



Department of Public Service

Public Service Commission

Audrey Zibelman

Chair

Patricia L. Acampora

Gregg C. Sayre

Diane X. Burman

Commissioners

Kimberly A. Harriman

General Counsel

Kathleen H. Burgess

Secretary

90 Church Street, New York, NY 10007-2919

www.dps.ny.gov

January 26, 2016

Mr. Jay Raphaelson
EnergyWatch Inc.
1261 Broadway, Suite 510
New York, NY 10001

Mr. Richard Beale
Consolidated Edison Company of
New York
4 Irving Place
New York, NY 10003

Subject: Informal Hearing Decision

170 Broadway NYC LP
Case # 440805
Astir Property Holding NV
166 Broadway, ENT
New York, NY 10038

Dear Mr. Raphaelson and Mr. Beale:

An informal hearing for the above referenced case was requested by the complainant, 170 Broadway NYC LP and was held on September 2, 2015. The complainant was represented by Mr. Jay Raphaelson, Mr. Peter Athensen, Ms. Diana Sweeney and Mr. Plessias Demetrios. Consolidated Edison Company of New York, Inc. (Con Edison or the utility) was represented by Mr. Richard Beale, Mr. Jeremy Feliciano, Mr. Will Saldarriaga, Mr. Charles Feldman, Mr. Michael Xu, Mr. John Cioffi and Mr. Joseph Princiotta. Based on the information presented below, I find that the utility billed the complainant correctly.

Background

166 Broadway/Astir Property Holding NV is a 21-story building located in lower Manhattan. It received electric service from Con Edison since 1985 until December 2014 when the account was closed by the complainant. The account was billed at a demand

rate. The meter in question was installed in 1998 and replaced on November 13, 2014 with another demand meter. The old demand meter consisted of a demand register in conjunction with a consumption, or watt-hour meter.

Con Edison reads meters serving demand-billed customers monthly. Each actual reading of the consumption meter permits calculation of the customer's cumulative consumption and of its consumption during the current billing period in kilowatt-hours (kWh). Each actual reading of the demand register permits calculation of the peak demand in kilowatts (kW) for the period since the preceding actual demand reading. The peak demand measured reflects the maximum consumption of electricity during a 30-minute interval.

By January 16, 2012 letter the complainant requested Con Edison to provide a temporary service because the 21-story building was being remodeled from an office building to a hotel. The letter stated that the complainant intended "to reuse incoming service assumed to be rated at 4000 amp"; it enclosed a list of the building's electrical equipment with a summary of the anticipated electrical load for 3383 kW. The utility replied by its February 21, 2012 load letter that it would supply a standard three phase, four wire, alternating current service at approximately 60 cycles and 120/208 volts from the existing vault. The available service would be limited to 3,500 amperes per phase per half hour of demand. According to the complainant the temporary service was installed in January 2013 and removed in May 2014.¹ In response to the high bill inquiries, the utility inspected the meter on February 21, 2014 and found the meter working properly.² The utility wrote in its May 9, 2014 e-mail that although the December readings and demand exceeded 80% of the meter allotted capacity the meter operated properly and did not malfunction.

Con Edison inspected the site on August 12, 2014 and found its current transformer (CT) cabinet with the lock and seal missing. It was determined that the contractor installed a split coil CT and an unauthorized shunt connection on the 2000/5 side of the CT coils creating an unmetered service condition. The complainant also installed Atlantic meter to verify the accuracy of the Con Edison meter. The utility corrected the unmetered service condition and billed the complainant \$6,496.99 for electric unmetered service during the period of February 21, 2014 to August 12, 2014. On October 23, 2014, the complainant requested to test the meter.

In his October 24, 2014 letter addressed to the Office of Consumer Services (OCS) the complainant disputed overbilling for electric service. Additionally, the complainant disputed supply charges billed by Con Edison Solutions or Energy Supply Company (ESCO) which were calculated based on the meter readings obtained by Con Edison. The complainant stated that by billing in excess of 4000 kW³ which is equivalent

¹ See complainant's letter dated 10/24/2014.

