STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE
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www.dps.ny.gov

April 12, 2013

Ms. June Bornstein
[redacted]

Mr. Jeremy Feliciano
Consolidated Edison Company
4 Irving Place, 9th Floor
New York, NY 10003

Subject: Informal Hearing Decision
Case #163338 – Jane Bornstein
[redacted]

Dear Ms. Bornstein and Mr. Feliciano:

An informal hearing concerning the above case was held on March 28, 2013 at 90 Church Street, New York, NY. Ms. June Bornstein (customer/owner) attended the informal hearing. Mr. Jeremy Feliciano represented the company, Consolidated Edison (Con Edison). The tenant, Brenna Haysom, was invited and attended the hearing. The following information leads me to conclude that a shared meter[1] condition of electric service did exist in apartment [redacted] and that the charges rendered are correct.

Owner's Position

In a July 23, 2011 letter that the customer faxed to the Office of Consumer Services (OCS), she stated that as of June 18, 2011, she rented the condominium to new tenants, [redacted] The apartment is described as being a duplex unit with a first floor apartment and a spiral staircase that leads to the basement level. The lower level contained storage, a laundry area. The front area could be used

[1] Shared meter means any utility meter that measures gas, electric or steam service provided to a tenant's dwelling and also measures such service to areas outside that dwelling and such tenant pays charges for the service to areas outside the dwelling measured through such meter.

as an office. There was only one meter for the space that was determined by the company when an inspection was performed. Because the new tenant occupied the entire space, no shared meter condition existed. In addition, the tenants' lease required them to have the utility services placed in their names.

Previously, the apartment was rented to a tenant, Brenna Haysom, who occupied the upstairs space and the back part of the basement with the laundry and storage. After the tenant initiated an investigation regarding the electric bill, it was determined that there was one meter for the entire duplex unit. Although the front two rooms remained unoccupied during the tenancy, the tenant was compensated for any misunderstanding inclusive of any additional electricity that the tenant felt she might have been charged for. The owner contends that she and the tenant were in mutual agreement that there would be no further issues regarding this matter. The tenant vacated the apartment on June 17, 2011.

Again, the owner maintains that since the new tenant is occupying the entire space including the front two rooms, no shared meter condition existed. At the time of the owner's letter, the new tenant wanted to open an electric account with the company and pay for the electricity that was used from the time the apartment became occupied, June 18, 2011.

In her April 24, 2012 letter to OCS, the owner stated that the company performed an inspection as scheduled on April 20, 2012. Moreover, she stated that the company inspector advised her that, since she was not billing the new tenants [redacted] for utility service and that she was paying the electric bill, there was no longer a shared meter issue.

At the time of the informal hearing, the owner provided a copy of the apartment layout and part of the lease which indicated that the tenant was responsible for the entire first floor and part of the lower floor. The owner indicated that the door that separated parts of the lower floor were unlocked while the tenant stated otherwise. In addition, there was another individual other than the tenant who occupied part of the lower floor.

The owner stated that she provided a copy of the agreement that was made between the tenant and herself to the company and OCS. She claimed that she had been speaking with representatives at the company who first told her that everything had been taken care of and later was told that there was nothing they could do since the matter was with OCS. She felt that she was given incorrect information and advice by those representatives she spoke with. The owner was under the impression that all she had to do was provide a copy of the agreement and that would have resolved the whole issue. Furthermore, the owner stated that she would look through her records to see if there is any other information that would help corroborate her position.

On April 3, 2013, [redacted], the owner's son, wrote to the informal hearing officer on behalf of his mother. In the letter, the owner's son indicated that his mother made numerous unsuccessful attempts to contact individuals in the company's Shared Meter Department. Therefore, his mother resorted to faxing information to those individuals. Responses to his mother's inquiries were received from the company mostly by

telephone as opposed to by letter. At one point, the owner was advised that she had supplied all of the information that was required and that a new account was being opened for the new tenant. However, subsequently, the representatives who she had been in touch with denied ever speaking with her or acknowledging that the matter had been resolved.

