STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE
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October 8, 2010

Mr. Stephen Levinson
[redacted]

Ms. Nancy Elwood
New York State Electric and Gas Corp.
P.O. Box 5224
Binghamton, NY 13902

Subject: Informal Hearing Decision
Case #009222
302 Seneca Road
Hornell, New York

Dear Mr. Levinson and Ms. Elwood:

An informal hearing concerning the above case was held on September 23, 2010 via telephone conference. Mr. Stephen Levinson (the customer) participated in the hearing as did Mr. Braun who is an electrical inspector with Atlantic Inland inspections, Inc., in Cortland, New York. Ms. Nancy Elwood (Appeals Analyst) and Mr. Joe Komoroske (Electric Distribution Engineer) represented the company, New York State Electric and Gas Corporation (NYSEG). Based on all the information presented, I suggest that the company create and distribute a written notification of its requirements to parties including electrical contractors and inspectors, pertaining to those customers whose electric service have been inactive for an extended period of time.

Complainant's Position

The customer contacted the Office of Consumer Services (OCS) on April 1, 2010 at which time he stated that he owned an apartment building whose electric service was disconnected in 2006. Due to the disconnection of service, there were complaints from the village and the tenants. The customer had a certified electric inspector in 2008 and who just recently stated that the equipment is safe. However, NYSEG refused to

restore the service because the equipment is obsolete. The customer also had a New York State Building Inspector come in August 2009 who went to the property and he too said it was safe. The customer states that he cannot afford to perform any upgrades. The customer was seeking to have the service restored since it has passed inspection. In his correspondence dated April 19, 2010, the customer enclosed a copy of a passed inspection, performed on-site by an electrical inspector with over thirty (30) years experience. He was also going to submit an updated passed inspection report from March 2010.

On September 20, 2010, the customer faxed correspondence to our office pertaining to his complaint. In reference to the facts of the dispute in his letter, the customer states that on June 16, 2006, law enforcement responded to a call at the rental property located at 302 Seneca Road, Hornell, New York where there was an allegation that someone smelled smoke from this address. Allegedly, the person who first noticed the smell walked four-tenths (4/10) of a mile to a fire station to report the situation instead of calling in the problem. When public service officials arrived, they did not find any evidence of a fire or smoke condition but claimed that there was a gas leak. At that time, the mayor ordered that the complex be shut down. On June 8, 2008, SBL? made application to NYSEG to have the service turned back on to the apartment complex located at 302 Seneca Road. The company received the inspection report on June 12, 2008 and advised SBL that an upgrade was needed if the service had been off for more than two (2) years. A U/L inspection was performed and the wiring passed the U/L inspection, but SBL was told that it did not meet NYSEG's standard for activating new service. SBL, on September 8, 2008, again requested that the company turn the service back on at the [redacted] Seneca Road address on September 22, 2008. The company visited the property on September19, 2008 and determined that the requested upgrades had not been made and consequently the service was not restored. NYSEG received a request on March 15, 2010 to restore the service but again refused to activate the service as the requested upgrades had not been made. As a result of this denial, a complaint was filed with the OCS. On May 7, 2010, the OCS issued a ruling that the request to activate service had been denied and listed the following reasons:
1 – the wiring met U/L inspection requirements but did not meet NYSEG standards for activating new service; and
2 – the service had been shut off at the 302 Seneca Road location since 2006 and in order for the service to be connected, all wiring and electrical connections must meet the company's current codes prior to the connection of service.

The customer questions as to whether the NYSEG can impose a two (2) year rule on disconnected service. The customer states the company conceded that the wiring at the 302 Seneca Road building passed the U/L inspection, but does not meet the company's standards for activating new service. The customer feels that it appears the company is alleging that the basis for this arbitrary two-year standard is found in a prior Commission case of PSC vs Mousaw (Case 01-E-1060). He believes that a discussion of this case merits a review of the particular facts that led the company to impose a two-year rule in that case. Mr. Levinson referred to 16 NYCRR Section 733.15 item 32 which he states stands for the proposition that the power company has the discretion to retire a power line. He claims that no evidence was offered by the company that indicates the company elected to retire the line to the [redacted] Seneca Road property. In

addition, he contends that there is no disputing that on June 16, 2006, power was fully operational at the 302 Seneca Road property. The fact that the company did not retire the line to the [redacted] Seneca Road property is "prima facie" evidence that Mr. Levinson was an existing customer on June 16, 2006 and made efforts to have service restored within a two (2) year window after receiving an inspection from a state certified official.

As part of his conclusion, the customer states the company has offered the following reasons for continuing to deny electric service to [redacted] Seneca Road:

1 – there is a two (2) year limit if power has been disconnected at a property and if a request is made, then the property is subject to electrical upgrades. However, the company has not offered one document that supports its arbitrary two-year rule.

2 – the company is claiming that a request for restoration of service was not made within two years. However, the company clearly admitted in its document (PSC Response Form) that it received the request on June 10, 2008 which was less than two years as the service at [redacted] Seneca was shut off on June 16, 2006. The company never stated that the repairs had to be made within two years; only the request to restore service had to have been made within two years.

