



Department of Public Service

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90 Church Street, New York, NY 10007-2919
www.dps.ny.gov

November 24, 2015

Mr. Douglas DiCeglio
Utility Rate Analysis Consultants (URAC)
156 Scranton Avenue
Lynbrook, NY 11563

Mr. Malik Wellington
National Grid – New York
One Metrotech Center
Brooklyn, NY 11201

Subject: Informal Review Decision
SCO Family of Services
Case # 342720
160-11 89th Ave.
Jamaica, NY 11432

Dear Mr. DiCeglio and Mr. Wellington:

An informal review for the above referenced case was requested by the complainant, SCO Family of Services who was represented by Mr. Douglas DiCeglio. Mr. Malik Wellington represented the company, National Grid – New York (National Grid or the utility). Information was taken from the submissions made by the parties as well as the Commission's file. An informal review was performed in accordance with the Consumer Complaint Procedures of the Public Service Commission (16 NYCRR, Section 12.10). Based on the information presented below, I find that the utility's assignment of nonresidential service classification SC 2-2 was proper.

Background

A copy of the complainant's service application provided by the utility shows that SCO Family of Services applied for the gas service including central heat, water heating, commercial ranges and gas air conditioning. The application indicated that the type of business was a family shelter. The utility opened the gas account for the shelter effective June 30, 2007 under nonresidential service classification No. 2 and billed it

under the rate schedule 2 (heating).¹ In his letter dated October 18, 2013, the complainant wrote to the utility that the gas account was billed on the wrong rate from turn-on. He stated that service was supplied to a residential multiple dwelling and should have been established under service classification No. 3.² The complainant requested the account be rebilled and any overpayment to be refunded with applicable interest.

On October 22, 2013, the complainant contacted the Office of Consumer Services (OCS) disputing the assignment of the service classification. On November 8, 2013, the utility inspected the premises and indicated in its report in part "This bldg is a 144 unit homeless shelter that houses 288 to 300 people. Bldg is seven stories high". By December 6, 2013 letter, the utility responded to OCS inquiry and advised that the rate SC No. 3 is for 6 to 25 families while the instant location has 144 units and a 24 hour staff which automatically qualifies it for commercial rate. The same letter concluded that the customer was already on the proper rate. By its December 26, 2013 letter, OCS informed the complainant that the utility denied his request for rebilling at SC No.3 rate. The complainant requested additional review and reconsideration. On March 6, 2014, OCS staff wrote to the complainant that the rate assignment was proper based on information indicated on application form. The complainant disagreed and requested an informal review.

Complainant's Position

In his March 7, 2014 letter the complainant argued that the utility's tariff allows billing under SC No. 3 because it clearly states that gas service supplied to an apartment building with six or more units whereby not more 50% of cubical content is occupied by nonresidential space and all the service rendered in common to all families living at this location. There is nothing in the tariff requiring that kitchens be located within the flats/apartments. Even though National Grid inspected the premises it still denied the customer service classification 3. This denial proves that regardless of any application the utility would not place the customer on proper rate SC No. 3.

The utility also should inquire as to whether or not there were 6 or more units since the customer had no way of knowing to check off the box "the Multi-Family with ...# of apartments" on the application form. The rate brochure provided by the utility does not absolve National Grid of any responsibility. There are numerous PSC decisions where the contents of the brochure were evaluated to determine the specific issue. The customer submitted an application which indicated a place of residence; however, National Grid is improperly prohibiting a homeless shelter from Service Classification 3 and steering these types of facilities from a less expensive rate.

¹ See tariff PSC No: 12 Gas Leaves 159 and 160, Effective date: 11/03/2006

² See tariff PSC No: 12 Gas Leaf 163, Effective date: 11/03/2006

Company's Position

The utility explained in its December 6, 2013 letter that based on the results of the field investigation the account does not qualify for SC No. 3 rate which is for 6 to 25³ family services while shelter has 144 units. The shelter 24 hour staff automatically qualifies it for the commercial rate. The utility maintains that the rate SC No. 2-2 was properly assigned from account inception and no adjustment is necessary.