² The record of the same date states "meter in shaded area [has] adequate wiring".

³ The utility records show that demand readings reached peak in March 2014. The demand reading of 4208 was recorded on March 20, 2014 and was used in billing.

to approximately 11,000 amp Con Edison has billed the entity far beyond the service capacity. The complainant provided electrical diagrams by Pinnacle Electric, a photo picture of the panel that was prepared to accept 1200 amp fuses and a survey of the building electrical equipment performed by EnergyWatch on May 22, 2014.

On November 10, 2014, the utility removed old meter # 6498333 40001HM K 800 and installed new meter # 8713251 40001CM K 800. The old consumption meter was tested on November 14, 2014 and found to be recording within the Commission's established limits of 99.8% (within two percent of one hundred percent) accuracy. A joint meeting with Con Edison representatives was held on May 7, 2015; however, the dispute over high bills was not resolved. On May 27, 2015, the utility inspected its CTs and the new meter # 8713251 40001CM K 800 and took pictures of the CTs. The report of the same date showed that all three window-type 2000/4000:5 CTs were connected to the 4000 tap and well within the +/- 2% range of the nominal CT ratio. The new meter wiring was found to be proper. The new meter was recording at 101% accuracy which was also within the Commission established accuracy limits for in service meter equipment.

By its letter dated June 19, 2015, staff advised the complainant that the utility billing was proper for the following reasons:

- the meter test showed that the meter was recording accurately
- the bills based on estimated readings were revised when actual readings were obtained
- although the demand meter may have been rated for 3500 kW demand it had the capacity of handling four times the consumption
- current transformers were also tested and found to be operating accurately
- the increase in use and demand coincides with the presence of the maximum number of supplemental electric heating units on site

The complainant objected to the staff's determination and requested an informal hearing.

Complainant's Position

The complainant explained the reasons for disagreement with the staff determination in his July 1, 2015 letter and stated:

- There were eight estimated readings during a period of April 3, 2013 to April 3, 2014. Con Edison should conduct a complete investigation, not just adjust the readings to their own guidelines.
- On May 7, 2015, during a meeting Con Edison's representatives were not able to explain how the building could achieve such high demands without service disruption.
- The 1200 ampere fuses in the customer's electrical panel would have failed prior to reaching the inflated demands billed.

Another March demand reading of 6392 kW was considered excessive and was disregarded.

- The complainant reached out to a fuse manufacturer and confirmed that the 1200 ampere panel was fused with Mersen 1200 Amp A4BQ fuses.
- It is inconceivable that the utility forces the customer into a position of proving that the demands billed by Con Edison were physically impossible.

By October 24, 2014 letter the complainant presented an itemized list of the site electrical equipment obtained by EnergyWatch on May 22, 2015. The list included 18 large heaters, 4 medium heaters, 155 room heaters, lighting and a spreadsheet of delivery and pickups of electric heaters. Based on an energy utilization survey the complainant calculated total winter load demand at 750.4 kW and 486,537 kWh during heating season and 157.9 kW and 54,002 kWh during non-heating months. By October 15, 2015 e-mail, the complainant provided an affidavit from Mr. Peter Athensen, Vice President of Construction for Highgate Hotels. Mr. Athensen stated that EnergyWatch survey accurately represents onsite equipment used during the reconstruction period. In a follow up e-mail dated December 4, 2015, the complainant showed a calculation of maximum of 389 kW that could have been used at the property through 1200 amp electric service.

The complainant contended that while Con Edison tested the electric meter and the current transformers, the installed 1200 amp fuses would melt in approximately 38 seconds while there was no service disruption during the intervening period. He also argued that the unmetered service condition found on August 12, 2014 contributed to additional 15.6 kW which could not have influenced billing estimates from winter 2013-2014. According to the complainant the utility's overbilling equates to \$1,341,838.45 including delivery charges, supply charges and applicable interest.

