

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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December 1, 2011

Mr. Peter Mutignani

Ms. Nancy Fiaccone

Analyst

National Grid

300 Erie Blvd. West

Syracuse, NY 13202-5300

Re: Case No. 007700

Dear Mr. Mutignani and Ms. Fiaccone:

An informal hearing regarding the above complaint was held on August 8, 2011 by teleconference. Mr. Peter Mutignani, the Complainant, and Ms. Nancy Fiaccone, the Analyst who represented National Grid-Upstate, participated. I conclude, based on the discussion at the hearing and review of information in the case, that the Complainant was properly billed for electric service provided to the [REDACTED] at [REDACTED] in [REDACTED]

Complainant's Position

Mr. Mutignani filed a complaint with the Office of Consumer Services (OCS) on March 22, 2010 to dispute his responsibility for backbilled charges to November 16, 2009 for the [REDACTED] at [REDACTED]. He argued that a tenant, who resided at the premises during the time period in question, was allegedly responsible for the service. He stated that he rented an apartment to [REDACTED] in June 2008 and

sometime around October or November of 2009 she notified him that she would be moving. He was notified by the tenant in the [REDACTED] that National Grid cut the service to the [REDACTED]. It was later determined that the electric service to the [REDACTED] was falsely applied for by the use of another person's social security number. That person filed a police report on the incident.

The Complainant stated that in February 2010 (approximately) he received a high electric bill for his home account and was notified by National Grid that it was for service at [REDACTED] for which the utility determined he, as the owner, was responsible. He faxed a copy of the lease to the utility showing that the apartment was rented to [REDACTED] in June 2008 and also included a receipt to the tenant. He stated that he was notified by Staff, by letter dated April 23, 2010, that the lease he sent had a start date but no end date; he responded that a month-to-month lease has no end date but rather continues month to month until the tenant moves or is evicted. He further surmises that the tenant prior to [REDACTED] might not have had the electric service locked prior to [REDACTED] moving into the apartment. Nevertheless, he disputes responsibility for the \$184.32 for usage that registered on the electric meter for the [REDACTED] at [REDACTED].

Utility's Position

National Grid's representative stated that the Complainant admitted that the utility had been out to the property at [REDACTED] numerous times since 2009 and found "theft of service" and an active meter with no one listed as a responsible party for service (inactive advance). The utility cut the service off at the "midspan" then found the electric service reconnected with crimps; National Grid tried to terminate the service on January 20, 2010 but could not gain access. On January 26, 2010, National Grid found an illegal connection from the pole to the house so it cut the electric service at the pole on February 7, 2010. The utility was finally able to remove the meter.

On February 11, 2010, the Complainant applied for service for the [REDACTED] at [REDACTED]; and, on February 16, 2010, the Complainant's electrician contacted National Grid for an upgrade electric service order. The work was completed and inspected on March 4, 2010, at which time the service for the [REDACTED] was connected in the Complainant's name. The utility notified the Complainant that it is company policy to bill the owner for usage registering on a meter that is listed as inactive. Therefore, the Complainant is the responsible party for the registered usage charges of \$184.32 from November 16, 2009 to February 16, 2010.

National Grid notified the Complainant that a lease or a notarized landlord statement--with the names of the tenants for the period of time the service was inactive with the utility--must be provided in order to bill the tenants. The Complainant (owner) said he does not use lease agreements nor was he willing to provide National Grid with a notarized landlord statement signed by both parties. Therefore, National Grid properly transferred the charges for electric service at [REDACTED] to the owner's (the Complainant's) account in accordance with HEFPA 11.14.

Discussion of Facts

The Rules Governing the Provision of Gas, Electric and Steam Service to Residential Customers [the Home Energy Fair Practices Act (HEFPA)] Section (§) 11.14 (c) allows utilities to “render a bill for previously unbilled service...to a residential customer....” The utility cannot render such a bill “after the expiration of 24 months from the time the service to which the new billing ... pertains was provided unless the culpable conduct of the customer caused or contributed to the failure of the utility to render a timely or accurate billing.” Furthermore, the practice of transferring balances is permissible where it can be established by competent proof that the responsibility for the accounts is the same.

The New York courts have upheld the right of a utility 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.2d 535 (1st Dep’t 1966)). On March 17, 2010, National Grid transferred the \$184.32 balance in the Complainant’s name from the [REDACTED] the active account in his name at [REDACTED] in [REDACTED] k. The utility provided detailed billing records that showed 857 kilowatt-hours (kWh) of consumption registered on the electric meter for the [REDACTED] at [REDACTED] November 16, 2009 through March 9, 2010 when the service was put in the new tenant’s name.

Upon receipt of his bill, the Complainant contacted National Grid to dispute the charges for the [REDACTED] back to November 16, 2009 and argued that a former tenant, not he, was responsible for the utility service. That dispute resulted in this complaint, which is now the basis for this informal hearing. The Complainant continues to contend that a tenant was responsible for the utility service.

Determination

The hearing officer’s decision is bound to be based on supportive documentation. The billing documentation supports the conclusion that the Complainant was properly billed for electric service for the [REDACTED] Street. The Complainant’s objections to the utility’s charges back to 2009 rely on his contention that a former tenant was responsible for the utility services. However, National Grid has no record of anyone requesting or applying for electric service to the [REDACTED] between November 16, 2009 and February 16, 2010--the date when the Complainant applied for service at that address.

In this case, records have been presented and show that the Complainant requested service at [REDACTED]. Without any proof other than the Complainant’s statements that he is not responsible for the monies in question, and based on our review of the documentation provided by National Grid, there is no basis upon which to order National Grid to remove the transfer charges for the first-floor front apartment at [REDACTED] from the Complainant’s bill for service at [REDACTED]. It is my determination that the monies are due and owing and that the utility may request payment from the Complainant for the disputed electric charges.

Nothing in this determination should limit the Complainant's right to pursue payment from his former tenant for utility service used for the [REDACTED] at [REDACTED] in [REDACTED]

The case will be closed fifteen (15) days from the date of this letter. Therefore, any monies being held in dispute (\$184) will become collectible by National Grid within 15 days of the date of this letter. Once the case is closed, the utility may proceed to collect any arrears that remain on the account if the arrears are not paid, or if arrangements are not made to pay the balance in the future, as provided in my determination. A copy of the Appeal Procedure follows:

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.ny.gov

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,

June Ellen Wheeler
Hearing Officer
Office of Consumer Services