, however, these programs are not meeting the needs of many utility customers who are unable to tender the amounts demanded by the utilities.

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[4] A listing of New York utility programs for low income customers is posted at the NYSERDA website, available at http://www.nyserda.org/homeheating/utilities.html.

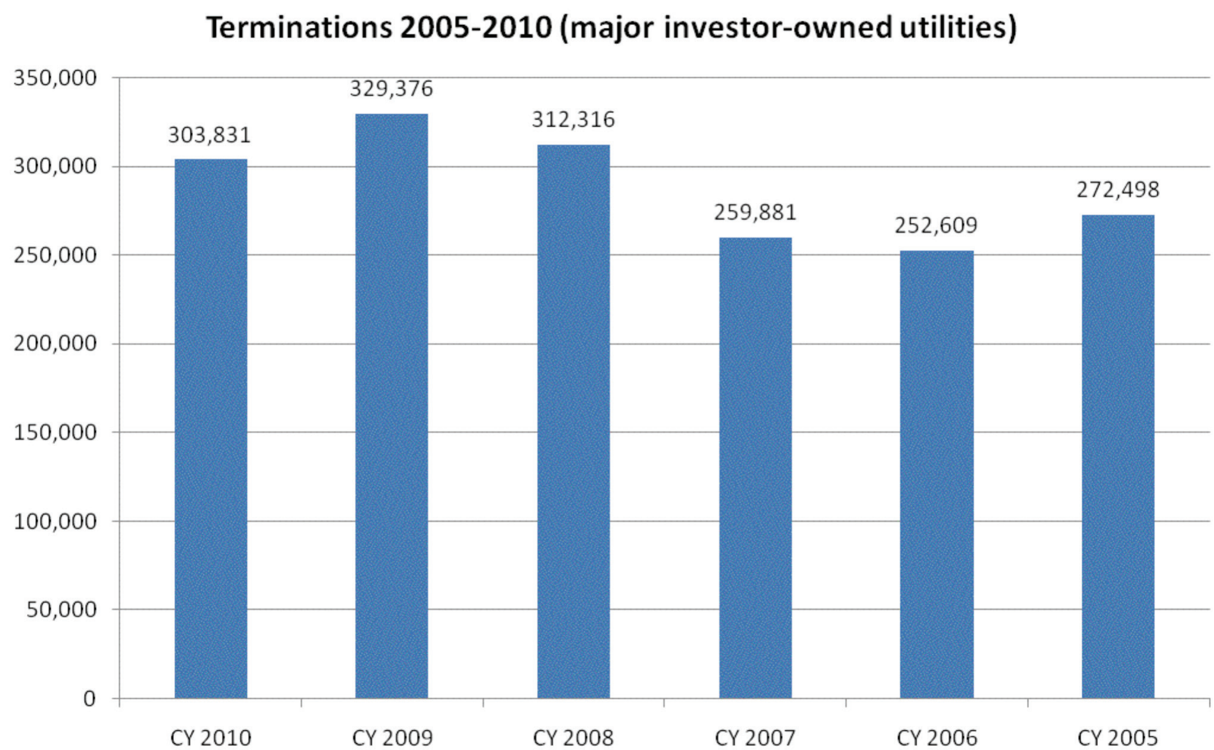
[5] *Do Households Smooth Small Consumption Shocks? Evidence From Anticipated And Unanticipated Variation In Home Energy Costs*, Julie Berry Cullen, Leora Friedberg, Catherine Wolfram, April 2005 University of California Energy Institute (2005):

"We find a different reaction to unanticipated income shocks among households without substantial financial assets. Our measure of possible liquidity constraints distinguishes those who receive interest or dividend income and are thus relatively well-off and financially savvy. Such households comprise only about 25% of our sample. Among the rest, who are more likely to be liquidity constrained, we find that consumption swings by about 40 cents for each dollar's worth of surprise in home energy costs – a quite large effect.

**** [H]ouseholds do not do a good job of buffering the unanticipated, yet relatively small, variation arising from weather and fuel price extremes." Id., at 18 (emphasis added).

Utility Service Terminations

The major investor-owned utilities are required to file monthly reports regarding such terminations and other data, including the amount of customer arrears, to the PSC.[6] In the years 2005-2010 these utilities, as illustrated in the graph below, reported to the PSC that they terminated residential service to more than 1.7 million residential ratepayers in New York State.



In the year 2010, the investor-owned utilities, along with Long Island Power Authority, terminated service to 321,995 residential ratepayers. Data regarding the incidence of residential utility service terminations as well as arrears data for 2010 was reviewed for this report and obtained from the PSC. As discussed below, analysis of this data reveals an unacceptably high level of service termination, wide variations among utilities, and significant seasonal variations in every utility's termination practices.

[6] Consolidated Edison Company of New York, Inc. (Con Edison) (gas and electric), National Grid, Niagara Mohawk (gas and electric), KeySpan - New York (gas), and KeySpan - Long Island (gas); NYSEG, RG&E, National Fuel Gas Distribution Corporation, Orange & Rockland Utilities, Inc., and Central Hudson Gas & Electric Company

The chart below shows the number of terminations, by month and by utility for the year 2010. The utilities with the most terminations, Con Edison and National Grid, have the most customers, and so would be expected to have more terminations than the smaller utilities. Nevertheless, there are major differences that suggest policy differences among the utilities in the use of service termination to collect bills and the timing of terminations.

