

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE
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April 25, 2012

Mr. Lloyd Ales

Mr. Greg Ladd
National Grid - Upstate
300 Erie Boulevard West
Syracuse, New York 13202

Subject: Complaint #106006 – Lloyd Ales

Balance transfer

Dear Mr. Ales & Mr. Ladd:

An informal hearing regarding the above noted complaint was held via telephone conference on April 24, 2012. Mr. Ales Lloyd, the customer/complainant, represented himself. Mr. Greg Ladd represented National Grid – Upstate (National Grid), the company. Upon review, the balance transfer charge to the customer's current account was upheld.

Complainant's Position

Mr. Ales contacted the Office of Consumer Services (OCS) to dispute responsibility for a balance transfer of \$1,476.45 from an address at [REDACTED]

The complainant stated that his building was repossessed by the city and demolished sometime in 2009. The meter was removed on May 19, 2009. The building was vacant during this time so there was no way that the billing for this address could have run up to \$1,476.45. Furthermore, the bills that he did receive during this time were for minimal usage. He contends that the company transferred a nonresidential balance to his residential account and threatened to shut off service to his residence. The complainant does not dispute charges rendered prior to the demolition.

On April 19, 2012, Mr. Ales submitted his position via e-mail, and a brief summary of the submittal is presented verbatim below.

According to repeated conversations with staff at the public service commission power utilities cannot transfer balances from commercial accounts to residential bills at a later date to make collections. I was told that I did not need to provide proof of this rule and that your agency would stipulate that is the rule.

The property at [REDACTED] was purchased by me in 1986 because it was zoned industrial and I needed a location to open a used car business. The building for many years before I bought it was a neighborhood grocery/deli on the first floor with a apartment above.

1. The building was zoned industrial. 2. A stated licensed car lot [REDACTED] was there for decades. 3. The floor 1 which is the NIMO and later National Grid name for the account [REDACTED] was a former store area with walk in coolers and other store fixtures and I used it for storage and a used car office after I purchased the building in 1986. 4. The electric bills from NIMO [REDACTED] and transferred to [REDACTED] were from the first floor account; a commercial account for a used car lot office located [REDACTED] that national Grid is trying to transfer onto a unrelated apartment bill in violation of state law.

I ask that since this is the case, national grid cease and desist from attempting to collect alleged balances from former business account [REDACTED] by attaching them to my apartment bill [REDACTED] and remove that balance which is approximately \$1300 from account [REDACTED]. Any Debt Collection attempts regarding [REDACTED] must be without the tactic making residential service contingent and related to a alleged debt resulting from [REDACTED].

During the hearing, the customer explained that he opened the service under his name, rather than under the business name, because the business was registered in his name. He also stated that he was not aware that the gas and electric services had different rates since the bills are not really clear. Mr. Ales believes that the company reclassified his gas service to residential for billing conveniences.

Company's Position

In response to the customer's complaint, National Grid mailed the customer a letter advising him that the location in question was demolished in May 2009 and the meter was removed. National Grid corrected the final bill by cancelling the basic service charges and estimated bills from May 19, 2009 through October 7, 2010. This action resulted in a credit of \$328.24 which was applied to Mr. Ales's current account [REDACTED]; it reduced the balance in question to \$1,148.21.

On February 16, 2011, National Grid contacted Mr. Ales and informed him that the gas meter was billed on a residential rate and the electric meter was billed on a

nonresidential rate from the date the respective services were turned on. The company explained that the balance transfer charge included nonresidential electric charges of \$205.53 and residential gas charges of \$ 942.68 (both totaling \$1,148.21).

The company acknowledged that the transfer of the nonresidential electric charges to the customer's residential account was incorrect and revised the transfer. The company credited the customer's residential account and debited the customer's closed account [REDACTED] \$205.53. After the revision, the remaining transfer charge on the customer's residential account [REDACTED] was \$942.68 and the remaining balance on the closed account [REDACTED] was \$205.53.