The complainant challenged the utility findings of unmetered service condition based on the fact that the photographs of the electric cabinet obtained by Con Edison failed to show that a cabinet lock was broken and came to the conclusion that the cabinet was never locked by the utility. The complainant asserted that Pinnacle electricians picked up the CTs from Con Edison for installation with a jumper already on and the tag "Do not remove – Con Edison". For this reason the electricians did not remove the jumper after the cabinet was energized.⁴

Using the utility records the complainant compiled a table based on the transformer network load, the building transformer load and billed demands. The complainant determined that the demands that were billed to 170 Broadway were impossible. Based on the building transformer readings the complainant requested to adjust billed kW to match the kW load of the building transformer, determine kWh billed using a reasonable load factor and a refund to the customer of overcharges with applicable interest.

⁴ The complainant also provided affidavits from Mr. Demetrios Pleassias licensed engineer, Mr. Kevin Clancy, president of KDC Consulting LLC and two employees of Pinnacle Electric supporting position regarding the use of 1200 amp fuses and CT cabinets not being locked by Con Edison.

During the hearing the complainant showed an electrical diagram of the building by Pinnacle Electric and pointed out the main switch for temporary service with the 1200 amp fuses. The complainant reiterated his argument that fuses would melt if the utility provided service over 1200 amps.

Company's Position

The utility maintains that the account was billed properly and the meter registered complainant's use correctly. The utility supplied records showing real time reports, a spreadsheet detailing the readings and consumption in a chronological order. This information clearly illustrated that the account was billed properly and based on the actual readings. The meter test report demonstrated that service was wired correctly and the electric meter in question was recording accurately at 99.8%. The utility inspected the customer's current transformers on May 27, 2015 and found the transformers working properly.

The utility notified the complainant regarding the unmetered service condition within the six month period which was in accordance with the current backbilling rules. During the hearing the utility stated that although the unmetered load was determined to be 23,076 kWh with demand of 15.6 kW the inspector witnessed only what was found onsite during his visit. This suggests that it was not possible to know with certainty how the contractor maintained electrical equipment at other times. The contractor had no authority to install an open core CT inside Con Edison's CT cabinet. Contrary to the complainant's opinion the utility claimed that the CT cabinet was locked and could have been opened without damaging the lock. The utility asserted that the complainant's theories were not substantiated and should be dismissed in their entirety.

Analysis

The principal issue in this case is whether the evidence supports the complainant's contention that the account was overbilled. For the reasons explained below I conclude that the utility's billing was proper.

In the letter dated July 1, 2015, the complainant stated that there was certainly an expectation on the building part that the billable loads would increase. Review of the account billing shows that these expectations were surpassed and the pattern of use exhibited since 1985 has drastically changed. The table below illustrates the changes in consumption and demand during reconstruction. Consumption increased 12 times and demand increased 5 times.

Period of time	Average billed energy use Kilowatthours per day/per month	Average billed demand Kilowatts per month
01/03/11 to 05/02/13 Before new temporary service was installed for reconstruction of the building	2533/75990	275
01/02/13 to 05/02/14 ⁵ During reconstruction	32001/960030	1494
05/02/14 to 08/01/14 After temporary service was removed	2426/72780	216

The utility obtained numerous actual readings during the period of January 2013 to May 2014 which automatically corrected any over or under estimated bills. Particularly, the utility obtained actual readings on November 10, 2014 when the meter was exchanged and on December 11, 2014, the date the account was closed. Therefore, at the time the account was finalized the complainant was billed only for the use recorded by the demand register and the consumption meter that was tested within the Commission's guidelines.

By its February 21, 2012 letter the utility informed the complainant that it would provide the service of at least 3500 amperes. It was the same service supplied to the building without interruptions since account inception in 1985. The old meter # 6498333 40001HM K 800 was installed in 1998; it had the capacity of registering consumption and demand delivered through the service line. Our practice shows that electric demand meters are very reliable and the majority of meters tested are found to be recording accurately. The CTs were inspected, tested and found operating within the prescribed parameters. The transformer test performed on a birdog testing equipment measured 3955.9 amp of electric current. The utility's equipment which delivered and measured electric service did not malfunction.

