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May 3, 2012

Ms. Patricia Moffat

[REDACTED]

Ms. Alana Mikhalevsky
Central Hudson Gas & Electric Corp.
284 South Avenue
Poughkeepsie, NY 10003

Subject: Complaint # 210947- Patricia Moffat

[REDACTED] [REDACTED]
Shared meter existence

Dear Ms. Moffat and Ms. Mikhalevsky

An informal hearing regarding the above noted complaint was attempted via telephone conference on May 3, 2012. This telephone conference was originally requested by Ms. Patricia Moffat, the customer/complainant. After I introduced myself to the customer, she said that "I've already made up my decision in a favor of the company and sent her a letter." I advised the customer that I never sent her a letter regarding her shared metering concern. Ms. Moffat said that she did not want me to conduct an Informal Hearing; she wants "a man." The customer also stated that she has big bills from the company. I replied that today's hearing will address only one issue which is the existence of a shared meter.

After I connected the telephone conference to Central Hudson, Ms. Alana Mikhalevsky picked up the line. Ms. Moffat repeated her request for another informal hearing officer. Therefore, I cancelled the Informal Hearing and advised both parties that my decision will be made as an Informal Review based on the documentation that is available in the customer's case file.

Based on the following information I determined that a shared meter condition did exist at [REDACTED]

Complainant's Position

The complainant denies the existence of a shared meter condition¹ affecting the tenant's meter. In her January 2012 and February 2012 correspondence to the Department of Public Service Office of Consumer Services (OCS), she states that, instead of a lease agreement, there was an oral agreement between her and the tenant. This oral agreement explains why the tenant, Natacha Jenkins, opened up an account with Central Hudson. Furthermore, the agreement was accepted by all tenants because Ms. Moffat charged them a very low rent. However, according to Ms. Moffatt, Ms. Jenkins became unruly and destructive, stopped paying the rent, and refused to pay the utility bill. Ms. Moffatt maintains that the company sided with the tenant so it could get money from her, the owner. This situation led to the tenant's eviction. Ms. Moffat states that she cannot afford the tremendous bill and the company threatens to disconnect the service.

Ms. Moffat also provided a copy of a petition to recover possession of real property filed with the Poughkeepsie City Court. This document indicates that Natacha Jenkins, the tenant, entered into possession of the premises in question under an oral rental agreement and owes the landlord two months' rent for November 2011 and December 2011, \$350 for each month. Ms. Moffat seeks to repossess the premises described as a room on a second floor with: a bed, blue book case, wooden cabinet, and a lamp. The petition goes on to specify that the premises in question are not subject to rent control by reason that the tenants would share in paying the bill.

Utility's Position

On November 25, 2011, the tenant, Natacha Jenkins called the company and stated that the second floor was rented to a number of people and that she was only renting a room. Based on the conversation, the company initiated a shared meter investigation. On January 5, 2012, the company conducted investigation and found that the tenant's gas and electric meters provide service to a five floor boarding house with a common kitchen and a bathroom. The field report provided a list of the electric and gas appliances.

The owner was present during the inspection and stated that only two rooms were occupied. One room had a padlock for which the owner did not have key. By January 12, 2012 letter, the company notified the owner that a shared meter condition was found for both the gas and electric meters. The estimated monthly shared usage was approximately 487 kilowatt-hours for the electric and 35 therms for the gas.

Analysis

Under Shared Meter Law (SML), New York State utilities are obligated to conduct shared meter investigations to assure residential tenants that service billed on their

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 outside that dwelling and such tenant pays charges for the service to outside the dwelling measured through such meter.

utility accounts serves only appliances within their particular apartments. Such investigations are to include “conducting appropriate test, an examination of wiring, piping, meter and heating equipment in the building as may be needed, an estimate of gas, electricity, or steam used in the shared meter customer’s dwelling and in areas outside the dwelling, and review of billing records” (PSL Section 52 (4) (a)). Utility inspectors are trained to identify shared meter conditions and have no stake in the outcome of their investigations.

The company’s field report of January 5, 2012 provides the compelling evidence of a shared meter affecting the tenant’s apartment. The tenant moved out and was not present at the time of the inspection. As of December 30, 2011, the tenant requested service at new location and the company disconnected the gas and electric services at the premises in question.

The owner argued that there was no shared meter condition because there was a mutually accepted oral agreement between her and the tenant. This agreement provided the tenants with the beneficial of a low monthly rent; this is why one of the tenants, Natacha Jenkins, knowingly took responsibility for the Central Hudson bill.

SML states a shared meter condition exists if an occupant’s meter, in addition to measuring gas or electric service provided to the occupant’s “dwelling,” also measures service provide outside of the “dwelling.” Thus, when service is provide to equipment under a tenant’s exclusive use and control, a shared meter does not exist.

The complainant’s own correspondence to OCS clearly shows that the tenant occupied one room on a second floor. However, her gas and electric meters were servicing the entire second floor of the house which included a kitchen, bathroom, and other rooms. Furthermore, there were other tenants living on the second floor. In other words, Natacha Jenkins did not have exclusive control over the entire second floor.

SML became effective October 1991 and it requires utilities to notify residential customers and owners of residential dwellings of the requirements of the law. In addition, utilities are required to mail annual notices to owners and tenants of residential dwellings. The law stipulates that shared meter agreements negotiated after October 1991 are permissible only under very limited circumstances, none of which are present in this case.² In another words, any agreements between the owners and the tenants may be legal up to the point when the owner/ tenant dispute involves the utility’s bills. The tenant who applied for the service with the utility becomes a residential customer and has many protections in the eye of the law. The examples of such laws are the Home Energy Fair Practices Act (HEFPA) and SML.

It is important to note that not all of tenants are residential utility customers because not every tenant necessarily needs to apply for the utility service. In this case, the tenant was the residential customer. The tenant’s complaint about a shared meter triggered

² The SML provides that agreements are only allowed if the shared use is minimal (less than 5 therms of gas per months or less than 75 kilowatt-hours of electricity per month or less than 10% of the total monthly consumption registered on the shared meter, whichever is greater), if a legal impediment to correct the condition exists or if the costs associated with correcting the condition are found to be extraordinary (in excess of four months’ rent).

the proper utility action: a field investigation which followed up with the implementation of the requirements prescribed by SML. Once SML is in effect, it protects the tenant's rights by negating tenant/landlord agreements – (with few exceptions noted above).

It appears that is in the customer's view that her oral agreement with the tenant was fair and legal. This situation could be legal if the owner did not allow the tenants to open up an account with Central Hudson. In other words, the shared meter condition could have been avoided if the customer kept the second floor gas and electric services under her name and charged the tenants higher rents.

Decision

Based on the above, I uphold the company's position that a shared meter was found. If either party disagrees with this decision, an appeal may be filed with the Commission. The appeal procedures are set forth below.

The customer has been billed the shared use and assessment charges totaling \$2,901.10. **If Ms. Moffat accepts this decision, then she is advised to request a review and reduction of the shared meter charges by the Shared Meter Designee, Ms. Sandra Sloane. The request must be submitted in writing and can be either faxed at 212-417-2221 or mailed at 90 Church Street, New York, NY 10007.**

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,

Tatyana Benyaguyeva
Informal Hearing Officer
Office of Consumer Services