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January 14, 2011

Mr. Aaron Diamond
Shelton Building Corp.
1664 Flatbush Avenue
Brooklyn, NY 11210

Mr. Roy McMillan
National Grid Metro – New York
One Metrotech Center
Brooklyn, NY 11201

Subject: Informal Hearing Decision
Case #922297 – Shelton Building Corp.
153-15 89th Avenue
Jamaica, New York

Dear Mr. Diamond and Mr. McMillan:

An informal hearing concerning the above case was held on January 7, 2011. Mr. Aaron Diamond (the complainant) represented the customer and attended the hearing along with Frank Cadicamo (building contractor). Mr. Roy McMillan represented the company, National Grid Metro – New York (National Grid). Based on all the information presented, I am upholding the charges for unauthorized use of interruptible gas service on the complainant's account.

Complainant's Position

Mr. Diamond wrote to the Office of Consumer Services (OCS) on September 4, 2009 stating that a temperature controlled (TC) alert was sent to the customer regarding the building in question. During that period, the customer had an oil burner malfunction which the customer's oil burner contractor repaired. The complainant states that that the company was notified of this repair. The complainant feels that the penalty and shut off should be cancelled based on the attached proof of compliance of the regulation.

The complainant states that the company checked his equipment in November 2008 and found it operating properly. The customer's equipment failed in January 2009

causing an interruptible service penalty. The interruptible penalty covers the period of January 15, 2009 to January 18, 2009. The customer included a receipt from the contractor dated January 17, 2009 stating that the equipment was repaired and started back on oil. It is requested that the company remove the penalty since he worked to have the equipment repaired immediately. The contractor responded initially on the night of January 15, 2009.

The complainant disagreed with the initial determination from the OCS because the interruptible penalty was assessed based on a test. He was under the impression that the test was to make sure that the company's equipment was operating properly and that if a problem with the customer's equipment was discovered, the customer would be able to make the repair with no penalty being assessed. The complainant also states that the temperature did not fall below 18 degrees as stated in the letter from the OCS.

At the time of the informal hearing, the complainant stated he had not received some of the correspondence that was sent to him because the mail was going to the service address instead of the mailing address which had been provided. The complainant contends that once it was known there was an equipment failure at the time of the alert, arrangements were made to replace the defective apparatus. Unfortunately, the replacement part was also found to be defective which attributed to the delay. The complainant maintains that everything within reason was done to avoid using gas during the alert without denying heat to the tenants in the building.

In addition, the complainant stated that the customer did not have an option to choose between the firm service rate and the interruptible rate when application for service was made back in 1997. Subsequently, while numerous requests were made to be switched to the firm rate, the company refused because of gas capacity in the customer's area. This meant that the customer agree either to be placed on the interruptible rate or use oil as the single fuel supply.

Upon the conclusion of the hearing, the complainant refused the company representative's offer to adjust the penalty charge by ten (10) percent. The complainant stated that he wanted the entire penalty charge removed from the customer's account.

Company's Position

The company's written response to the complaint states that the building in question is billed in the SC 6M2 (TC) rate. The customer has a dual fuel heating system. The SC 6M2 rate is a contract rate that requires that the customer burn their alternate fuel source during alert periods called by the company, based on the outside temperature. In exchange, the customer receives a significant cost savings on gas usage. Prior to the winter, usually in November or early December, a test of the customer's TC equipment is conducted to be sure that, if and when an alert is called, the system will automatically switch to an alternate fuel. If an alert is called and the customer fails to burn the alternate fuel, the customer is subject to a penalty of nine (9) times the current rate for the gas used during the alert period. The customer has been billed on the SC 6 rate since 2004. The following is a chronology of what transpired during the winter of 2008 – 2009 for the account in question:

11/10/08 – the TC test was conducted. During this test, no problem was found.
01/15/09 – an alert was called by the company as the temperature was to fall below fifteen (15) degrees. An automated phone message was sent to all SC 6 customers advising them of the alert. The alert lasted for four (4) days (1/15 through 1/18).

Throughout the time of the alert, it was determined through the M2M equipment on the meter that the customer was using gas and not oil. Hourly usage was recorded by that equipment.