3 – the company has argued that because the power was off at 302 Seneca Road for more than two years, that this is considered to be "New Service", subject to required electrical upgrades. However, the fact that the company did not elect to retire the power lines to 302 Seneca Road clearly indicates that the company did not intend to consider the request to restore power as new service. If the company had retired the lines and made public record of this retirement, then it could argue that this should be considered new service and choose not to retire the line.

The customer states that the following evidence was submitted at the hearing to show (1), a request to restore service at 302 Seneca Road was made within the arbitrary two-year timeframe; (2) the 302 Seneca property passed inspection by a New York licensed electrician stating that the property passed normal industry standards and could be re-energized safely; (3) the power lines to 302 Seneca Road were never retired by the company and remain on the books even today so the company never intended to declare that 302 Seneca Road was unfit for electric service.

At the time of the informal hearing, the customer indicated that Mr. Braun, an electrical inspector who has thirty-four years of experience, would speak on his behalf. Mr. Braun began by stating that he was unaware that after an electric service to a building was inactive for a period of twenty-four months, the company would require a complete upgrade which is the case here. Since the six original electric meters were still in place and there was no change in the line work, he believes that all that would have been required for the company to restore service to the building would be an Underwriters inspection. Again, he is unaware of any requirement that an upgrade is required after service has been off for more than two years. He acknowledged that the company may require an inspection after two years. However, he also stated that the request to have the service turned on was made less than two years after the service was turned off.

Mr. Braun stated that the electrical equipment in the building is unchanged and from a safety standpoint, he feels that there is no reason why the service should not be energized at this time. The whole issue remains that if the company is going to make certain requirements, it should send notifications to the respective parties so that everyone is aware of the requirements. He added that there is nothing in the company's "Green Book" specifications booklet about requiring upgrades after a two year period.

His contention is that in this situation, there is an existing service in an existing building. If there is a policy that states the company will not restore service after two years, then something in writing should exist and be distributed. This is also so he can advise his clients beforehand that the service cannot be restored until an inspection is performed by the company and an upgrade may be required.

In regard to the service being disconnected years ago, according to the customer, the mayor of the town issued orders to have the electric service to his building turned off due to an alleged gas odor; it had nothing to do with an electrical condition. As a result, the building was evacuated and there was an approximate delay of two years before the customer requested to have it restored. He attributed the delay to a number of things such as getting tenants to reoccupy the building and at the time, assisting his severely ill mother. When he did apply to have the service restored, the customer was advised by the company that repairs costing thousands of dollars were needed before service could be turned back on. He indicated that he was unable to do so because of financial restraints.

Utility's Position

As part of its May 6, 2010 written response, the company states the following:

On June 10, 2008, the customer contacted the company to have service turned on to six (6) electric meters at the building in question. The meters had been off since 2006. The customer was advised that he would need to have an electric inspection performed prior to the company turning on the service to the meters.

On June 12, 2008, the company received the inspection report and proceeded to explain to the customer that an upgrade would be required. It was explained to the customer that if electric service is disconnected and then reconnected more than two (2) years later, an Underwriters Laboratories (U/L) inspection is required. In addition, if the service does not meet the current standards, the customer would be required to have the service upgraded prior to having the company energizing the meters. According to the company's specifications booklet entitled, "Electric Services and Meters", each position of a ganged meter socket shall be rated to 200 amperes continuous. The existing meters at the location are three (3) double cabinets rated at only 100 amperes continuous.

On September 18, 2008, the customer requested that the service be turned on at the location on September 22, 2008.

On September 19, 2008, the company made a visit to the location and confirmed that the customer's service equipment had not been upgraded. As a result, the company did not restore the service. The company then contacted the customer to advise him of this.

On March 15, 2010, the company received a new U/L inspection. The company again visited the location and found that the required upgrades had not been performed. The company contacted the electrical inspector and explained that the service would not be restored without the required upgrades. The inspector indicated that he would contact the customer.

On March 29, 2010, the customer and the electric inspector both contacted the company, at which time the customer stated that he was financially unable to make the necessary upgrades to the service. The company discussed the options with the customer and it was determined that the best course of action would be for the customer to install one (1) new double cabinet to serve the present apartment and one in the future. The customer indicated that when his renovations of the property were completed, there would be four (4) apartments. The company advised the customer that if he wanted to strip the old enclosures, he could notify the company's call center and a work request to remove the six (6) inactive meters would be issued. At that time, the customer indicated that he was agreeable with this plan.

On April 1, 2010, the customer contacted the Office of Consumer Services (OCS) for our intervention.

On April 8, 2010, the company spoke with the customer and advised him of its position. A copy of the company's Electric Services and Meters specifications booklet was provided to the customer. The customer requested the name and telephone number of the company's Field Planning Supervisor to discuss the matter further.

On April 13, 2010, the customer spoke with the Field Planning Supervisor who explained the company's position. It was also explained to the customer that the company is permitted to have more stringent requirements than the National Electrical Code (NEC). The supervisor advised the customer that the company does not certify its inspectors; the municipalities determine who inspects in their respective municipality. It is required that the inspectors be knowledgeable in both the NEC and the company's requirements.