Company	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Central Hudson	400	309	405	1523	1603	1545	1246	1161	1350	1477	563	304	11886
Con Edison	8754	5337	6501	9427	10000	9434	6687	8365	9770	8782	7137	3275	93469
KeySpan NY	2465	1244	2906	6062	5548	5974	5244	4217	3861	3355	2461	1624	44961
KeySpan LI	379	171	682	1157	1426	1562	1345	1342	750	661	183	75	9733
LIPA	597	400	1402	2088	2639	2569	1678	2336	2123	1692	440	200	18164
National Grid	7	13	2606	5327	9592	8990	6639	7694	7581	4524	909	90	53972
National Fuel	6	7	367	3245	3708	3769	3487	2727	2178	1470	323	2	21289
NYSEG	863	902	2456	3918	5846	5541	3270	3921	4158	3325	806	106	35112
Orange & Rockland	504	252	374	1067	1649	1366	1123	1050	1048	450	167	126	9176
Rochester G&E	1005	1330	2058	2378	3161	3602	2140	2568	2496	2157	1033	305	24233
TOTAL	14980	9965	19757	36192	45172	44352	32859	35381	35315	27893	14022	6107	321995

Con Edison shut off service at least 5,000 times per month in every month of the year, while other utilities, e.g., National Grid and National Fuel Gas, virtually halted all service terminations for nonpayment in January and February. For example, Con Edison, with 2.82 million total customers, terminated service to 8,754 of them in January, while National Grid, also a large utility with 1.45 million customers, terminated service to just 7, and National Fuel Gas, with 460,000 customers, terminated service to just 6. Utility service terminations for nonpayment peaked in May, 2010 at more than 42,000. In contrast, service to fewer than 10,000 customers was terminated in February.

Ratepayers on the verge of a Blackout

The termination of service numbers do not include far larger numbers of customers who have fallen behind in paying their bills, who are threatened with service termination. For example, in May 2010, when National Grid shut off service to 9,592 customers, 246,224 customers — more than 17% of its total customers — were more than 60 days in arrears, and the company sent 86,797 shutoff notices to customers threatening termination of service.

Similarly, in April 2010, when Con Edison shut off service to 9,427 customers, 229,989 — 8% of its total number of customers — had arrears exceeding 60 days, and notices threatening shutoff were sent to 215,111 customers. Thus, in those months, the number of customers terminated for nonpayment was a small fraction of the total number of customers whose households were threatened with termination of service – 11% in the case of National Grid and 4% in the case of Con Edison. According to the PSC, over 950,000 customers in New York State are currently more than 60 days in arrears on their utility bills.

The large numbers of customers with arrears, the large numbers of customers receiving threats of shutoff, and the large numbers of customers actually terminated indicate that a chronic, major affordability crisis exists for New York's residential utility customers.

Is the Home Energy Fair Practices Act (HEFPA) Working?

The shutoff of a residential customer for non payment of bills ordinarily involves a component of customer default. Bills owed to the utility for service provided have not been paid.[7] Nevertheless, the utility's decision to terminate service as a collection tactic is a discretionary choice made by the utility, as evidenced by the major month to month fluctuation in the number of terminations for some but not all utilities. In many situations, the utility is free to choose to accept or reject the proffer of a partial payment by a customer in arrears who has broken a Deferred Payment Agreement.[8] While the policies are not clear, the available data suggests significant variation among utilities. For example, some utilities (e.g., National Grid, NYSEG) bring terminations to a virtual halt in winter months while Con Edison terminates service to substantial numbers of customers in every month of the year.

New York led the nation in 1981 with its enactment of a bill of rights for electricity and natural gas utility consumers, the Home Energy Fair Practices Act (HEFPA).[9] At the time, the death of elderly persons in unheated premises where utility service had been shut off raised public awareness of the need to address harsh utility collection practices. HEFPA declares it to be the policy of New York State that continuous provision of electricity and natural gas service to residential customers "without unreasonable qualifications or lengthy delays is necessary for the preservation of the health and general welfare and is in the public interest." N.Y. Pub. Serv. Law § 30. For nearly thirty years, HEFPA has been responsible for limiting the number of utility terminations in New York State and is relied upon every day by utility customers to obtain and keep service.

HEFPA included many reforms, including elimination of deposit requirements in most situations, stringent requirements designed to assure the availability of utility service to applicants who owe the company for past service, procedures to minimize terminations for non payment, adequate notification of customers prior to service termination, additional notifications in wintertime to vulnerable customers, a system of complaint adjudication, and a toll-free PSC consumer "Hotline" intended to keep service on in situations where there is a potentially meritorious claim for continued service.

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[7] The portion of any bill that is genuinely in dispute cannot be the basis for termination while PSC complaint proceedings are pending.

[8] Every termination notice must offer a customer in arrears an opportunity to avoid termination of service by agreeing to pay the amount due in installments, based on the customer's financial circumstances, along with charges for current service. Many terminations occur after the customer breaches a DPA. When that occurs, the total DPA balance, and charges for current service, are immediately due. At that point, utilities are given discretion to terminate service, to insist upon a significant down payment as a condition of a new DPA, or they may simply reinstate the DPA if late payment is proffered.

[9] See *New State Legislation Urged on Gas, Electricity Shutoffs*, Albany Times Union, Jan. 14, 1981; *Senate in Albany Votes Rights Bill for Utility Consumers*, New York Times, July 3, 1981.

HEFPA directs the Public Service Commission to enforce its requirements. Some New York utilities have attempted to interpret HEFPA rules narrowly. For example, in 2003 National Grid unilaterally changed its policies to require deposits to tenants who lacked written leases of more than a year's duration, and denied service to more than 1,000 applicants for service in the months before the practice was halted by order of the PSC.[10] In 2007, National Grid adopted more stringent requirements for providing service to applicants with prior arrears, demanding "up front" down payments of as much as $1,000, which was far more than many applicants could afford. This led to increased incidents of households going without utility service for extended periods of time. Eventually, the PSC itself ruled on consumer petitions and modified the practices.[11]

Utilities are typically subject to reduction in their revenues by the PSC if they fail to meet certain service "metrics", including the number and duration of outages due to physical system failures or storms, but they are not put at significant financial risk by the PSC for deliberate interruptions of service for bill collection purposes or for noncompliance with HEFPA requirements. There is simply no requirement to minimize or reduce the frequency of service termination for collection purposes. Although HEFPA violations can sometimes be corrected when a customer or their advocate invokes the PSC complaint procedure, that has been made less accessible in recent years because the PSC simply refers a customer's complaint back to the utility, without investigating, requiring a customer to complain twice to the PSC when the utility adheres to its position.[12]

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[10] The PSC stated "[t]he record suggests that the company disclosed its plan for a lease-based policy to the Department [Office of Consumer Services] and was never specifically told it could be illegal. . . ." *Order On Residential Security Deposits*, Case 03-M-0772, Petition of Niagara Mohawk Power Corporation, etc. (Issued and Effective March 25, 2004), at 13.