According to a survey of electrical equipment by EnergyWatch a total load of winter equipment was 750.4 kW. The complainant stated in his October 14, 2015 submission ⁶ that a significant rise of demand and consumption in the winter months was due to a large quantity of the heaters brought into the hotel during winter. A review of the schedule for the delivery and pick up of the electric heaters shows that 20 large heaters were delivered

⁵ See complainant's letter dated 10/24/2014.

⁶ See complainant's e-mail 1 of 4 dated October 14, 2015.

during November 21, 2013 thru March 5, 2014; and 155 room heaters were delivered during March 6, 2014 thru March 18, 2014 when the winter was over; 92 room heaters and 13 large heaters were picked up on April 21, 2014. The pick-up date of April 21, 2014 is near the date of May 2, 2014 which also signifies the date when consumption and demand dropped to the level preceding reconstruction (see table on page 6). The fact that the room heaters were used during a period of March 6, 2014 to April 21, 2014 and the consumption and demand also reached its peaks in March 2014 could mean that the remodeling of the building was in its last stages. These facts lead me to conclude that the most energy consuming equipment in addition to room heaters was used prior to April 21, 2014. Considering that temporary service had been removed in May 2014 and a survey was performed on May 22, 2014, I am not convinced that 750 kW winter load adequately represents the construction site load and the list of the surveyed equipment is complete.

The complainant asserted that if the building received about 4000 amp of service, its 1200 amp fuses would melt in 38 seconds. Relying on fuse rating of the control panel, the complainant recalculated maximum winter demand at 389 kW. The complainant submitted a picture of a panel prepared to accept the fuses. This picture showed empty cabinets. Since the picture was obtained on January 31, 2013 according to complainant's October 29, 2015 e-mail, it is obvious that temporary service with 1200 amp fuses was not installed in January 2013 as alleged. During the hearing the complainant showed an electrical diagram of the building, prepared by Pinnacle Electric, and pointed out the main switch for temporary service which included a NAVTech 1200A CT cabinet. The diagram states that the NAVTech 1200A CT cabinet was "added on August 25, 2014" which was three months after May 2014 when, according to the complainant, the temporary service had already been removed. Considering the inconsistency of the complainant's testimony, I find that the evidence regarding the timing of installation of the 1200 amp fuses and calculations of the construction site at 389 kW demand is inconclusive.

Now I turn to the matter of the unmetered service condition found on August 12, 2014, which was subsequently challenged by the complainant. An affidavit by Mr. Athensen states "At no time did I see a broken lock on the Con Edison meter cabinet, nor any breakage evidence. During construction and until December 2015 there was no lock on the cabinet."⁷ The following facts counter Mr. Athensen's statement:

- The report of unmetered service condition refers not to the meter cabinet, but to the CT cabinet.

- An e-mail dated July 15, 2015 from Agron Halili, on-site Director of Engineering to Josef Princiotta, Con Edison manager, states "Please let me know when your inspector can open cabinet for Pinnacle." The same date response, addressed to Peter Athensen whose name was among other e-mail recipients states "Tomorrow 7/16/15"

⁷ The complainant's account has been closed in December 2014 which means that Mr. Athensen refers to his continued to work at the building, but for the new owner of the hotel.