On April 14, 2010, after the customer again contacted the OCS, the company's Field Planning Supervisor spoke with the customer and advised him that if he does upgrade the service and a disconnect/reconnect is required, the normal fee of $290.00 to do so would be waived. It is the company's practice to waive this fee when there is a safety concern which is the case in this installation. Upon further review of the photograph of the meters, the company determined that it appears one set of gangs is used as a feed through to the middle set of gangs. This is not acceptable as the meter sockets are not designed for this use and a trough is required.

It is the company's contention that the upgrades are necessary for safety reasons. Also, the company is justified in withholding service until the required upgrades have been performed.

At the time of the hearing, in response to the inspector's inquiry regarding the company's requirements in situations such as this, the company's representative stated that it is company policy to require an inspection and if necessary, an upgrade if the electric service has been off for a period of two years or more. After being asked whether this is a written policy, the representative indicated that it is a company policy but there was nothing in writing that is shared with other parties such as contractors or inspectors.

The representatives advised that the company reserves the right to require an inspection and require an upgrade if found it is at that time. In addition, the representatives advised that the company follows the requirements of its specifications "Green Book" booklet. Regarding the upgrade, if a service is to be turned on, an upgrade may be requested.

Upon the close of the hearing, the company representatives agreed to research its records to determine the reason why service was initially disconnected and why service was not restored as soon as it was realized that the problem had nothing to do with the electric service facilities in the building.

A copy of a report received from the company on September 27, 2010 states that on June 16, 2006, "per Steuben 911/fire or something going on here/county fire dept and code enforcement on site/nat. fuel also and now they are requesting NYSEG/village of N. Hornell/wants and ETA…". On that same date, the company turned off the six (6) meters. Also on that date, the service was disconnected to all six (6) units at the location per Hornellsville Codes Officer and the mayor for numerous code violations. In response to the hearing officer's request for clarification, the company stated that NYSEG responded to a call from a 911 dispatcher requesting the company's presence at the building in question. The company turned off electric service to the building as directed by the code enforcement officer and the mayor. The company states it is its responsibility to comply with a reasonable request from a public official, or a request of a code enforcement officer to disconnect service. The company goes on to state that it does not have any knowledge of the specific conditions found by the code enforcement officials nor does it know what caused them to deem the situation of such a critical nature that they felt compelled to issue this order. The company advises that those details should be obtained from the officials of the Village of North Hornell. If the company is directed to disconnect an electric service for code enforcement violations, NYSEG does require a U/L inspection for safety reason prior to turning the service back on. The company further advises that if the customer feels that NYSEG should not have been directed to turn off the service, he would need to have it addressed by the Village of North Hornell; it is not an issue between him and the company. The company maintains that its actions were appropriate and consistent with how it responds any time it is directed to disconnect service for safety reasons and/or code violations.

Analysis

The issue to be addressed is whether the company was justified in its refusal to provide electric service until the customer had the requested electrical upgrades performed.

According to the company's records, the electric service to the building in question was off for more than two (2) years prior to the time that the customer requested service be supplied to six (6) electric meters. U/L requirements state it is necessary that an inspection be performed where the service has been off for a period of more than two (2) years. Also, an inspection performed by the company found that the current rating of the customer-owned metering equipment was lower than the required 200 amperes. Therefore, it was deemed that the customer's service equipment needed to be upgraded. The company's position that its service requirements may be more stringent than that of the National Electrical Code (NEC) is worth noting. This is also true in cases where a city or town's code requirements are commonly more stringent than the NEC when comparisons are made. The requirements of the NEC are sometimes looked upon as the minimum requirements for service installations that must be complied with. However, it is not uncommon that depending on the geographic location involved, the code requirements of local jurisdictions may supersede those minimum requirements set by the NEC.

In this particular case, the question posed by the customer's inspector was whether there was anything in writing that the company followed which required an inspection and/or electrical upgrade. If yes, why wasn't it shared with other parties including contractors and inspectors. It would appear to be prudent that the company facilitate some type of notification to interested parties of the requirements and procedures in place for the restoration of those services that were off for extended periods of time.

In regard to the actual termination of service, the company states that it does not have any knowledge of the specific conditions found by the code enforcement official or what prompted them to deem the situation to be of a critical nature. The company merely followed instructions to terminate service as it should have. It is unfortunate, however, that more information pertaining to the preexisting emergency is not known. The question remains as to what prompted the initial emergency call to the company which ultimately led to the disconnection of service. There is no information suggesting that the preexisting emergency condition was indeed electrical in nature. Meanwhile, the service is to remain off until the required upgrades are performed due to safety issues. There does not appear to be any other assistance that this office can afford the customer at this time.

Decision

While this office may not be able to afford the customer assistance in having service restored, based on my review of the documentation and information presented, I do suggest that the company create and distribute a written notification of its requirements to parties including electrical contractors and inspectors, pertaining to those customers whose electric services have been inactive for an extended period of time. 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, Jaclyn A. Brilling, at:

Secretary@dps.state.ny.us

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

Jaclyn A. Brilling, 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,

John P. Thompson
Informal Hearing Officer
Office of Consumer Service