[11] *PSC Nullifies National Grid's $1,000 "Grand Plan" Requirement for Utility Service*, PULP Network, March 19, 2008, available at http://pulpnetwork.blogspot.com/2008/03/psc-nullifies-national-grids-1000-grand.html.

[12] After complaining to the PSC, and after the PSC has referred the complaint to the utility, "the customer may contact OCS [PSC Office of Consumer Services] and express dissatisfaction with the manner in which the [utility service] provider attempted to resolve the issue [after the customer's complaint was referred by the PSC to the utility]. Should that happen within 60 days of the service providers' response, the case will be reclassified as a complaint (under the Standard Resolution System -SRS), charged to the service provider and submitted to the provider for investigation and a full response to the Office of Consumer Services." New York PSC, Quick Resolution System A Service Providers Guide to handling customer difficulties reported to the New York State Department of Public Service, June 2004, at 6. Available at <http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/web/EC0210596C98F1368525743D006AFA2C/$File/QRS_GuideforServiceProviders.pdf?OpenElement>

Conclusion

Continuous utility service is required for household functions of light, refrigeration, cooking, and in many circumstances, for heating, cooling, and water supply. In the years 2005-2010, there have been more than 1.7 million residential utility terminations in New York State. The large numbers of customers with arrears, the large numbers of customers receiving threats of shutoff, and the large numbers of actual residential terminations as well as a wide variety in utility practices require strong scrutiny by the Governor and the Legislature. A short-term policy must be taken to stop winter terminations and a long-term approach must be adopted to address the chronic termination problem plaguing New Yorkers.

Recommendations:

AARP recommends to the Governor and the New York State Legislature the following policy initiatives:

1. Prohibit utility companies from terminating service during winter months December–March until a complete review of existing consumer protection policies is completed by the New York State Public Service Commission (PSC) and corrective actions are implemented.

2. Require the PSC to conduct a full review of existing consumer protection policies under HEFPA and report back to the Governor and Legislature on any recommendations to improve these protections as well as examining the following:

   - Effectiveness of consumer "Hotline" function in helping consumer avoid service terminations
   - Level of assistance for customers negotiating or renegotiating DPAs with utilities by the PSC
   - Utility best practices to minimize service terminations
   - The necessity for adding utility performance measurements to decrease service terminations

3) Require the PSC to begin collecting termination data from utilities by age, income, individual termination history and if the individual was on public assistance such as HEAP, and to require utilities to file the results of their annual survey of customers whose service was terminated for nonpayment of bills.

4) Require more oversight and transparency in the wholesale electricity market place that is administered by the New York System Independent System Operator (NYISO) to help address recent manipulations that can cause prices to increase for ratepayers.[13] Bringing more accountability to the public will help mitigate rate increases if not lower rates.

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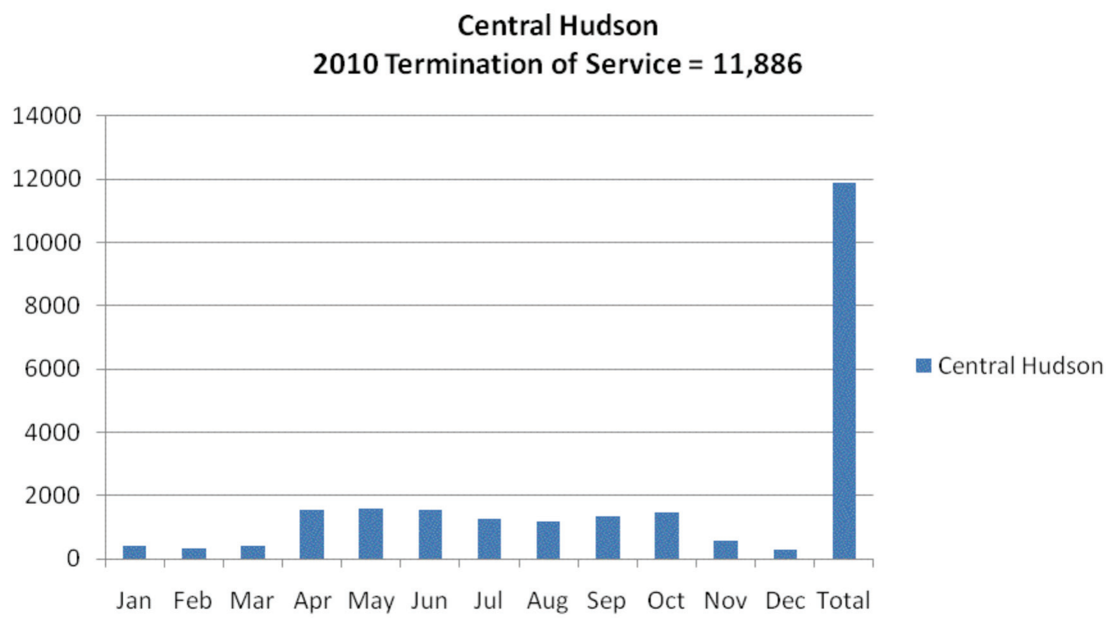
[13] New Yorkers Lost $2.2 Billion Because of NYISO Practices: The Debate Continues, McCullough Research, March 30, 2009.http://www.mresearch.com/pdfs/392.pdf