Analysis

The principal issue in this matter is whether the utility properly assigned nonresidential service classification SC No. 2-2 to the SCO Family of Services from the account inception.

The complainant contends that Service Classification No. 3 clearly allows an apartment building with six or more units whereby no more than 50% of cubical content is occupied by nonresidential space. The utility's tariff PSC No: 12 Gas defines SC No. 3 in its Leaf: 163 Heating and/or water heating service (Multi-Family Buildings) Applicable to Use of Service as:

The use of gas for space heating and/or water heating in multi-family buildings having six or more individual flats or apartments, wherein not more than 50% of the cubical content is occupied by non-residential activities and such service is rendered in common to all families.

In case 28080 issued on April 23, 1986 the Commission amended the definition of a "residential customer" and a "residential applicant" found in 16 NYCRR Section 11.2. The new definition of a residential customer allowed the utilities to assign residential rate or the rate that was less than nonresidential to a multiple dwelling as defined in the Multiple Dwelling Law or the Multiple Residence Law. Accordingly, the definition of a residential customer as originally formulated in article 2(see below) was amended by the residential rate applicable to a multiple dwelling shown in article (i) (see below)

(2) The term residential customer or current residential customer includes any person who, pursuant to an application for service or an agreement for the provision of commodity supply made by such person or a third party on his or her behalf, is supplied directly with all or any part of the gas, electric or steam service at a premises used in whole or in part as his or her residence where:

(i) the distribution utility's effective tariff specifies a residential rate for such service; provided, however, that no person who is supplied service to an entire

³ The utility provided no supporting documentation showing rate eligibility for 6-25 families.

multiple dwelling or for the common areas of a multiple dwelling as defined in the Multiple Dwelling Law or the Multiple Residence Law, shall be considered a residential customer solely because the distribution utility's effective tariff specifies a residential rate;

The New York State Multiple Dwelling Law provides the following definition of a multiple dwelling : A "multiple dwelling" is a dwelling which is either rented, leased, let or hired out, to be occupied, or is occupied as the residence or home of three or more families living independently of each other...⁴

The building currently occupied by the complainant was initially built as a hotel and formerly known as Pa Am hotel in Elmhurst.⁵ The 144 units identified in the utility's November 8, 2013 report are the former hotel rooms where the shelter houses homeless families. Homeless families living in a shelter differ from the families that live independently in a multiple dwelling building as defined by Multiple Dwelling Law for a simple reason – they have no financial means for independent living and their living arrangements depend on a shelter rules and a shelter staff that works around the clock. The activities conducted in a shelter support the community of its residents and include, but not limited to, special programs for assisting in a search of employment, obtaining health benefits, cleaning and maintaining a secure and safe environment. These activities can be characterized as non-residential; some activities like maintaining a safe environment conducted 24/7 and therefore, occupy more than 50% of the cubical content of the building.

Likewise, the Commission's determination for the rehearing of case 26358 Westledge Nursing Home against Con Edison uphold the rebilling of gas space-heated nursing homes from Service Classification No. 3 – residential to No. 2 –General. The issue in a case 26358 was whether gas space-heating nursing homes were billed for their gas service on SC No. 3 improperly, and whether they were properly classified on SC No. 2. The decision found that nursing homes were not multiple dwellings, as that term was used in the utility's gas tariff. There are obvious similarities between nursing homes and shelters. Both facilities have staff that works 24/7 conducting nonresidential activities. The families in a nursing home also cannot live independently of each other although primarily for the health reasons or due to old age. The nursing home residents directly depend on a staff that has numerous duties around the clock.

Based on the above arguments I find that the gas service for SCO Family of Services should remain on the nonresidential service classification SC 2-2.

Determination

⁴ See New York State Multiple Dwelling Law, Article 1 Introductory provisions; Definitions, Section 4 Definition (4)

⁵ The internet article from Elmhurst United dated November 12, 2014, describes the shelter as "the formerly Pa Am hotel in Elmhurst".

The evidence here supports the conclusion that the utility's assignment of nonresidential service classification SC 2-2 was proper and no further adjustment is necessary.

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