The owner believed that the problem occurred when the tenant moved out of the apartment and she did not immediately close the account. The owner indicated that she eventually closed the account. The owner mentioned that the high usage in the apartment was most likely due to the use of high energy halogen bulbs. In addition, the owner again stated that there was no lock on the door leading out of the tenant's space nor had there ever been.

Tenant's Position

The tenant, Brenna Haysom, wrote to OCS on July 19, 2011 and stated that she occupied the apartment in question for approximately six (6) months and vacated the apartment on June 17, 2011. She claims that her agreement with the owner was inclusive of the duplex unit consisting of the first floor and part of the basement. Furthermore, she contends that she did not occupy the front office area and waiting room in the basement. In addition, it was determined that there is one meter for the apartment, inclusive of the front rooms that she did not occupy. To her knowledge, there were no outstanding issues between her and the owner pertaining to this matter and she received compensation for the problem. She requested that her name be removed as the tenant of record since she had not resided at the residence since June 17, 2011.

At the time of the informal hearing, the tenant stated that she had reached an agreement with the owner and was compensated ($250) for the shared meter condition. She also mentioned that an associate occupied a small portion of the lower floor to do his work. Moreover, the tenant was interested in knowing that she was not being held responsible for the service to the boiler or any other part of the common areas which is the responsibility of the owner.

Company's Position

The company's December 1, 2011 written response to our request for information stated that the "120 day" letter expired as of October 22, 2011. At the time, no shared meter charges or assessment had been applied to the owner's account.

In regard to the shared meter condition, on June 24, 2011, the company sent the "120 day" letter to the tenant and the owner. The letter stated that on May 16, 2011, a company representative found that some of the electricity passing through the tenant's meter also supplied service to two rooms in the basement. The monthly shared meter usage was estimated to be 220 kilowatt-hours. The company's letter also stated that the owner had until October 22, 2011 to correct the condition or she would be billed for all of the service recorded on the shared meter.

The company's May 16, 2011 field reports states that the tenant's residence consisted of five (5) rooms in the basement. The electrical load at the time of the visit was 1,728 watts, while the shared meter load was calculated to be 576 watts. The report stated that the meter also supplied service to two (2) rooms on the first floor. The appliances found in this apartment included the following:

- washing machine & electric dryer
- 2 computers & 2 printer
- 23.7 cubic foot frost free refrigerator
- toaster oven
- microwave oven
- dishwasher
- coffee maker
- electric toothbrush
- 1,065 watts of electric lighting

The company's April 13, 2012 written response stated that the owner was contacted and that the prior tenants, [redacted], vacated the apartment abruptly. Furthermore, that there were new tenants, [redacted], now residing in the apartment. In response to the owner's claim that there was no shared meter condition, an appointment was made for April 20, 2012 to verify the status of the condition. In the interim, letters dated March 17, 2012 were sent to the prior tenant and owner advising them of the shared meter billing of $165.14 for the period of February 1, 2011 to June 17, 2011 and shared meter assessment in the amount of $2,145.45. The owner was also advised that an account was established in her name and she would continue to be billed until the condition was corrected.

The company's August 28, 2012 written response stated that it provided a copy of the April 20, 2012 inspection report. It also stated that the account is noted as having a shared meter condition but billed on the residential service classification. The company will allow OCS to determine whether the shared meter coding of the account should be removed at this time. The April 20, 2012 field report stated that the owner advised the company's inspector that she would take responsibility of the duplex unit and that she will not rent out part of the basement. At the time of the inspection, the basement was noted as being vacant and that the owner will keep the account in her name. The appliances noted in the ten (10) room duplex apartment include the following:

- 2 ceiling fans
- 1 fan
- washing machine & electric dryer
- 21 cubic foot frost free refrigerator
- toaster oven
- 52 inch color television & one cable box
- printer
- dishwasher
- microwave oven
- modem, router

- 1,191 watts of electric lighting

At the time of the informal hearing, the company representative advised that the company found a shared meter condition consisting of two rooms in the basement that were connected to the tenant's meter. Furthermore, he indicated that because the shared meter monthly usage was more than minimal (above 75 kwh per month), the owner was required to provide a copy of the landlord-tenant agreement as well as documentation indicating that the condition could not be corrected due to either extraordinary cost[2] or legal impediment[3]. This information was also stated in the June 24, 2011 (120-day) letter to the owner. Thus far, only a copy of the agreement was provided.