APPENDIX A


Central Hudson
2010 Termination of Service = 11,886
14000
12000
10000
8000
6000
4000
2000
0
Jan
Feb
Mar
Apr
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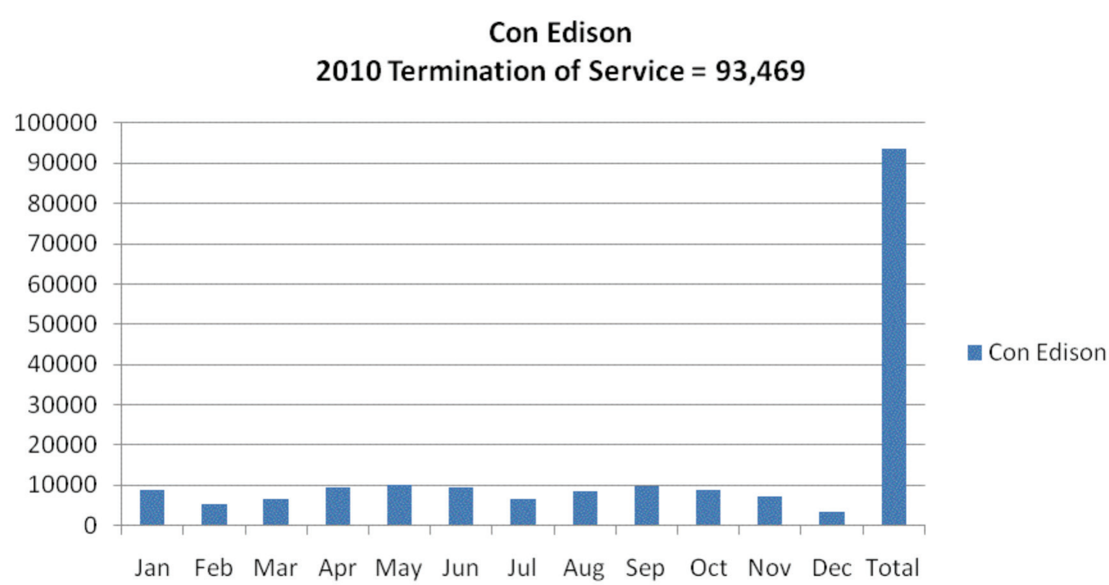
Jun
Jul
Aug
Sep
Oct
Nov
Dec
Total
Central Hudson


Con Edison
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100000
90000
80000
70000
60000
50000
40000
30000
20000
10000
0
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Apr
May
Jun
Jul
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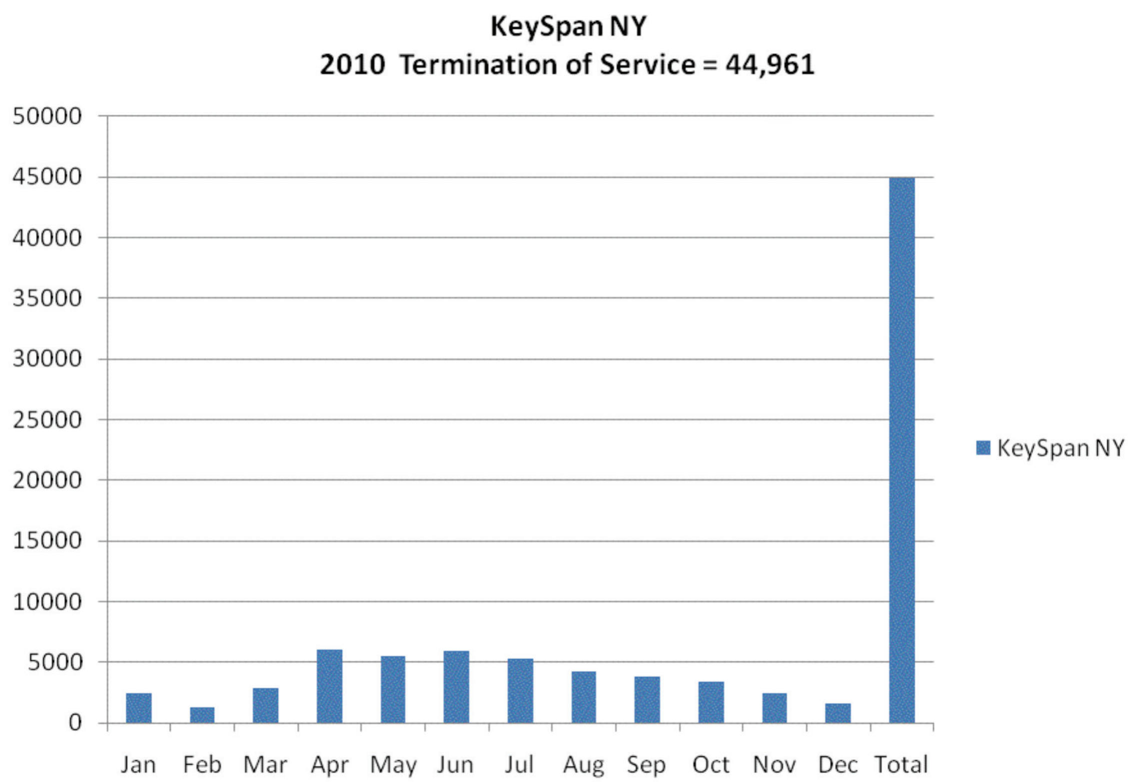
Oct
Nov
Dec
Total
Con Edison