9 am we will open cabinet”.⁸ Without going into further discussion of whether the CT cabinet was ever locked or whether it was possible to open CT cabinet without scratching and breaking a lock, I find that installation of a split core CT ⁹ inside the Con Edison’s CT cabinet was prohibited. Pinnacle Electric, as a licensed electric contractor should have reasonably known that utility’s permission was required for any type of work inside the CT cabinet. The complainant argued that the Pinnacle electrician picked up the CT with the jumper on and with Con Edison’s tag “Do not remove - Con Edison”. This means that there was no definite proof whether the customer installed the shunt. I agree, although, it is possible that Con Edison did remove the shunt after the CTs were energized. Under the circumstances whereby unauthorized installation of a split core CT compromises contractor’s conduct I cannot give the benefit of the doubt to the complainant. I conclude that the complainant is responsible for the unmetered service condition found on August 12, 2014 and the billing was proper.

The complainant asserts that the demands billed were far in excess of not only the 166 Broadway transformer readings, but in excess of the peak kW of the entire transformer network which included six buildings altogether. Similarly to the consumption meter the demand register detected higher readings during the reconstruction period of January 2, 2013 to May 2, 2014 and showed significantly lower readings after May 2, 2014. There were no complaints about demand readings since the date the meter was installed in 1998 until the remodeling of the building started. When this work was completed the readings of the meter decreased as one would expect when the most energy consuming project ended. Although it is unknown what caused the meter to detect and register demands over 6000 kW there is no evidence of meter malfunction. With the passage of time, it is impossible to establish the cause for higher readings and even if it was possible the utility is not required to monitor the customer’s electric facilities around the clock. The utility is required to assure safe and secure provision of its service for which no complaints were made.

I would like to emphasize, that a utility always has the burden of proof to show its billing was proper. In this case Con Edison met that burden through its inspection and tests of the meters and current transformers. As it was stated earlier about 4000 amp service was provided to the building since 1985. As we know there were no service interruptions during the reconstruction period and the 21-floor office building was converted into a hotel. I find that the complainant received the service according to specifications indicated in his request for service letter and conclude it is the readings of an accurate meter that are the basis for upholding billed usage. The Commission has consistently found that the readings of an accurately recording meter are conclusive of use.

⁸ See complainant’s e-mail 3 of 4 dated October 14, 2015.

⁹ Affidavit by Mohamed Rahman, a project manager for Pinnacle Electric states” When the split core CT’s provided by the owner’s metering representative were installed the electrical cabinet was not locked at that time.”

Determination

The evidence here supports the conclusion that the billing was accurate. The billing is sustained as rendered.

If either party disagrees with this decision, an appeal may be filed with the Commission. The appeal procedures are set forth below

APPEAL PROCEDURE

If you believe that this decision is incorrect, you may appeal to the Commission. The basis for an appeal to the Commission is limited to one or more of the following grounds:

- (1) The hearing officer made a mistake in the facts in the case or in the laws or regulations which affected his or her decision; or
- (2) The hearing officer did not consider evidence presented at the hearing or review, which resulted in an unfavorable decision; or
- (3) New facts or evidence, not available at the time of the hearing, have become available, and could affect the decision on the complaint.

If you choose to appeal, your appeal must be in writing and must contain an explanation of the facts or conclusions in the decision with which you disagree, the reasons for your disagreement, the relief or remedy sought from the Commission, and documentation of your position or legal arguments supporting your position.

The appeal should be filed within fifteen (15) days after the informal hearing or review decision is mailed, and may be filed electronically or by regular mail. To file electronically, e-mail your appeal to the Secretary of the Public Service Commission, Kathleen Burgess, at:

Secretary@dps.ny.gov

If you are using regular mail, send your appeal letter to:

Kathleen Burgess, Secretary
Public Service Commission
Three Empire State Plaza
Albany, New York 12223

A copy of the appeal letter should also be sent to the opposing party. Appeals of Informal Hearing Decisions become a matter of public record and are listed on the Commission's website. Both your appeal letter and the informal hearing decision will be available to

members of the general public (subject to limited redaction in the case of residential customers)

The Commission may make a determination on your appeal, reject it, return the case to the informal hearing officer for additional consideration, order a formal evidentiary hearing on the complaint or take such other action as it deems appropriate.

Sincerely,

Tatyana Benyaguyeva
Informal Hearing Officer
Office of Consumer Services