Prior to the hearing, Mr. Ladd called the customer to offer a settlement agreement but was not able to speak with customer and left a message. The customer did not return Mr. Ladd's call. At the start of the hearing, Mr. Ladd offered Mr. Ales a \$400 credit if he agreed to settle his case. The customer refused the offer. Mr. Ladd said that it was possible that the gas service could have been assigned a nonresidential rate, from the turn on date, if the account was established under the customer's business name. However, the company billed the customer the lower residential gas rate and the customer benefited from the situation by paying less.

Analysis

Company records show that account number [REDACTED] was opened in Mr. Ales' name on January 9, 1986 and closed on October 7, 2010 with a final balance owing in the amount of \$1,476.45. This amount was transferred to the customer's current residential account [REDACTED]. After the customer filed a complaint, the company removed charges from May 19, 2009 to October 7, 2010 that totaled \$328.24. The remaining transfer charge was reduced to \$1,148.21 and it represented nonresidential electric and residential gas service charges. The company removed the nonresidential electric charges of \$205.53 from customer's residential account. The \$205.53 was returned to the customer's closed account. This action left a balance of \$942.68.

The New York courts have upheld the right of the company to transfer arrears from one account of the same customer to another and to terminate service based on arrears from a different location (see Dworman v. Con Edison, 26 A.D.2d535 (1st Dep't 1966)). However, Public Service Law §§31 and 32 (the Home Energy Fair Practices Act of 1981) now effectively precludes transfers of nonresidential arrears to residential accounts.

In this particular case, the balance transfer charge consisted of two charges: electric nonresidential and gas residential. Initially, the company incorrectly transferred nonresidential electric charges to the customer's current residential account. National Grid corrected its error by leaving residential charges on the residential account and returning nonresidential charges back to the closed account.

National Grid provided a statement of the complainant's previous account [REDACTED] [REDACTED] which shows partial payments and late fees. The records indicate that the customer did not make a request to close this account. It appears that the customer became aware of the situation only after he was threatened with the disconnection of

his current residential service. It is possible that had he made an earlier request to disconnect service that it may have lowered the disputed charge.

The customer maintains that the company reclassified the gas service because it was a "billing convenience." However, the customer's correspondence to OCS contains a copy of an October 7, 2005 bill shows SC1 as the residential gas rate. The fact remains that even though the customer conducted business at [REDACTED], he was billed on the lower residential rate for the gas service and thereby benefited from it.

The information below illustrates the estimated savings achieved by the lower SC1 rate versus the SC2 rate for the delivery part of the bill only since the customer had Agway Services as a supplier company.

SC1 - 30 therms = \$30.42 with basic service charge of \$17.85 included
SC2 - 30 therms = \$34.92 with basic service charge of \$23.65 included

The example of 30 therms represents monthly average gas consumption for a summer period. The difference between the two rates for 30 therms is about \$5. The annual savings for a summer period of 6.5 months is approximately \$32.5.

SC1 - 434 therms = \$84.08 with basic service charge of \$17.85 included
SC2 - 434 therms = \$141.98 with basic service charge of \$23.65 included

The example of 434 therms represents monthly average gas consumption for a winter period of 5.5 months. The difference between the two rates is about \$60 per month which is significantly higher than that of the summer savings. The annual savings for a winter period of 5.5 months is approximately \$330.

The estimated annual savings, by being billed under SC1, is \$362.5. The account was opened from January 9, 1986 through May 19, 2009, or roughly 23 years, which translates into \$8,337.5 in savings over the lifetime of the account.

In another words, if customer was billed at SC2 rate he would owe the company a considerably higher amount of money than the amount that was transferred. It is true that the customer's residential account would not be threatened with disconnection if the gas was billed on a nonresidential rate; however, the company still has the right to collect the money for the gas service provided and would have done so using other collection methods.

Determination

Based on the aforementioned information, I find that the company correctly transferred nonresidential and residential charges and the customer is responsible for the total balance transfer charge of \$1,148.21.

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. Brillling, at:

Secretary@dps.state.ny.us

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

Jaclyn A. Brillling, 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