KeySpan NY
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45000
40000
35000
30000
25000
20000
15000
10000
5000
0
Jan
Feb
Mar
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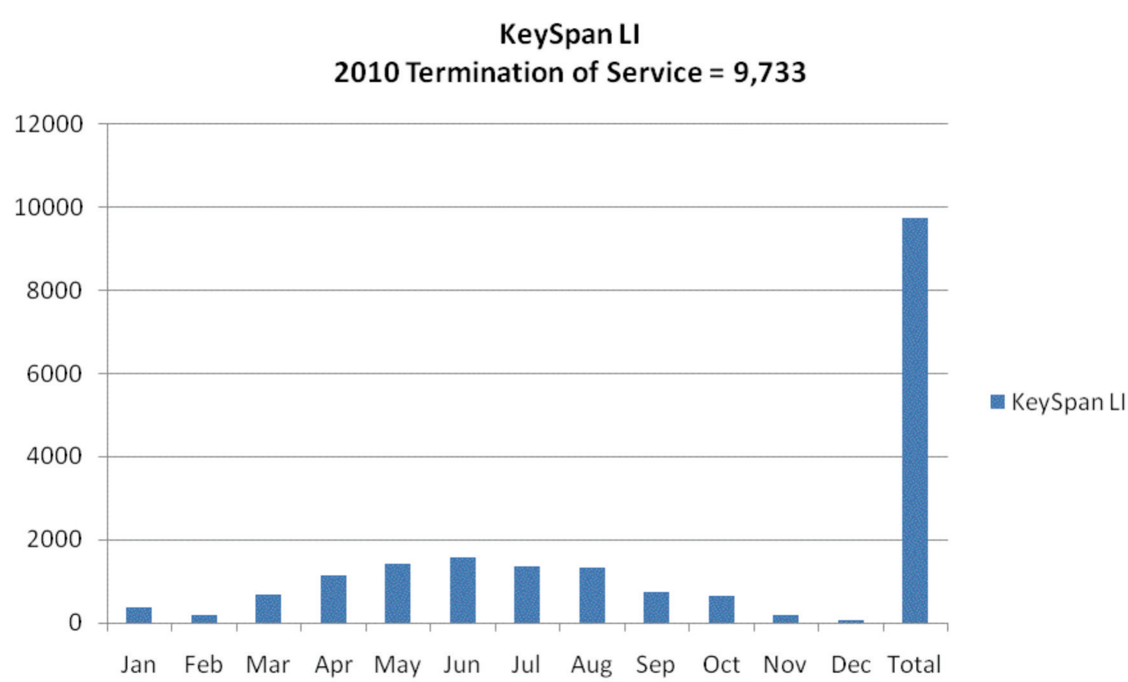
Dec
Total
KeySpan NY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6000
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2000
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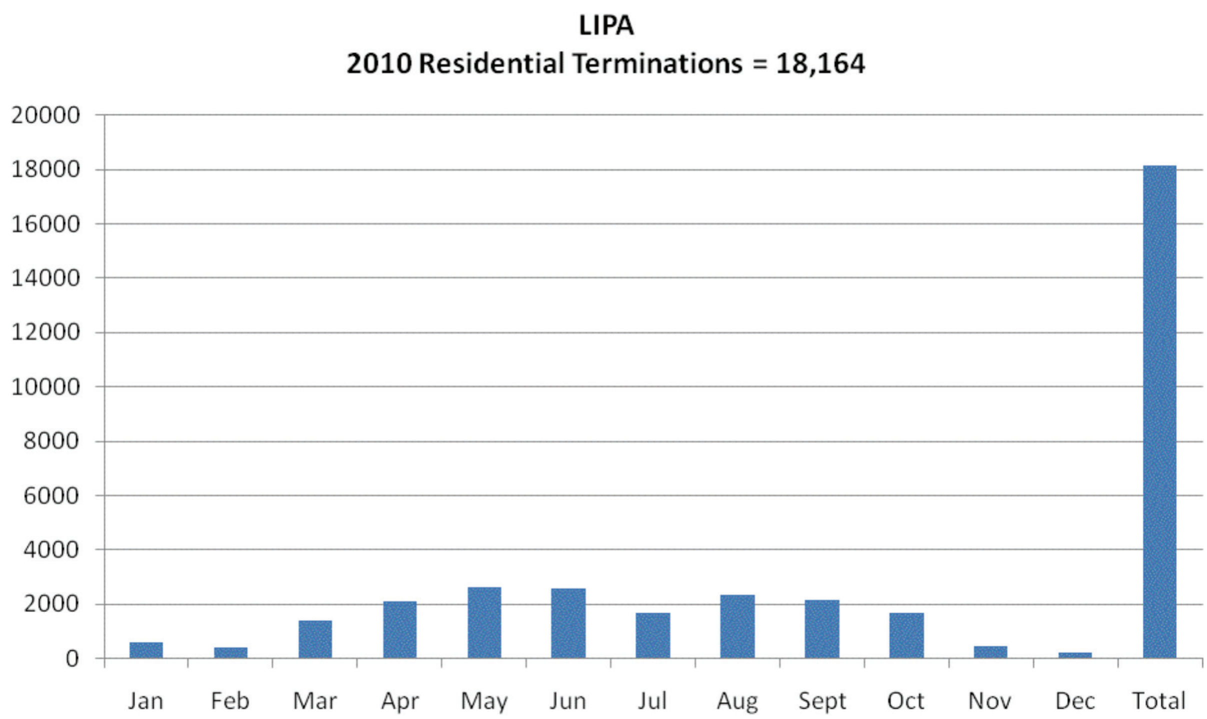
Total
KeySpan LI