01/20/09 – a field inspection determined that the reason that the switch did not occur was that the customer's contractor had apparently powered down the M2M while installing a new oil pump. The technician's report states, "On arrival found M2M downpowered & S/P from Star installed new oil pump, powered up unit, left on auto gas & bnr in automatic."

Subsequent to this, the account executive for this account noted that the complainant advised him that the problem was corrected and that he would send him an invoice. The account executive indicates that, as of 3/20/09, that invoice had not been received.

06/29/09- the customer was billed for a Rate 6 T/C Alert Charge in the amount of $11,643.79, for a total of 1052 ccfs used.

At the time of the informal hearing, the company representative reiterated the company's findings above and emphasized that while the customer passed the equipment test in November 2008, the violation occurred during the time of the alert, in January 2009. He specified that for the three day alert period (January 15th to January 18th), the customer used oil for only eight hours; during the remaining time, gas was being used.

The company representative indicated that the customer has been on the interruptible rate since1997. He concurred that the customer was not offered gas service on the firm rate because the gas capacity in the area did not allow it. There were no other options to obtain gas service on the firm rate.

In an attempt to settle the dispute, the company representative offered to reduce the penalty charge by ten (10) percent and grant a deferred payment agreement on the balance. Thus far, the company had already removed the late payment charges and collection fees in addition to waiving the security deposit that was requested previously. This amounted to an adjustment of approximately $11,000.00.

Analysis

The issue to be addressed is whether the company applied the disputed charges to the account in accordance with existing regulations, procedures and the company's tariff.

The information provided by the company indicates that the unauthorized use of gas occurred during the period when an alert was declared in January 2009. It did not occur when the test was conducted in November 2008 as contended earlier.

Staff's December 14, 2009 letter to the customer states that based on the company's approved tariff, interruptible customers are solely responsible for the service, maintenance, repair and upkeep of all dual-fuel equipment and all associated control devices. In addition, the company is not responsible for any malfunction of said equipment or devices or any gas usage when the outside temperature falls below the specified transfer temperature.

The company's tariff does not provide for any other rate for gas service used during a period of service interruption. Public Service Law (PSL) § 66 (12)(d) obligates utilities to charge its customers in strict conformance with rates approved by the Public Service Commission. A utility tariff, approved and filed with the Commission, has the full force and effect of properly enacted law. The facts do not warrant reducing the charges for the customer's unauthorized gas use during a period of service interruption.

Special Provision D of the company's SC No. 6M tariff (Leaf 224.1, PSC No. 12 – Gas) states:

> The consumer expressly agrees to be solely responsible for the service, maintenance, repair and upkeep of all dual-fuel equipment and all associated control devices. The Company assumes no responsibility for the adequacy of standby facilities and shall not be liable for any loss, damage or expense, direct or indirect, which may be incurred by the customer or others in connection with or as a result of any curtailment or discontinuance of gas service.

Special Provision B of the tariff (Leaf 223, PSC No. 12 – Gas) states:

It is understood and agreed that as a condition of service hereunder consumers shall be required to transfer their fuel supply from gas to an alternate fuel source whenever the outside temperature falls below the temperature specified by the Company.

In addition, the following provisions of the company's tariff (Leaf 225, PSC No. 12 – Gas) state:

f. If operation or supply conditions warrant, the Company may designate the "outside temperature" as the temperature measured at The Central Park Observatory for the purpose of requiring the customer to switch to an alternate fuel source.

g. If the company declares an emergency, the Customer agrees to immediately manually switch from the use of gas to an alternate fuel upon oral or written request of the Company at any time and the Customer shall not switch back to gas until notified by an authorized representative of the Company.

After taking the aforementioned information into consideration, I believe that the company was able to demonstrate that gas was used during the period in question. Therefore, I conclude that National Grid can hold the customer responsible for the charges for unauthorized use of interruptible gas service.

As the customer had expressed an interest in being placed on the firm gas rate, it is suggested that the company explore any options, consistent with its tariff, available in order to accommodate the complainant's request.

Decision

The documentation and information presented have provided no evidence or information that would warrant the waiving or altering the unauthorized use of interruptible gas charge applied to the account. Accordingly, the disputed charges are sustained at this 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 Services