The company representative advised the owner that the account would remain in the owner's name until the requirements of the Shared Meter law were met. He concluded that the charges rendered for the shared meter condition were applicable and would remain on the owner's account. However, he agreed to check the company's records for any indication that the owner was given incorrect information by the representatives she had spoken with previously.

Information subsequently provided shows that the owner was in contact with company representatives who advised her that the account in question could not be established in the tenant's name because of the shared meter condition that was found. The owner was also apprised that documentation attesting to a legal impediment or extraordinary cost was required in order to satisfy the applicable provisions of the Shared Meter Law.

Analysis

The issues to be addressed in this case are whether an electric shared meter condition existed in apartment [redacted] and whether the company complied with the applicable provisions of the Shared Meter Law.

OCS wrote to the customer on January 4, 2013 advising her of the company's findings and our determination that a shared meter condition existed. In addition, the customer was also advised of the options to either request an informal hearing, if he disagreed with our initial determination that a shared meter condition existed, or write to the Commission's Designee, if he accepted our determination but wanted the shared meter charges adjusted. The customer chose to request an informal hearing since it was her contention that a shared meter condition had never existed.

The records indicate that the tenant's account was closed as of June 17, 2011. An account was established in the name of the owner as of June 17, 2011 where the shared meter billing and shared meter assessment were debited. As previously mentioned, the owner has chosen to keep the account open in her name. The amount

[2] Extraordinary cost means the cost, as determined by a qualified professional, of installing equipment necessary to eliminate a shared meter in a dwelling or portion thereof which is in excess of the amount of rent for four months rental of such dwelling.

[3] Legal impediment means a restriction which prevents separate metering, rewiring, or repiping due to zoning ordinances which limit the number or type or location of meters in a building or due to the historical significance of the structure or such other legal restrictions as determined by the commission in its rules.

of the shared meter billing was $165.14 for the period of February 1, 2011 to June 17, 2011. The amount of the shared meter assessment was $2,145.45.

At this time, I must take into consideration the company's May 16, 2011 field report that indicates a shared meter condition was found. In addition, the letter from the company properly advised the owner that she may make an agreement with the tenant in addition to providing documentation attesting to a legal impediment or extraordinary cost that prevents her from correcting the condition. I have received no evidence that the owner received improper information when she was in contact with the company.

Decision

Based on the information provided during the informal hearing process, I find that a shared meter condition did exist at the premises in question and that the company complied with the provisions of the Shared Meter Law. Therefore, the charges are sustained as billed. The company is directed to offer the customer a deferred payment agreement in accordance with the applicable nonresidential regulations pertaining to deferred payment agreements. 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.

In addition, if you are a building owner seeking reduction of a 12-month assessment charge due to the utility's finding of shared meter condition, you are required to make this request by appeal of this informal hearing determination, even if you now recognize that such a shared meter condition did exist at your property. (Also, if you do choose to appeal on the basis that the informal decision erred in finding that a shared meter condition existed, you should also include a request for reduction of the 12-month assessment in case the Commission does not grant your appeal with respect to the existence of a shared meter condition.) Only the Public Service Commission or its designee can provide partial relief from this 12-month assessment charge.

If you are either a building owner or a tenant and you dispute the utility's apportionment of shared area service, you should appeal this informal

determination. Only the Public Service Commission or its designee can resolve issues relating to a utility's apportionment of shared area service.

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 Acting Secretary of the Public Service Commission, Jeffrey C. Cohen, at:

Secretary@dps.ny.gov

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

Jeffrey C. Cohen, Acting 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

cc: Brenna Haysom