LIPA
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18000
16000
14000
12000
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4000
2000
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Jan
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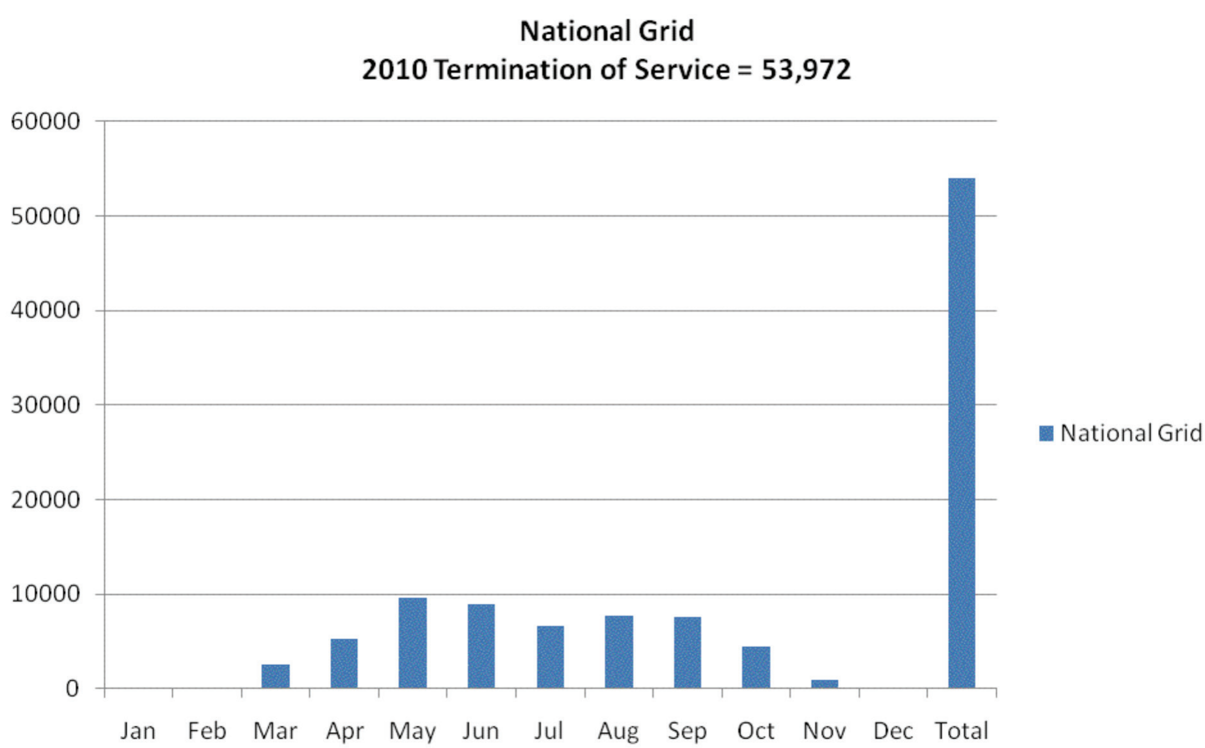
Oct
Nov
Dec
Total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2010 Termination of Service = 53,972
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20000
10000
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Jan
Feb
Mar
Apr
May
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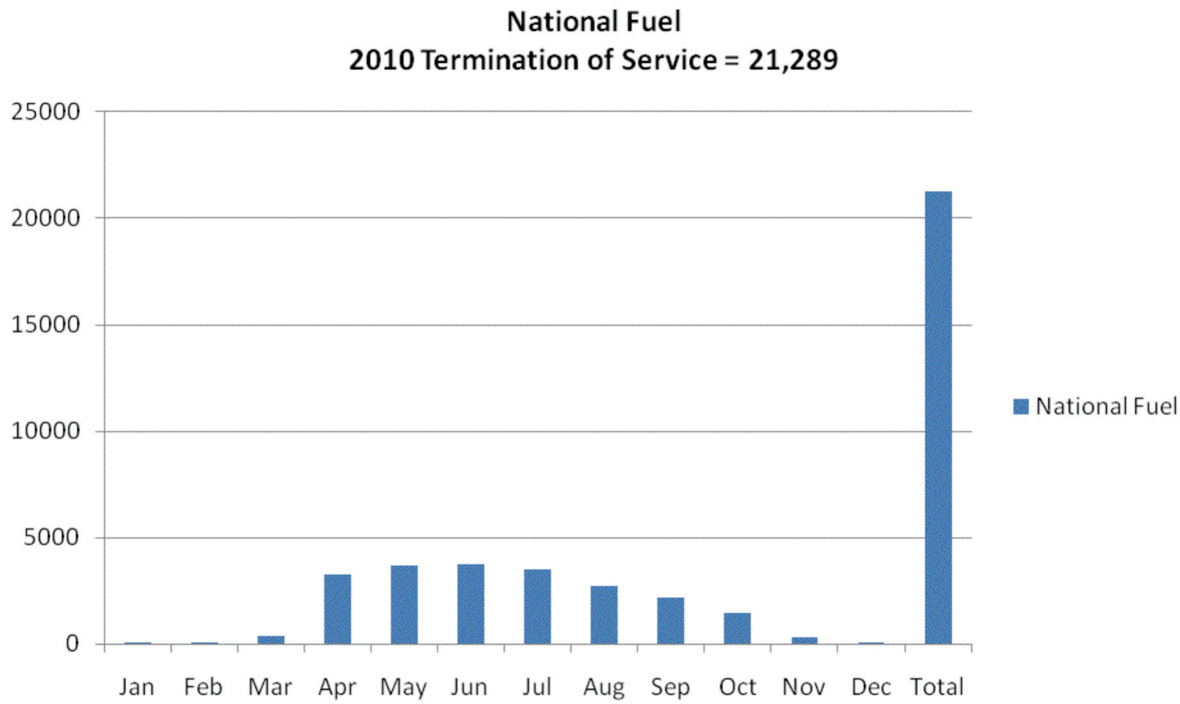
Oct
Nov
Dec
Total
National Grid


National Fuel
2010 Termination of Service = 21,289
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20000
15000
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5000
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Jan
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Apr
May
Jun
Jul
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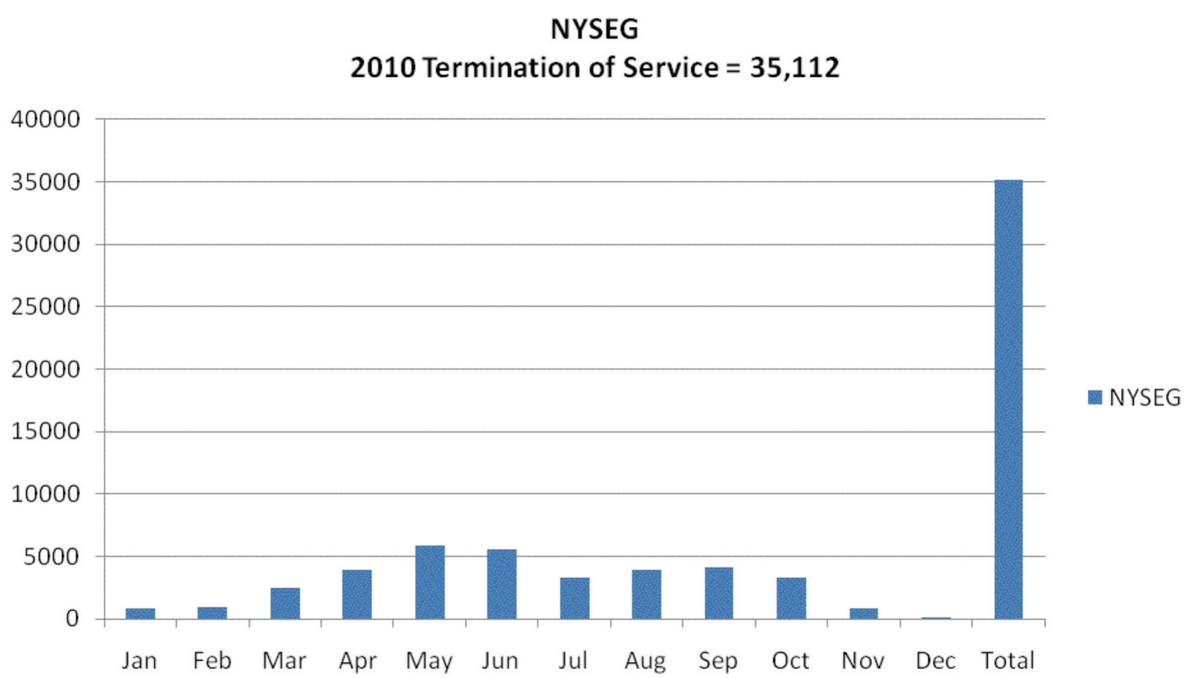
Oct
Nov
Dec
Total
National Fuel


NYSEG
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35000
30000
25000
20000
15000
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Jan
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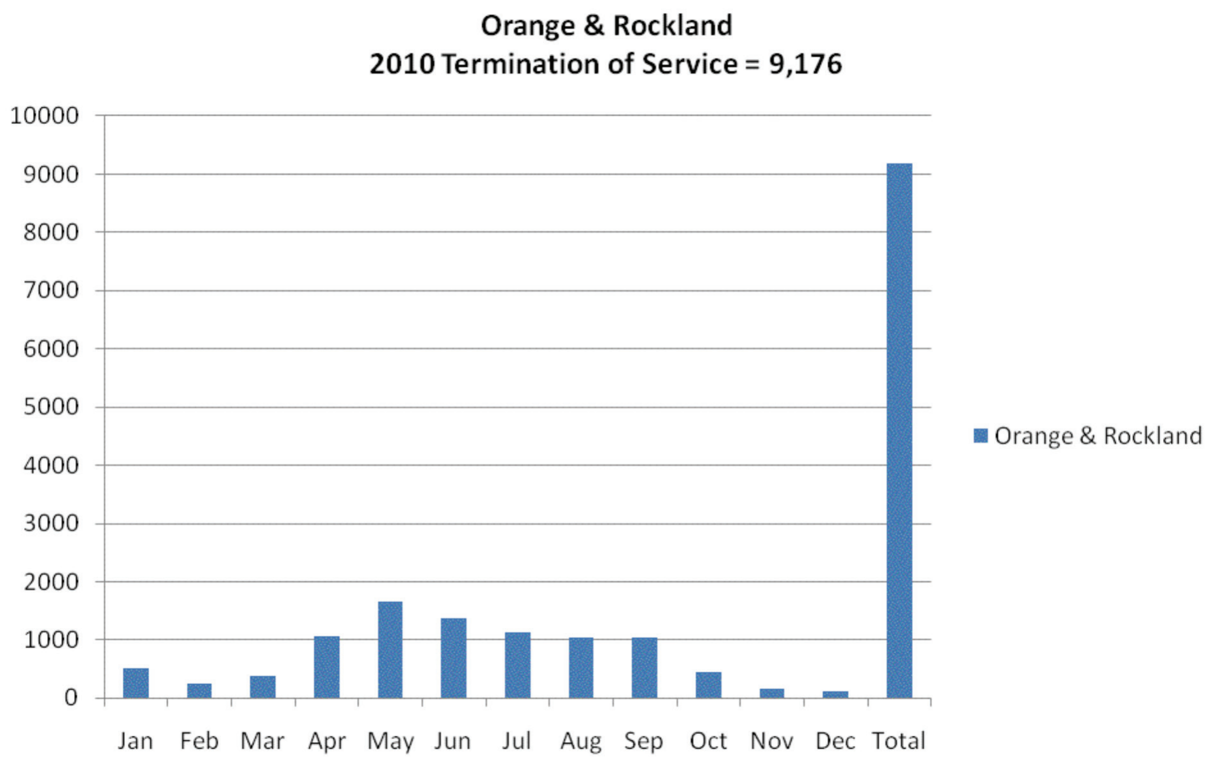
Oct
Nov
Dec
Total
NYSEG


Orange & Rockland
2010 Termination of Service = 9,176
10000
9000
8000
7000
6000
5000
4000
3000
2000
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Jan
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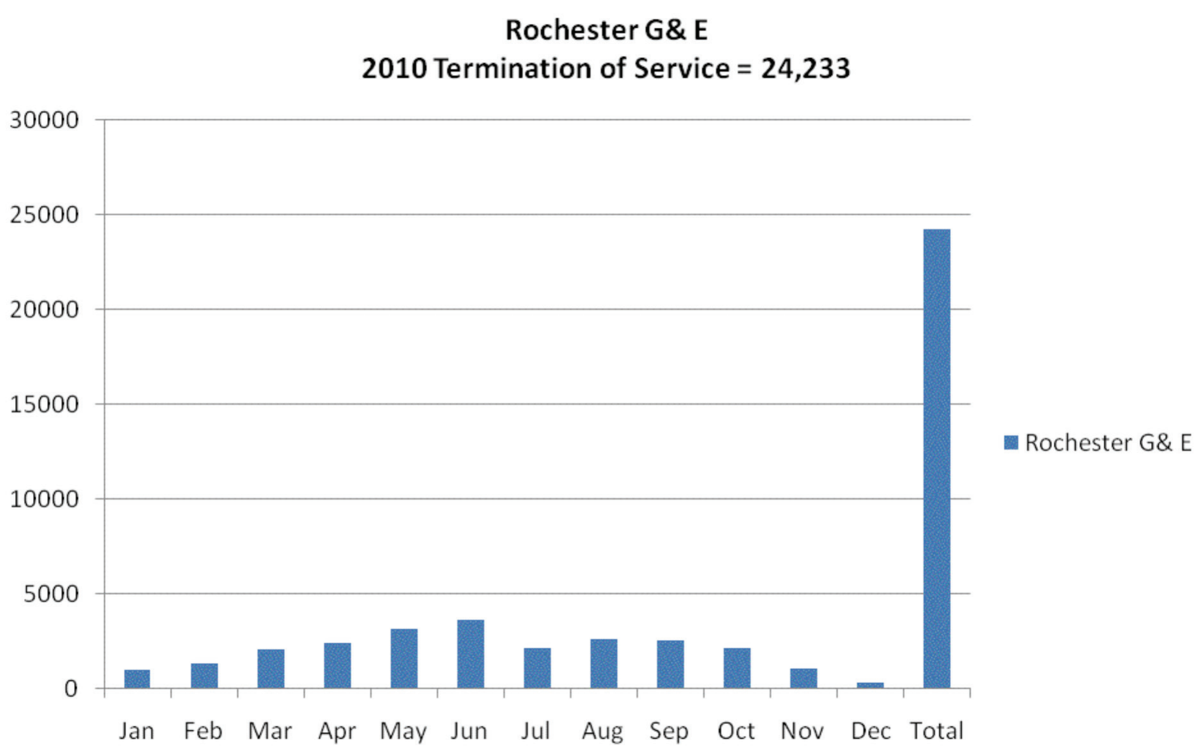
Nov
Dec
Total
Orange & Rockland


Rochester G& E
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30000
25000
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Jan
Feb
Mar
Apr
May
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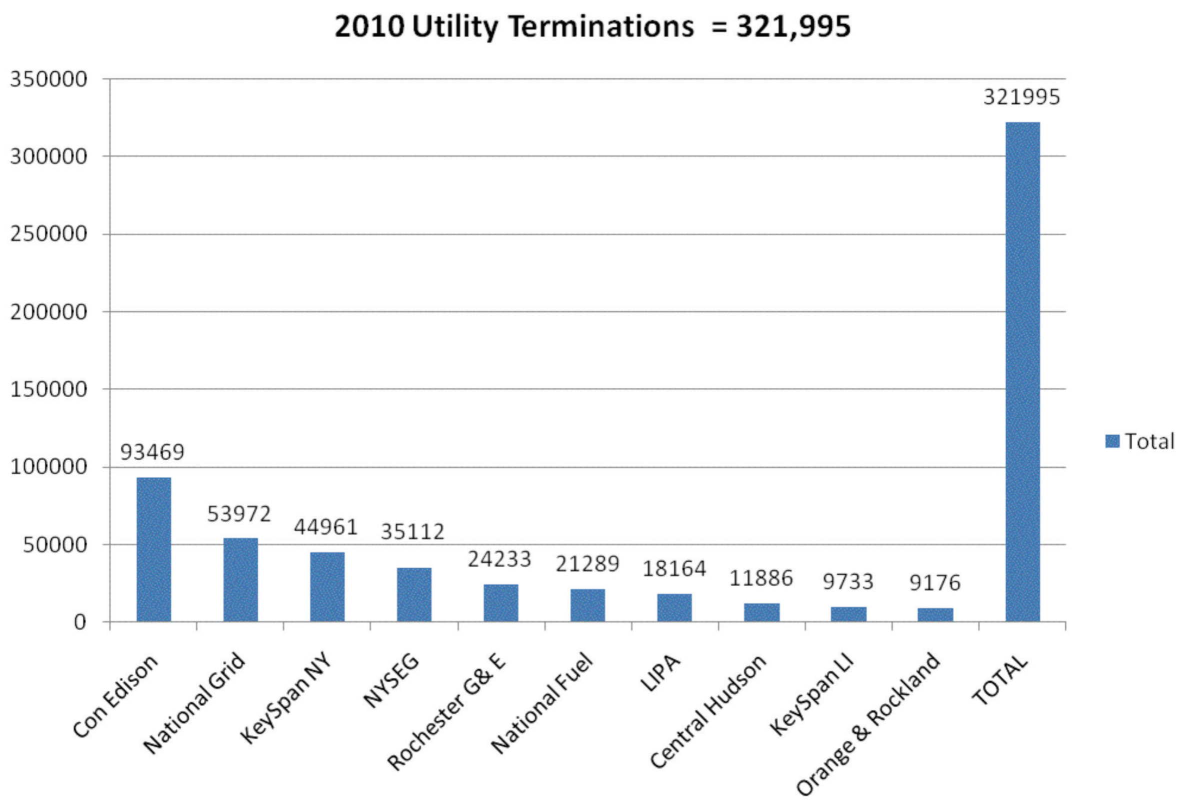
Nov
Dec
Total
Rochester G& E


2010 Utility Terminations = 321,995
350000
300000
250000
200000
150000
100000
50000
0
93469
53972
44961
35112
24233
21289
18164
11886
9733
9176
321995
Total
Con Edison
National Grid
KeySpan NY
NYSEG
Rochester G& E
National Fuel
LIPA
Central Hudson
KeySpan LI
Orange & Rockland
TOTAL

APPENDIX B

Summary of New York's HEFPA law and regulations[14] affecting service termination and denials:

- HEFPA Clarified the right of individual applicants to obtain electricity and natural gas service promptly;
- Simplified utility service application requirements;
- Eliminated most deposit requirements;
- Established rights to deferred payment arrangements tailored to individual circumstances for customers in arrears who cannot afford to pay total arrears when utility service is off or termination is threatened;
- Provided for continued service in medical emergency situations and while disputed charges are being resolved by the PSC;
- Added new notice requirements for service terminations and denials;
- Required additional winter notices and protection for elderly and disabled customers;
- Required special notices and remedies for tenants in buildings where service termination is iminent due to landlord payment defaults;
- Required a budget billing option to levelize seasonal fluctuations in usage;
- Established a user friendly administrative customer complaint and bill adjudication system, and
- Instituted a telephone "hotline" (1-800-342-3355) for speedy review by the PSC of terminations and service denials.

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[14] HEFPA Regulations are available at http://www3.dps.state.ny.us/N/nycrr16.nsf/Parts/6CAA329B4A1945F485256FC7004CFBA3?OpenDocument.

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